been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretay of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendment do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-28865 Filed 12-19-86; 11:34 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 1010 of the Veterans Administration Central Office, . . 810 Vermont Avenue, NW., Washington, DC 20420, January 13 and 14, 1987. The sessions will begin at 8:30 a.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202-233-2886) prior to January 6, 1987.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after meeting. Oral statements will be heard at 9:30 a.m. on January 14, 1987.

Dated: December 12, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-28685 Filed 12-22-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 246
Tuesday, December 23, 1986

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).

COUNCIL ON ENVIRONMENTAL QUALITY

DATES, TIMES AND PLACE: Thursday, January 8, 1987, 2:00 p.m., Monday, January 12, 1987, 10:00 a.m., Thursday, February 5, 1987, 10:00 a.m., Council on Environmental Quality Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC.

DATE: December 18, 1986.

STATUS: Open.

MATTERS TO BE CONSIDERED: Under the Council's NEPA regulations, Federal agencies may refer to the Council federal interagency disagreements concerning proposed major federal actions that might cause unsatisfactory environmental effects. (40 CFR Part 1504 *et seq.*) In accordance with this provision the Environmental Protection Agency has referred the proposed amendments of the Corps of Engineers' regulations implementing the National Environmental Policy Act. The purpose of these meetings is to aid the council in seeking a resolution of the referral.

The first and second meetings will be limited to briefings and discussions among the Council and other Federal agencies. The third meeting is being called to provide the public with an opportunity to present their views.

For the first meeting, January 8, the General Counsel of CEQ will brief the Council on the issues raised in the referral.

For the second meeting, January 12, representatives of the Corps of Engineers, the Environmental Protection Agency and any other interested Federal agencies, will present information and discussion regarding the referral.

For the third meeting, February 5, members of the public will have an opportunity to present views on the issues raised in the referral. Organizations and individuals wishing to make oral presentations at the public meeting on February 5, must request time in writing from CEQ by January 28, 1987. In addition interested parties may submit written comments for the record.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20006 (202) 395–5754.

A Alan Hill,

Chairman.

[FR Doc. 86–28925 Filed 12–19–86; 3:23 pm]

BILLING CODE 3125-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 22, 29, 1986, January 5, and 12, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 22

No Commission meetings.

Week of December 29—Tentative

No Commission meetings.

Week of January 5—Tentative

Thursday, January 8

10:00 a.m.
Briefing on Status of Safety Goal Implementation (Public meeting)

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Shearon Harris (Public meeting)

Friday, January 9

10:00 a.m
Affirmation/Discussion and Vote (Public meeting)
a. Proposed Order on Shearon Harris (Tentative)

Week of January 12—Tentative

Thursday, January 15

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Briefing on Status of Palisades (Public meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) *moved* from December 17 to December 18. Affirmation of "Final Rulemaking on Revisions to Operator Licensing—10 CFR 55 and Conforming Amendments" (Public meeting) scheduled for December 18, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates (202) 634–1410.

Andrew L. Bates,

Office of the Secretary.

December 18, 1986.

[FR Doc. 86–28928 Filed 12–19–86; 3:38 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 51, No. 246
Tuesday, December 23, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2910

[AA-320-06-4211-02-2410; Circular No. 2590]

Airport Leasing Procedures; Amendments

Correction

In rule document 86–25222 beginning on page 40807 in the issue of Monday, November 10, 1986, make the following corrections:

§ 2911.2–3 [Corrected]

1. On page 40810, in § 2911.2–3(b), in the third column, in the third line, "conveyance of" should read "conveyance or".

§ 2911.2–4 [Corrected]

2. On page 40810, in § 2911.2–4, in the third column, in the section heading, "Executive" should read "Execution"; and in the first line, "receipt the" should read "receipt of the".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-07-NCBC; CA-19159]

Realty Action; Exchange of Public and Private Lands in Riverside and San Diego Counties, CA

Correction

In notice document 86–25131 appearing on page 40359 in the issue of Thursday, November 6, 1986, make the following corrections:

1. In the first column, in the legal description for Riverside County, in T. 7S., R. 3E., in Sec. 18, remove the comma between "E½" and "SE¼".

2. In the same column, in the legal description for San Diego County, in T.18S., R. 7E., in the first line of Sec. 2, remove the comma between "NW¼" and "SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

Alaska National Wildlife Refuges, Management Regulations

Correction

In rule document 86–27901 beginning on page 44791 in the issue of Friday, December 12, 1986, make the following correction:

§ 36.2 [Corrected]

On page 44793, in the third column, in the amendment to § 36.2, remove the phrase "immediately after the words 'as defined in this section' " from the end of paragraph (h).

BILLING CODE 1505-01-D

Federal Register

Tuesday
December 23, 1986

Part II

Department of Defense

48 CFR Ch. 2

Department of Defense; Federal Acquisition Regulation Supplement; Final Rule

DEPARTMENT OF DEFENSE

48 CFR Ch. 2

Department of Defense; Federal Acquisition Regulation Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulation (FAR) and the DoD FAR Supplement (DFARS) became effective for solicitations issued on or after April 1, 1984. The 1984 edition of the DFARS was issued at that time. This document contains the 1986 edition of the DFARS, which replaces the 1984 edition.

EFFECTIVE DATE: December 23, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L), Room 3C841, the Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION: This 1986 edition of the Department of Defense Supplement to the Federal Acquisition Regulation (FAR) is issued under the statutory authorities of the Secretary of Defense. The FAR and the DoD FAR Supplement (DFARS) became effective for solicitations issued on or after 1 April 1984.

The FAR and the DFARS contain direction 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 must be followed in awarding and administering DoD contracts. The DFARS 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 FAR.

The new edition incorporates Defense Acquisition Circulars (DACs) 84-1 through 84-14 and reflects coverage that is now in the field and being utilized. The last DAC issued in the former edition, 1984, is 84-14. No further DACs will be issued to that edition. The first change to this edition will be Number 86-1 and later DACs will be numbered in sequence (e.g., 86-2, 86-3, etc.) (Note: The changes made by DAC 86-1 have been incorporated into this Federal Register publication).

Appendices which are currently in effect are included in this edition and are listed in the Table of Contents. (Note: DFARS (former DAR) manuals and supplements referenced in the Table of Contents are not included in the subscription to the DFARS and must be purchased separately from the Government Printing Office.)

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

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, DC 20402.

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

List of Subjects in 48 CFR Ch. 2

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

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

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Part 202—Definitions of Words and Terms
Part 203—Improper Business Practices and Personal Conflicts of Interest
Part 204—Administrative Matters

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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 Assistant Secretary of Defense for Acquisition and Logistics 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 military 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 270 is used in the DoD FAR Supplement for new material which is not covered 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 225.101. In this case, the FAR can only be numbered through 225.169.

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

(5) A new subsection 252.225–7001 could be used as the second clause supplementing the FAR clauses prescribed by Part 25 beginning with 52.225–1. 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, the DoD FAR Supplement, or the DFARS. 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 form 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, Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & 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 FAR 1.304(a) 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 FAR 1.304(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 offices 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 Joint Acquisition Coordinating Board-Europe 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 (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 effec. 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 Assistant Secretary of Defense (Procurement), OASD(A&L) Attention: DAR Council, Washington, DC 20301–3062
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 Assistant Secretary of Defense (Acquisition and Logistics) (ASD(A&L)); provided, however that unanimous approval by the members of the DAR Council will constitute approval of the ASD(A&L) of all matters except those involving major policy. Written requests for such approval will be submitted to the ASD(A&L) 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 that activity.

201.602 Authority of contracting officers.

201.602–1 Authority.

(a) 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 sealed bidding, by negotiation, or by coordinated or interdepartmental acquisition; 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 acquisition functions when delegated by the contracting office.

(b) Business clearances or approvals shall be obtained as prescribed by applicable departmental procedures.

201.603–3 Appointment.

Certificates of Appointment which were issued under the purview of the Armed Services Procurement Regulation and its successor, the Defense Acquisition Regulation, will have the same effect as if they had been issued under the Federal Acquisition Regulation.

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.

Subpart 201.7—Determinations and Findings

201.702 General.

(a) 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, the supporting data and the D&F may provide for limited additional quantities. Similarly, a provision may be included authorizing increased quantities if the acquisition process reveals that additional quantities can be acquired under the approved program and within available funds.

201.704 Content.

Additional guidance to that contained in FAR 1.704 for the preparation of a D&F is set forth with the appropriate subject matter. Where a format for a D&F is set forth with the appropriate subject matter, the D&F should conform generally to that format.

201.707 Signatory authority.

The Agency Head may 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 by the head of a contracting activity signing as chief officer responsible for contracting.

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

202.101 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 Mapping Agency, the Defense Nuclear Agency, and the National Security Agency.

"Head of the Agency" means the Secretary of Defense, the Assistant Secretary of Defense (Acquisition and Logistics), the Secretary, Under Secretary or any Assistant Secretary of the Army, Navy and Air Force, and the Director and Deputy Director of Defense agencies, except to the extent that any law or executive order limits the exercise of authority to specific individuals at the Secretarial level. In the latter situation, the Assistant Secretary of Defense (Acquisition and Logistics), unless specifically restricted to the Secretary of Defense, shall exercise the authority for Defense agencies.

"Senior Procurement Executive" means for the:

Department of Defense, Deputy Secretary of Defense;

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

Navy, The Assistant Secretary of the Navy (Shipbuilding and Logistics);

Air Force, The Assistant Secretary of the Air Force (Research, Development and Logistics);

Defense Logistics Agency, the Deputy Director (Acquisition Management);

Defense Communications Agency, The Director, Defense Communications Agency;

Defense Mapping Agency, The Director of Acquisition;

Defense Nuclear Agency, The Director, Acquisition Management; and

National Security Agency, The Deputy Director, National Security Agency.

(a) *Contracting Activities* include:

For the Army:

Office of the Assistant Chief of Staff for Information Management;

Office of the Director, Contracting and Production, ODCSLOG;

Office of the Deputy Chief of Staff for Procurement and Production, Headquarters, U.S. Army Materiel 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 Command;

U.S. Army Tank-Automotive Command;

U.S. Army Aviation Systems 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 Information Systems Command;

U.S. Army Medical Research and Development Command;

U.S. Army Western Command;

Military Traffic Management Command;

U.S. Army Strategic Defense Command;

Eighth U.S. Army;

U.S. Army Depot Systems Command; and

U:S. Army Intelligence and Security Command.

For the Navy:

Office of Acquisition and Contract Policy, Office of the Assistant Secretary of the Navy, Shipbuilding and Logistics;

Director, 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;

Strategic Systems Project Office;

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 Defense Mapping Agency:
Headquarters, Defense Mapping Agency, Logistics Office.

For the Defense Nuclear Agency:
Headquarters, Defense Nuclear Agency.

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

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

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. 5370.2G of 4 August 1977, 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 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 a 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 Anti-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 204.1—Contract Execution

204.170 Contracting Officer or Point of Contact Telephone Number.

The name and telephone number of the contracting officer or point of contact at the office awarding the contract shall be identified in the contract. The name and telephone number of the contracting officer or point of contact at the office which issues a modification shall be identified in the modification.

Subpart 204.2—Contract Distribution

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 copies of orders under Basic Ordering Agreements and 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.

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

"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 contracts, including notices of award; purchase orders; BPA calls; imprest fund purchases; SF 44 purchases; job orders; task orders; delivery orders; contingency orders; administrative notices; communication services authorizations (CSA's); production lists; priced exhibits; other orders against existing contracts; and contract modifications such as change orders or agreements, supplemental agreements, funding changes, option exercises, and notices of termination or cancellation.

"Contracting Office" means any office which awards or executes a contracting action when that action is accomplished by the Contracting Officer. 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.

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 in excess of $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 to require the reporting of subcontracts awarded prior to the 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 Contracting 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 contracting 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 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 adequacy of the way in which the DoD acquisition 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 acquisition 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 consists 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 acquisitions. 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, contracting 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 printout 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, the Defense General Supply Center (for petroleum and petroleum products), and the Military Sealift Command. The estimated value of the orders to be placed in each fiscal year against each Military Sealift Command contract shall be reported on a separate DD Form 350 in the appropriate fiscal year. The total estimated value of the orders to be placed against each Defense Fuel Supply Center contract, and each Defense General Supply Center contract for petroleum and petroleum products, shall be reported at the time of contract award.

(8) 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.

(9) 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.

(10) Orders placed by the Services for 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 by the Services and cumulative dollar amounts reported on a single DD Form 350 in accordance with departmental regulations. DLA activities shall submit individual rather than consolidated reports.

(11) 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 contracting 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 may be extended 10 calendar days for the forwarding of reports in order to assure complete coverage of all contracting actions occurring in the fiscal year at the option of the activity set forth in 204.671-4(d) below.

(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 B8B) may be omitted and the word "classified" inserted in lieu thereof. In addition, enter 9999 in Block B8A and zeros (000) in Blocks B8B and B8C. Should further modification of coding of items on DD Form 350 be deemed necessary for security classification purposes, the appropriate departmental offices identified in (d) below shall be contacted for special instructions.

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

(1) Army contracting offices (including Corps of Engineers Civil Works) to HQDA(JDHQ-SV-W-P), Washington, DC 20310-0600.

(2) [Reserved]

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

(4) Air Force contracting offices as directed by HQ USAF.

(5) Defense Logistics Agency contracting offices as directed by HQ DLA.

(6) All other contracting offices of the Department of Defense shall forward the signed originals to HQDA(JDHQ-SV-W-P), Washington, DC 20310-0600.

(e) Contracting 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 contracting 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 contracting 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 Item A2, A3, or B1 on a previously submitted report because a code was incorrect, that report must be canceled and a new "original" report submitted.

(2) *Item A2, Report number.* (i) Each contracting office shall assign to DD

Form 350 a unique 4-position number with alpha or numeric characters. If more than one activity within a contracting office utilizes the same reporting office code, the contracting office shall assign separate blocks of numbers to each such activity in order to prevent duplication of report numbers.

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

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

(4) *Item A4, Name of contracting office.* Enter in the space provided sufficient detail to establish the identity of the contracting office submitting the report.

(b) *Part B, DD Form 350*—(1) *Item B1, Contract number.* Enter, left justified, either 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 accordance with 204.70. Contracts numbered under exceptions permitted by 204.7001 shall include the identification of the contracting 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–00S–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 204.7001.

(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 Small Business Administration pursuant to the Small Business Act—Pub. L. 85–536, section 8(a), or orders placed against a contract awarded by another agency, enter the DUNS code for the contractor establishment 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 or has multiple DUNS codes 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 requesters should provide the following information:

(*1*) Name of requesting contracting office;

(*2*) Contracting location (city/town; state/country) and commercial telephone number (including area code);

(*3*) Name of individual making the request;

(*4*) The total number of requests, if more than one; and

(*5*) 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 performed for the Government, including military installations. If more than one location is involved, show the location involving the largest dollar amount of the acquisition. 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 performance. 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, DC and foreign countries.

(iii) *Item B5B.* Enter the state or country code from the list published by the Director, Federal Procurement Data Center for the principal place of performance. For Washington, DC, 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 word "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; if reporting the award of an unfunded contract, e.g., unobligated requirements type contract, enter Code 3 and leave Item B7 blank. Do not enter Code 3 to establish a Basic Ordering Agreement (BOA). Only orders against BOAs are reportable, and then only under Codes 1 or 2.

(7) *Item B7, Total dollars (obligated/deobligated).* Enter the net amount of funds obligated or deobligated by the contractual instrument being reported. Enter whole dollars only. Leave blank if Item B6 is Coded 3.

(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 Form 350 must contain a 4-character entry for this item. If more than one classification is applicable to the contracting action, enter the one accounting for the largest dollar volume of acquisition.

(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 for the acquisition (including rental or lease) of equipment, supplies, or services separately purchased in support of RDT&E work. Acquisition 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.* Acquisition 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 also 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 and 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 S10. 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 270)) 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 program 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. Any part of $25,000 or less shall be reported on the DD Form 1057. 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 Part D of DD Form 350 if Item B13 is coded 6, 7, or 8. For pre-CICA contracting actions, if Item B13 is coded 6, 7, or 8, do not complete Part C of DD Form 350. For post-CICA contracting actions, if B13 is coded 7, complete only Items C9 and C10 of Part C.

(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 under basic ordering agreements, priced exhibits and production lists entered into by a DoD Component. Use Codes A–G, as appropriate, for modifications of such orders.

(v) *Code 5. Order under DoD contract*—Enter this code when reporting 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 contracting actions from Workshops for the Blind or Other Severely Handicapped. Use Codes A–G, as appropriate, for modifications of such orders.

(vi) *Code 6. Order under mandatory GSA Federal Supply Schedule*—Enter this code for all contracting actions (including modifications) under mandatory GSA Federal Supply Schedule contracts (see FAR 8.401). Also enter this code for all contracting actions (including modifications) under mandatory GSA ADP Schedule contracts and mandatory GSA Area Contracts for Utility Services.

(vii) *Code 7. Action with another Federal agency*—Enter this code for all contracting actions (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 Departments of Treasury, Agriculture and Energy.

(viii) *Code 8. Order under optional GSA Schedule*—Enter this code for all nonmandatory contracting actions (including modifications) under GSA Federal Supply Schedule contracts (see FAR 8.402). Also enter this code for all contracting actions (including modifications) under nonmandatory GSA ADP Schedule contracts and nonmandatory GSA Area Contracts for Utility Services.

(ix) *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 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.

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

(xi) *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 (ix)(B) above). For funding actions involving the kinds of contracting actions covered in (iv), (v), (vi), and (vii) above, codes 4, 5, 6, and 7 shall be used as appropriate.

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

(xiii) *Code E*—Enter this code for termination for default.

(xiv) *Code F*—Enter this code for termination for convenience.

(xv) *Code G*—Enter this code for cancellation.

(c) *Part C of DD Form 350—Solicitations issued prior to 1 April 1985 (pre-CICA) (see 4.671–5(d) for solicitations issued on 1 April 1985 or later (post-CICA))*. 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, 7, or 8 leave all items in this Part C blank. If Item B13 is coded 1 through 4 or A, 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 except as provided for by Code 0 in (2) below. 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:

Code and Reason	
0	Original estimate less than $10,000, or contract made outside the United States, its possessions and Puerto Rico, or the reason for the original exemption is no longer coded;
1	The contracting action for security reasons is of a classified nature;
2	Contracting action of perishable subsistence when made by placement of an order under a contract covered by FAR 16.5;
3	Contracting action is for utility services and only one source is available;
4	Contracting action 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	Contracting action to be made by an order placed under an existing contract covered by FAR 16.5;
6	Contracting action to be made from another Government department or agency, including contracting actions with 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	Contracting action 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 unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research;
8	Contracting action for which a foreign government reimburses the Department for the cost of the contracting action for 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 acquisition shall be from sources specified within 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 corresponded to the negotiation exception of 10 U.S.C. 2304(a) (see FAR 15.201–15.217) cited as the negotiation authority in effect when the solicitation was issued.

Code and Negotiation Authority

0101 Labor Surplus Area Set-Aside
0102 Unilateral Small Business Set-Aside
0200 Public Exigency
0400 Personal or Professional Services
0500 Services of Educational Institutions
0600 Purchases Outside the United States
0700 Medicines or Medical Supplies
0800 Supplies Purchased for Authorized Resale
0900 Perishable or Nonperishable Subsistence Supplies
1001 Sole Source of Supply
1002 Patent Rights or Copyrights
1003 No Responsive Bids Received
1004 Remaining Requirements
1005 Public Utility Services
1006 Films, Motion Pictures, Manuscripts
1007 Technical Nonpersonal Services
1008 Studies or Surveys
1009 Nature or Amount of Work Unknown
1010 Stevedoring, Terminal, Warehousing, or Switching Services
1011 Commercial Transportation
1012 Services Relating to Perishable Subsistence
1013 Inadequate Specifications
1014 Storage of Household Goods
1015 Replacement Parts
1016 Sole Source Facilities Contract
1017 Additional Construction Same Site
1018 Foreign Military Sales
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
1200 Classified Purchases
1300 Standardization and Interchangeability of Parts
1400 Substantial Initial Investment or Extended Preparation
1500 Negotiation After Advertising
1600 In the Interest of National Defense
1701 Joint Small Business Set-Aside
1702 Otherwise Authorized by Law
1703 Repurchase Following Default

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

(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 Noncompetition based on catalog or market price
7 Competition not applicable

(ii) Definitions of the extent of competition codes:

(A) *Price competition, Code 1.*

(1) 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 for 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 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.

(2) 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 acquisition (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor which continues or augments a specific military program in instances where such placement was necessitated by prior acquisition decisions. An example of a follow-on contract is one which by force of circumstances was awarded to a contractor who was just completing a research and 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 furnishing 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 acquisition 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 involves catalog or market prices and the criteria for "price competition" as specified in (ii)(A) above have been met, enter Code 1 versus Code 6.

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

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

(2) Awards to nonprofit organizations, including educational institutions;

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

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

(5) Awards coded 7 in B13.

(6) Awards requiring investment of Government funds for the purpose of establishing a competitive second source where (i) Item C10 is coded 1a or 1g, and (ii) the justification required by 6.302–1(c) is on an individual basis and not a class basis; includes a determination that there is only one source in addition to the existing source and that to solicit the additional source would increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition, of the supplies or services; and includes a description of the estimated reduction in overall costs and how the estimate was derived.

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

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

Code and 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 dollars 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 for the type of contract that will be used when the letter contract is converted to a definitive contract.

(7) *Item C7, Number of offerors solicited.* Do not complete this item.

(8) *Item C8, Number of offers received.* Do not complete this item.

(9) *Item C9, Competitive solicitation procedures.* Do not complete this item.

(10) *Item C10, Authority for other than full and open competition.* Do not complete this item.

(d) *Part C of DD Form 350—Solicitations issued on 1 April 1985 or later (post-CICA) (see 204.671.5(c) for solicitations issued prior to 1 April 1985 (pre-CICA)).* The following rules apply to each of the items listed in Part C of DD Form 350: If Item B12 is coded 1, leave all items in this Part C blank. If Item B13 is coded 1 through 4, 8 or A, 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 7, enter N in Item C9, enter 5A in Item C10 and leave all other items in this Part C blank. If Item B13 is coded 5, or B through G, enter the same code in each item in Part C that was entered on the DD Form 350 to report the original contract governing this transaction except as provided for by Code Z in (2) below. If the DD Form 350 was not required to report the original contract governing this transaction, enter the code which is applicable to the original contract. If Item B13 is coded 6, items in this Part C shall be coded (manually or by automation) as follows:

C1, enter Code 2;
C2, enter Code F;
C3 and C4, do not complete;
C5, enter Code 1;
C6, enter appropriate code;
C7, enter Code 2;
C8, enter Code 2;
C9, enter Code F for multiple award schedules or Code B for single award schedules; and
C10, do not complete.

(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 5.202):

Code and Reason

A The contracting action is of a classified nature and the synopsis cannot be worded to preclude the disclosure of classified information; or disclosure of the agency's needs would compromise the national security. (FAR 5.202(a)(1))
B The contracting action is to fulfill a need for supplies or services that is of such unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals and not comply with the time periods specified in 205.203. (FAR 5.202(a)(2))
C The contracting action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government, have the effect of requiring that the acquisition shall be from specified sources. (FAR 5.202(a)(3))
D The contracting action is expressly authorized or required by the statute to be made through another Government agency, including acquisitions from the SBA using the authority of section 8(a) of the Small Business Act, from a specified source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped. (FAR 5.202(a)(4))
E The contracting action is for utility services and only one source is available. (FAR 5.202(a)(5))
F The contracting action is an order placed under a requirements contract, or a mandatory GSA Federal Supply Schedule contract. (FAR 5.202(a)(6))
G The contracting action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), or an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would improperly disclose the originality of thought or innovativeness of the proposed research. (FAR 5.202(a)(7))
H The contract is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable. (FAR 5.202(a)(8))
I Reserved. ("I" and "0" are normally reserved to eliminate confusion with the numbers "1" and "0" during data entry.)
J The contract action is made under conditions described in FAR 6.302–5 with regard to brand-name commercial items for authorized resale and advance notice is not appropriate or reasonable. (FAR 5.202(a)(9))
K The contracting action is made under the terms of an existing contract which was previously synopsized in sufficent detail to comply with the requirements of 5.207 with respect to the current contracting action. (FAR 5.202(a)(10))
L The head of the agency determines in writing, after consultation with the Administrator of the Small Business Administration and the Administrator for Federal Procurement Policy, that advance notice is not appropriate or reasonable. (FAR 5.202(b))

Z Original estimate less than $10,000 or the reason for the original exemption is no longer coded or the contract is made outside the United States, its possessions and Puerto Rico.

(3) *Item C3, Method of contracting.* Enter Code 1 when accomplished by sealed bidding; enter Code 2 when accomplished by negotiation, including a combination of sealed bidding and negotiation, and modifications pursuant to the provisions of Pub. L. 85–80.

(4) *Item C4, Negotiation authority.* Do not complete this item.

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

(i) Enter the code below which corresponds to the extent of competition in the 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 Noncompetition based on catalog or market price
7 Competition not applicable

(ii) Definitions of the extent of competition codes:

(A) *Price competition, Code 1.*

(*1*) 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 for 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 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. If B13 is coded 6, enter Code 1.

(*2*) 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 acquisition (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor which continues or augments a specific military program in instances where such placement was necessitated by prior acquisition decisions. An example of a follow-on contract is one which by force of circumstances was awarded to a contractor who was just completing a research and development contract in the same program. Other examples of follow-on contracts included those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor furnishing 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 acquisition 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 items sold in substantial quantities to the general public as defined in FAR 15.804–3(c). If the award involves catalog or market prices and the criteria for "price competition" as specified in (ii)(A) above have been met, enter Code 1 versus Code 6.

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

(*1*) Awards for brand name items for commissary resale;

(*2*) Awards to nonprofit organizations, including educational institutions;

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

(*4*) Awards made pursuant to section 8(a), Small Business Act (15 U.S.C. 637(a)); and

(*5*) Awards coded 7 in B13.

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

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

Code and 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 dollars 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 Form 350 so reported shall equal the total contract action.

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

(7) *Item C7, Number of offerors solicited.* Enter the code below which

describes the number of offerors solicited. If B13 is coded 6, enter Code 2. Code 1 is used when only one offeror was solicited. Code 2 is used when more than one offeror was solicited.

(8) *Item C8, Number of Offers Received.* Enter the code below which describes the number of offers received. If B13 is coded 6, enter Code 2. Code 1 is used where only one offer was received. Code 2 is used when more than one offer was received.

(9) *Item C9, Solicitation procedures.* Enter the code below which accurately describes the action. This item pertains to the requirements of FAR Part 6, Subparts 6.1, 6.2, and 6.3, with the exception of the statutory authorities for other than full and open competition (Subpart 6.3) which are reported in Item C10 below. Codes A through K designate the full and open competition requirements set forth in FAR Part 6. Codes L and M designate actions which do not require the application of these requirements. Code N designates a statutory exception to full and open competition. Modifications within the scope of a contract and delivery orders under requirements or definite quantity contracts shall be reported the same as the initial contract. Delivery orders under indefinite quantity contracts shall be reported the same as the initial contract when the conditions in FAR 6.001(f) are met. If these conditions are not met, the delivery order shall be reported pursuant to the conditions applicable to that order. If B13 is coded 6, for post-CICA contracts, enter Code B for single award schedules or Code F for multiple award schedules.

If Item B13 is coded 8, for post-CICA contracting actions, enter only Code B or N as appropriate.

Code A—Full and open competition—sealed bidding is entered when the action resulted from an award pursuant to FAR 6.102(a).

Code B—Full and open competition—competitive proposals is entered when the action resulted from an award pursuant to FAR 6.102(b).

Code C—Full and open competition—combination is entered when action resulted from an award using a combination of competitive procedures (e.g., Two-Step Sealed Bidding) pursuant to FAR 6.102(c).

Code D—Architect-engineer is entered if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

Code E is entered if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

Code F—Multiple award schedule is entered if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3). Orders against such schedules are also Coded F. Do not use this code if Item 13 is coded 8. (Use either B or N as appropriate.)

Code G—Alternate source—reduced cost is entered if the action resulted from use of procedures to reduce overall costs pursuant to FAR 6.202(a)(1).

Code H—Alternate source—mobilization is entered if the action resulted from use of procedures for having a facility available for national defense or industrial mobilization pursuant to FAR 6.202(a)(2).

Code J—Alternate source—Eng/R&D capability is entered if the action resulted from use of procedures for establishing or maintaining an essential engineering, research, or development capability pursuant to FAR 6.202(a)(3).

Code K—Set-aside is entered if the action resulted from use of procedures for set-asides pursuant to FAR 6.203.

Code L—8(a) program.

Code M—Otherwise authorized by statute is entered when the agency uses contracting procedures that are expressly authorized by statute and not addressed in FAR Part 6 (See FAR 6.001(c).) Code M should not be used for statutes addressed in FAR 6.302–5; these statutes require Code N in Item C9 and Code 5A in Item C10.

Code N—Other than full and open competition is entered if the action resulted from use of other than full and open competition pursuant to FAR 6.301. When this code is used, an entry is required in Item C10.

(10) *Item C10, Authority for other than full and open competition.* Enter the appropriate code below when Item C9 is coded N. Explanations of the authorities are set forth in FAR 6.302.

Code 1A—Unique source is entered when action was justified pursuant to FAR 6.302–1(b)(1).

Code 1B—Follow-on contract is entered when action was justified pursuant to FAR 6.302–1(b)(2).

Code 1C—Unsolicited research proposal is entered when action was justified pursuant to FAR 6.302–1(b)(3).

Code 1D—Patent/data rights is entered when action was justified pursuant to FAR 6.302–1(b)(4).

Code 1E—Utilities is entered when action was justified pursuant to FAR 6.302–1(b)(5).

Code 1F—Standardization is entered when action was justified pursuant to FAR 6.302–1(b)(6).

Code 1G—Only one source—other is entered when the action was justified pursuant to FAR 6.302–1 in a situation other than the examples cited in Codes 1A through 1F above.

Code 2A—Urgency is entered when action was justified pursuant to FAR 6.302–2.

Code 3A—Mobilization is entered when action was justified pursuant to FAR 6.302–3(a)(2)(i).

Code 3B—Essential R&D capability is entered when action was justified pursuant to FAR 6.302–3(a)(2)(ii).

Code 4A—International agreement/foreign military sales is entered when action was justified pursuant to FAR 6.302–4.

Code 5A—Authorized by statute is entered when action was justified pursuant to FAR 6.302–5(a)(2)(i).

Code 5B—Authorized resale is entered when action was justified pursuant to FAR 6.302–5(a)(2)(ii).

Code 6A—National security is entered when action was justified pursuant to FAR 6.302–6.

Code 7A—Public interest is entered when action was taken pursuant to FAR 6.302–7.

(e) *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, 7, or 8, leave all items in this part blank. If Item B13 is coded 1 through 4, or A, (i) coding of all items in this Part D shall be accomplished in accordance with the coding instructions for that item, and (ii) 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), including non-US chartered nonprofit institutions as defined in (v) below.

(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 domestic 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. If an award is made to a non-US chartered nonprofit institution, enter Code 3, Foreign Concern. A nonprofit institution is defined as any corporation, foundation, trust, or 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 for the blind or other severely handicapped and the action is an acquisition from the Procurement List (see 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) (see FAR 8.713), and Code E for all other nonprofit institutions.

(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 a 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 a separate award for the portion bid on under this solicitation.

(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.

(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 220.70.

(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 220.70.

(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 (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 is 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 or 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 11). 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 the list published by the Director, Federal Procurement Data Center.

(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 the list published by the Director, Federal Procurement Data Center.

(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 the list published by the Director, Federal Procurement Data Center.

(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 FAR 52.232–16 or Alternate I.

(ii) Enter Code 2 if the action contains the clause at 252.232–7004.

(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.

(f) *Part E, DD Form 350.* For departmental or higher authority use.

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

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

(2) *Item F2, Signature.* Contracting officer or representative.

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

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

204.671–6 Instructions for preparing magnetic tape of DD Form 350 actions, DD–DR&E(M)1014.

A magnetic tape as prescribed by the Office of the Deputy Under Secretary of Defense for Acquisition Management will be submitted to DIOR–WHS by the Departments to cover individual DD Form 350 transactions for each month (noncumulative). The instructions for preparing the tape are developed by DIOR–WHS with the agreement of the Departments.

204.672 Monthly contracting summary of actions $25,000 or less (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 contracting office 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 acquisition, such as base and central contracting, or RDT&E and non-RDT&E acquisition. 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 or the Defense General Supply Center for Petroleum or Petroleum Products; these offices 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 requests; 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 contracting offices of specified Departments and Agencies, the following instructions are applicable to all contracting 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, contracting 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 may be 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 contracting office has not transacted a reportable action during the month.

(3) Letter of transmittal is not required.

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

(1) The original (except from Army Engineer Civil Works Contracting offices) shall be forwarded to HQDA (JDHQ-SV-W-P), Washington, DC 20310-0600.

(2) Army Engineer Civil Works Contracting offices shall forward the original to HQDA (DAEN-PRP), Washington, D.C. 20314-1000. A copy is not required for HQDA.

(c) Navy contracting 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 contracting offices shall forward the original DD Form 1057 as directed by HQ DLA.

(f) All other contracting offices of the Department of Defense shall forward the original DD Form 1057 to HQDA (JDHQ-SV-W-P), Washington, D.C. 20310-0600.

(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 contracting office listed in Appendix N.

(2) Contracting 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) *Contracting office and mailing address*—Enter sufficient detail to establish the identity of the contracting office submitting the report.

(3) *Reporting office code*—Enter the code assigned to the contracting 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 (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 "—" immediately preceding the amount to signify a credit entry. Do not enter parentheses.

(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 (2), (3), (4), (5), and (6) below.

(2) Enter on Lines 1.a., 2.a., 3.a., and 4.a., the number and dollar amount of those contracting actions accomplished through sealed bid procedures.

(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). Small business-small purchase set-asides shall be reported as competitive awards.

(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). These actions shall also be reported in section B, as appropriate.

(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, Set-Aside and local use data.*

Line and Description	
B01a	Labor Surplus Area or Industry Set-Aside
B01b	Small Business Set-Aside (Unilateral)
B02	For local use
B03a	Small Purchases Set-Aside for Small Business
B03b	For local use
B04	For local use
B05	For local use
B06	For local use
B07	For local use
B08	For local use
B09	For local use
B10	For local use
B11	For local use
B12	For local use
B13	For local use
B14	For local use
B15	For local use
B16	For local use
B17a	Small Business Set-Aside (Joint)
B17b	For local use

Enter on Lines B01a, B01b, B03a and B17a the number and dollar value of actions of $25,000 or less which were awarded under the type of set-aside indicated. The other lines will be completed as directed by the appropriate Departmental office identified in 204.672-3(a)(3).

(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 for 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.

204.672–6 Instructions for preparing summary punched cards or tape of DD Form 1057 actions, DD–DR&E(M)1015.

Summary of punched cards or tape as prescribed by the Office of the Deputy Assistant Secretary of Defense for Procurement will be submitted to DIOR–WHS by the Departments to cover DD Form 1057 transactions for each month (noncumulative). The instructions for preparing the punched cards or tape are developed by DIOR–WHS with the agreement of the Departments.

204.673 Report of individual contract profit plan (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 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 contractual 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, DC 20310–0600;

(i) Contracting offices under the jurisdiction of AMC and the BMDS Command shall report through U.S. Army Materiel 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, DC 20314–1000.

(2) Navy: Naval Supply Systems Command (SUP–024B), Washington, DC 20376. Navy contracting offices shall forward the original DD Form 1499 as directed by COMNAVSUP (SUP–024).

(3) Air Force: AFLC/ACOCDLSORS, Wright-Patterson Air Force Base, OH 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:DDR&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; for example, the fourth report in fiscal year 1984 would be numbered 0004–84. This number identifies a

specific DD Form 1499 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 204.671–5(e).

(d) *Item 3, SPIIN.* Enter in item 3 any order, supplemental agreement, or other modification number in the manner prescribed in 204.671–5(b)(2).

(e) *Item 4, Date of action.* Enter in numeric terms the year and month (e.g., 84–03 for 1984 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, Contracting 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 reportable 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, Contractor 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 DUNS number. 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 204.671–5(b)(8)(i).

(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, Negotiation 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 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; $500,500.49 shall be entered as $500,500.

(2) The dollar entries shall reflect the entire reportable amounts negotiated in the contractual 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 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 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 persen 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), pre-punched 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 (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 therefor.

(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 therefor.

(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.*

(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 4.804-1(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 of 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 1593, 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 4.804 and 204.804 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 files*—remove any contract cross-reference data forms relating to the completed contract, mark each "Completed *(Date)*" and place them in completed (inactive) cross reference/locater 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 righthand 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)
MO, M1 Marine Corps
M2, M6:
DLA Defense Logistics Agency
DNA Defense Nuclear Agency
DMA Defense Mapping Agency
MDA Miscellaneous Defense Activities

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
K Short Form Research Contract
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

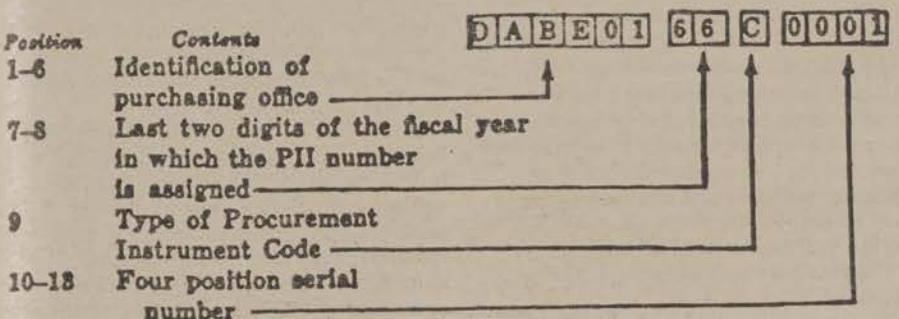
activity shall commence with the number 0001 at the start of each fiscal year. Alpha-numeric serial numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with an alpha in the first (or first and second) position followed by the three (or two) 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 Z001 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 (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
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 0001 through 9999.

(2) Calls/orders issued by an office other than the purchasing office identified in the basic PII number shall be assigned alphanumeric 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 (known 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 (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 origin 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 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 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 than 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 payments 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 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. 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	Amount
0002	15B/EE Periscope Adapter System, NSN-2040-00-916-2842, including one set of the following for each system	12	EA	$72,831.00	$873,972.00
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 below:

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 RDD: 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 A2573M IPD: 2 RDD: 334 PROJ: 501	10	Ea	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RDD: 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 Insulated, 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 than at subline level, as authorized by 204.7104-2(c)(2), when all subline items of a line item 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	1237	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 separately 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
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.).

AJ: 17X1505183503150691000001928000000000000000000
AK: 17X1505183703175691000001928000000000000000000
AL: 17X1505193503143691000001928000000000000000000

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-19 ACR: AJ	2			$6,074.80
0002AB	Pulse Decoder KY-312/A5Q-19 ACR: AK	6			18,224.40
0002AC	Pulse Decoder KY-312/A5Q-19 ACR: 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	$52,601.00	$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 at 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 at 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.

Cumulative No. of line items	Two-position serial No. for double-letter exhibit identifier—serial No. sequence
1-33	01 thru 09, then OA thru OZ, 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	AO thru A9, then AA thru AZ, then
374-407	BO thru B9, then BA thru BZ, then
408-441	CO thru C9, then CA thru CZ, then
442-475	DO thru D9, then DA thru DZ, then
476-509	EO thru E9, then EA thru EZ, then
510-543	FO thru F9, then FA thru FZ, then
544-577	GO thru G9, then GA thru GZ, then
578-611	HO thru H9, then HA thru HZ, then
612-645	JO thru J9, then JA thru JZ, then
646-679	KO thru K9, then KA thru KZ, then
680-713	LO thru L9, then LA thru LZ, then
714-747	MO thru M9, then MA thru MZ, then
748-781	NO thru N9, then NA thru NZ, then
782-815	PO thru P9, then PA thru PZ, then
816-849	QO thru Q9, then QA thru QZ, then
850-883	RO thru R9, then RA thru RZ, then
884-917	SO thru S9, then SA thru SZ, then
918-951	TO thru T9, then TA thru TZ, then
952-985	UO thru U9, then UA thru UZ, then
986-1019	VO thru V9, then VA thru VZ, then
1020-1053	WO thru W9, then WA thru WZ, then
1054-1087	XO thru X9, then XA thru XZ, then
1088-1121	YO thru Y9, then YA thru YZ, then
1122-1155	ZO thru Z9, then ZA thru ZZ

Cumulative No. of line items	Three-position serial No. for double-letter exhibit identifier—serial No. 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

Cumulative No. of line items	Three-position serial No. for double-letter exhibit identifier—serial No. sequence
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 0CZ
442–1121	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 2A9, then 2AA thru 2AZ, 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
10,472–10,709	and so on to
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)(3)), 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 Representatives 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 (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;

(4) The ACRN shall be shown in the contract and 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.g., 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.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

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.

205.002 Policy.

(c) Small business specialists in each purchasing office are responsible for screening all proposed contract actions and for recommending action to be taken with respect to publicizing such actions 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 contract action 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 213 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 purchasing activity is not in possession of complete sets of specifications, plans, and drawings (as in some acquisitions for 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 Contract Actions

205.201 General.

(b) *Commodity assignments.* When an item is assigned or is within a Federal Supply Class assigned for acquisition 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 contract actions less than $10,000.* When recommended by contracting personnel or the small business specialist, and approved by the contracting officer, proposed contract actions less than $10,000 may be publicized in the *Commerce Business Daily*.

205.202 Exceptions.

(a)(6) Use of nonmandatory automatic data processing (ADP) Schedules covered in Part 270 is not included in this exception and requires synopsizing.

205.204 Presolicitation notices.

See FAR 14.205–4(c) and 215.404(b).

205.205 Special situations.

(c)(1) Each contract action 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 contract actions with fees 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*.

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 acquisition 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 action, as authorized by one of the exceptions in FAR 6.302, the synopsis shall include reference to Numbered Note 22. The Numbered Note will appear in the *Commerce Business Daily* as follows:

Note 22.—This contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source under authority of FAR 6.302. Interested persons may identify their interest and capability to respond to the requirement or submit proposals. This notice of intent is not a request for competitive proposals. However, all proposals received within forty-five days after the date of publication of this synopsis will be considered by the Government. A determination by the Government not to open the requirement to competition based upon responses to this notice is solely within the discretion of the Government. Information received as a result of the notice of intent will normally be considered solely for the purpose of determining whether to conduct a competitive procurement.

(End of Note)

(d)(S–71) Each notice publicizing a contract action for 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 their relative order of importance to the Government, 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."* 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 procedure for selection of architect-engineer firms is a competitive procedure which includes consideration of 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 projects) 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 contract actions for architect-engineer services. When the notice is used in accordance with FAR 5.205(c), the substance of the Numbered Note shall be included.

Subpart 205.3—Synopses of Contract Awards

205.302 Preparation and transmittal of synopses of awards.

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

(2) Size status ((S) for small business and (L) for large business) 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 Affairs) 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 (Senators 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—COMPETITION REQUIREMENTS

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

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

(a) This authority may be used, as appropriate, to totally or partially exclude a particular source from a contract action.

(b)(S-70) *Additional instructions and formats for agency head determination and findings for exclusion of a particular source.*

(i) When the authority of FAR 6.202(a) is proposed for use, it must be shown clearly that the necessity for excluding a particular source arises from genuine considerations pertinent to the authority of FAR 6.202(a)(1), (2), or (3). The supporting data, as well as the determination and findings, must name the source to be excluded from the contract action. Additionally, the supporting documents shall include the following information as applicable, and such other information as may be pertinent:

(A) The specific purpose to be served (i.e. to increase or maintain competition, the interest of national defense in case of a national emergency or industrial mobilization, or the interest of national defense in establishing or maintaining an essential engineering, research or development capability) by excluding a particular source from the contract action;

(B) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award;

(C) The circumstances which make it necessary to exclude a particular source from the contract action:

(*1*) The reasons for lack of, or potential loss of, alternative sources; e.g., the technical complexity and criticality of the item;

(*2*) The current annual requirement and prospective needs for the supplies or services;

(*3*) Address projected future requirements as justification for the exclusion of a particular source from the contract action;

(D) Explain whether the existing source must be totally excluded from a contract action or whether a partial

exclusion of the existing source from a contract action is sufficient;

(E) Describe the potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions;

(F) When the authority of FAR 6.202(a)(1) is cited:

(*1*) Provide basis for assumption of future competition;

(*2*) Provide the basis for the determination that exclusion of a particular source will likely result in reduced overall costs either for the current acquisition, or for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, facilitization costs, duplicative administration costs (additional inspection, testing, etc.), economic order quantities, and life cycle cost considerations;

(G) When the establishment of an additional source(s) is necessary to provide production capacity to meet current and mobilization requirements, the following:

(*1*) The current annual and the mobilization requirements for the item, citing the source of, or the basis for, such planning data;

(*2*) The comparison of current production capacity necessary to meet mobilization requirements; and

(*3*) The hazards of relying on the present source and the time required for a new source(s) to acquire the necessary facilities and skills and achieve the production capacity necessary to meet mobilization requirements.

(ii) Set forth below is the sample format for D&Fs citing the authority of FAR 6.202(a)(1).

(Military Department or Agency)

Determination and Findings

Authority to Exclude a Source

Upon the basis of the following and determination which I hereby make as agency head pursuant to 10 U.S.C. 2304(b)(1), the proposed contract action described below may be awarded using full and open competition after exclusion of (1).

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the aforementioned source.

2. The aforementioned source is the source which can be expected to receive an award for the above requirement.

3. It is necessary to establish or maintain an alternative source or sources through the use of full and open competition after exclusion of the aforementioned source.

4. The exclusion of the aforementioned source will increase or maintain competition and is likely to result in reduction of (2) in overall costs for the acquisition, or for any anticipated acquisition, of such supplies or services. This estimate is based on (3).

Alternate: The exclusion of the aforementioned source will be in the interest of national defense to have a supplier available for furnishing the above supplies or services in case of a national emergency or industrial mobilization, because (4).

Alternate: The exclusion of the aforementioned source will be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, because (5).

Determination

The exclusion of a source from the proposed contract action will increase or maintain competition and is likely to result in reduced overall costs for the acquisition or any anticipated acquisition of such supplies or services.

Alternate: It is in the interest of national defense to exclude a source from the proposed contract action in order to have a supplier available for furnishing the above supplies or services in case of a national emergency or industrial mobilization.

Alternate: It is in the interest of national defense to exclude a source from the proposed contract action in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date_____.

1. Name of source to be excluded.

2. Description of estimated reduction in overall costs.

3. Description of how estimate was derived.

4. 5. Description of circumstances necessitating the exclusion of source.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302-1 Only one responsible source.

(b)(S-70) When acquiring test articles and associated support services from a designated foreign source under the DoD Foreign Weapons Evaluation Program, the authority of FAR 6.302-1 may be used.

(c)(S-70) The authority of FAR 206.302-1(a) shall not be used in the case of acquisitions described in FAR 206.302-1(b)(6) unless the equipment or parts have been adopted as standard items of supply in accordance with DODD Standardization Program (see DODD 4120.3 and Departmental procedures). This authority shall not be used for initial acquisitions of equipment or spare parts, or to select arbitrarily the equipment or parts of certain suppliers. (If supplies might subsequently be standardized see FAR 15.407(b)).

206.302-2 Unusual and compelling urgency.

(b) *Application.* The following are illustrative of circumstances with respect to which the authority of 10 U.S.C. 2304(c)(2) may be used and are not intended to be all inclusive:

(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; or

(6) Purchase requests citing an issue priority designator under the Uniform Material Movement and Issue Priority System (UMMIPS) of 4 or higher, or citing "Electronic Warfare QRC Priority" may justify other-than-full and open competition, but in such cases the specific circumstances must be set forth in the justification required by FAR 6.303.

206.303 Justifications.

206.303-1 Requirements.

(b)(S-70) Any recommendation by technical and requirements personnel for other than full and open competition must have been reviewed and approved at an appropriate management level in accordance with agency procedures prior to submittal to the contracting officer.

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

207.103 Agency-head responsibilities.

(c)(1) The formal 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 requirements may also be adapted to the acquisition of all supplies and services.

(c)(2) Written 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 7.105, as appropriate.

(c)(3) Acquisition plans for acquisitions described in (c)(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.

(c)(4) The criteria and thresholds in (c)(2) above do not preclude the preparation of written acquisition plans for any acquisition, whether short-range or long-range, when determined necessary by the Departments.

(c)(5) Acquisitions which represent a final buyout or a one-time buy are exempt from the requirements of (c) (2) and (4) above.

(d) Written acquisition plans meeting the criteria and thresholds of (c)(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.

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

(f) 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.

(g) Acquisition plans shall be reviewed and approved in accordance with Departmental procedures.

(h)(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 DoDD 4245.3, "Design to Cost", and in accordance with Departmental procedures.

(ii) In solicitations and contracts including design-to-cost principles, consideration should be given 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:

(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).

(i) 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]

207.105 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)(3) *Cost.*

(i) *Life cycle cost.* Indicate the provisions/clauses that will be used to impose Life Cycle Cost and Cost/Schedule Control System Criteria (see 234.005–70).

(ii) *Design-to-cost.* Indicate the provisions/clauses that will be used to impose Design-to-Cost and Cost/Schedule Control System Criteria (see 234.005–70).

(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(i).

(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 other than full and open competition.* See FAR 6.303–2 for the information required to be included in the acquisition plan if the plan is to be used to support a justification and approval or a determination and findings under Part 206.

(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, qualified 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.

(iv) See DoDD 4120.3 for procedures relative to standardization.

(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) Other than full and open competition authority recommended. Discuss basis for recommendation of other than full and open competition exception (see FAR 7.105(b)(2)).

(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) Incentives. When appropriate, discuss plans for providing for incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

(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)(18) and any others, as appropriate.

(xi) Other considerations, as applicable.

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 full cost comparison which demonstrates that contract performance is more economical unless:

(1) The commercial activity is performed exclusively by military personnel, there is adequate competition and reasonable prices can be obtained from qualified commercial sources, or

(2) The commercial activity involves 40 or less DoD civilian employees. (See Section 502, Pub. L. 96–342, as amended by Section 1112, Pub. L. 97–252 and Section 1234, Pub. L. 99–145.) When this situation applies, refer to DoDD 4100.5 and DoDI 4100.33 for further guidance.

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 for 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, DC 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, DC 20555. If the application meets all regulatory requirements 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, DC 20555. DOE F Form 5400.3 shall be requisitioned directly from: Oak Ridge National Laboratory, Isotope Distribution Office, P.O. Box X, Oak Ridge, 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).

208.070 Industrial preparedness production planning.

(a) *Scope of subpart.* This subpart establishes uniform procurement policy guidance and procedures for the Department of Defense in planning with industry for the establishment and retention of industrial base capability essential to national defense for production during periods of national emergencies.

(b) *Definitions.*

"Emergency (National)" means a condition declared by the President or Congress by virtue of powers previously vested in them which authorizes certain emergency actions to be undertaken in the national interest. Actions to be taken may include partial or total mobilization of national resources.

"Industrial Base" means that part of the total privately-owned and Government-owned industrial production and maintenance capacity of the United States, its territories and possessions, as well as capacity located in Canada, expected to be available during emergencies to manufacture and repair items required by the military services.

"Industrial Preparedness Planning" means planning designed to maintain an adequate industrial base to support DoD requirements for selected essential military items in a national emergency.

"Planned (or Planning) Item" means any item selected for industrial preparedness planning under the criteria of DoD Instruction 4005.3, "Industrial Preparedness Production Planning Procedures."

"Planned Producer" means an industrial firm which has indicated its willingness to produce specified military items in a national emergency by completing an Industrial Preparedness Program Production Planning Schedule (DD Form 1519).

(c) *General.* The Industrial Preparedness Production Planning (IPPP) program is conducted jointly among DoD components and industry to provide a means for correlating industrial capabilities and military requirements for the orderly retention, improvement, and rapid application of industrial capability to military production during an emergency.

(d) *Policy.*

(1) The Department of Defense will conduct Industrial Preparedness Production Planning to assure capability for the sustained production of essential military items to meet the needs of the U.S. and Allied Forces during an emergency.

(2) In planning for the production of selected items, preference shall be given to the use of privately-owned facilities, so as to minimize the need for Government investment. Government-owned production facilities will be included in the industrial base only when:

(i) private industry is unable or unwilling to provide the facilities necessary to support DoD requirements; or

(ii) they are determined to be necessary for reasons of national security or to assure a quick response capability to meet fluctuating or job lot demands.

(3) Current procurements will be integrated, when applicable, with Industrial Preparedness Production Planning requirements.

(e) *Limitations.*

(1) Industrial Preparedness Production Planning will be limited to those weapon systems and items selected by the Military Departments and DLA in accordance with policy established in DoDI 4005.3, "Industrial Preparedness Production Planning Procedures."

(2) Industrial Preparedness Production Planning with foreign sources, except Canada, is prohibited.

(f) *Existing authority affecting the industrial base.* Specific authority under current contracting procedures to accomplish industrial planning actions includes the following:

(1) Leasing of Government-owned property to planned emergency producers under the authority of the

Military Leasing Act of 1947 as codified in 10 U.S.C. 2667;

(2) Acquisitions in the interest of national defense under FAR 6.202(a)(2), or in case of a national emergency or to achieve industrial mobilization under FAR 6.302–3.

(3) Obtaining Jewel Bearings, Miniature and Instrument Ball Bearings, Precision Components for Mechanical Time Devices, High Purity Silicon, and High Carbon Ferrochrome (HFC) (see FAR 8.2, and 208.73, 208.74, 208.75 and 208.76 of this Supplement).

(4) Use of multiyear contracts (see FAR 17.1 and 206.202(a)(2) and 206.302–3);

(5) Providing Government production and research property to contractors (see FAR 45.302–1); and

(6) Preservation of domestic industrial base (see FAR Part 25).

(g) *Applicable procedures.* To assure the most effective planning approach, each DoD component will determine the specific type and depth of Industrial Preparedness Production Planning for each planning item. One or more of the authorities listed above may be appropriate to accomplish a particular planning action. Specific procedures as applicable to a current contract action include:

(1) Solicitation of Planned Producers in all acquisitions over $10,000 of items for which they have signed industrial preparedness agreements (but see FAR 19.5 and 220.7003 of this Supplement as pertain to partial set-asides for small business and labor surplus area concerns);

(2) Procedures under FAR 6.202(a)(2) or 206.302–3 to effect an industrial planning requirement; and

(3) When determined necessary by the applicable DoD component, individual service contracts may be awarded for accomplishing industrial planning efforts for selected essential military items. These efforts may include but are not limited to the maintenance of Government-owned industrial facilities (real and personal property); including production data packages; and

(4) When it is determined necessary to contract for an Industrial Preparedness Production Planning effort, and an item selected for such planning is being acquired, a line item for the planning services and data will be included in the contract schedule. The schedule shall describe in detail the required end items of supply, the specific services, and data by separate line items (see 204.71).

Subpart 208.3—Acquisition of Utility Services

See Supplement No. 5, Procurement of Utilities Services.

Subpart 208.4—Ordering From Federal Supply Schedules

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 8.405–1.

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 acquired 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 acquired, 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.

Mandatory Nationally.

Schedule identification	FSC class	Schedule title	Remarks
25 I	2520, 2530, and 2540	VEHICULAR EQUIPMENT COMPONENTS—tire chains and clutch facings	
26 II	2610	PNEUMATIC TIRES AND INNER TUBES—Highway, off-highway industrial, pursuit/emergency high speed passenger, and agriculture.	
26 IV A	2630	TIRES—industrial, solid and cushion	
35 IV A	3510	APPLIANCES—household and commercial washing machines, electric, and drying tumblers, electric and gas	
36 II	3610, 3615	SPECIAL INDUSTRY MACHINERY—lithographic printing plates (masters) and solutions; spirit duplication, thermal process; printing, duplicating, and bookbinding equipment; and pulverizing, pulping, and shredding machines.	Except Special Item Nos. 51–1, 51–1–1, 51–1–3, 51–2, 51–46, 51–106, 51–107 51–108, 51–110, 51–111, 51–113, 51–114, 51–125, 51–125–1, 51–126.
36 IV	3610	SPECIAL INDUSTRY MACHINERY—copying equipment, supplies and services	Except Special Item No. 51–43, 51–44, 51–45, 51–52, 51–53, and 51–54.
37 I A	3730	AGRICULTURAL EQUIPMENT—cattleguards	
37 II A	3750	LAWN AND GARDEN EQUIPMENT—lawn mowers, mowers, shredders, edgers, trimmers, roto-tillers, broadcast spreaders, sprayers, vacuums, sweepers, tractors, and accessories.	

Schedule identification	FSC class	Schedule title	Remarks
41 I A	4120	AIR CONDITIONING EQUIPMENT—domestic use window units	
41 III A	4110	APPLIANCES—household refrigerator and refrigerator freezers	
41 III B	4110	REFRIGERATION EQUIPMENT—drinking water dispensers, mechanically cooled	
45 VII A	4520	PLUMBING AND HEATING EQUIPMENT—domestic water heaters, gas and electric	
45 VIII A	4540	PLUMBING AND SANITATION EQUIPMENT—household garbage disposers, ⅓ and ½ horsepower.	
49 I A	4910, 4940	MAINTENANCE AND REPAIR SHOP EQUIPMENT—hydraulic jacks, heat guns, auger machines.	
51 I A	5130, 5133, and 5180	HAND AND POWER TOOLS—pneumatic, hydraulic, power actuated, gasoline engine, and special purpose drill bits.	
51 II A	5130	HAND AND POWER TOOLS—electric	
51 IV	5110, 5120, 5136, 5140, and 5210	HAND AND POWER TOOLS—nonpowered tools	
56 I B	5620	GLASS—safety glass, laminated, for "m" series trucks	
61 I	6140	BATTERIES—6 or 12 volt lead-acid automotive storage	
61 III	6135	BATTERIES—dry cell	
62 I	6230	LIGHTING FIXTURES AND LAMPS—household and quarters use	Except Index Numbers 5, 13–22.
62 III	6240, 6250, and 6750	ELECTRIC LAMPS—fluorescent and incandescent, and fluorescent adapters	
62 & 67	6240, 6750	LAMPS—electrical and photographic	
66 I B	6650, 6675	INSTRUMENTS AND LABORATORY EQUIPMENT—electronic distance measuring equipment and magnifiers	Except Air Force.
66 II A	6630	INSTRUMENTS AND LABORATORY EQUIPMENT—blood analysis systems, dilutors, pipettes, electrophoresis equipment.	Except Air Force.
66 II B	6515, 6630, 6640, and 8125.	INSTRUMENTS AND LABORATORY SUPPLIES—glass, plastic, and metal laboratory ware; laboratory distillation and demineralizing systems; vena puncture products for blood specimen collection; and prescription bottles.	
66 II C	6630, 6640, and 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—microscopes, centrifuges, pH meters, microtomes, stirrers, shakers, stereoscopes, monoculars, and titrators/titration systems.	
66 II E	6670	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory balances, precision scales and accessories.	
66 II H	5915, 5985, and 6625	INSTRUMENTS AND LABORATORY EQUIPMENT—amplifiers, microwave and low frequency instruments, and RF components.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
66 II M	6625, 6630, and 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—spectrophotometers, densitometers, liquid scintillation systems, multichannel pulse height analyzers, spectrometers, photometers, and polarograph analysis equipment.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
66 II N	6630, 6635, 6640, and 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—analyzers, chromatographs, colony counters, blood analysis systems dilutors, pipetters, electrophoresis equipment, and image analysis systems.	Not mandatory for Dept. of the Air Force.
66 II O	4110, 6530, 6636, and 6640.	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory apparatus, and laboratory and clinical refrigerators and freezers.	
66 II P	6640	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory and pharmacy furniture	
66 II Q	6625, 6630, 6640, 6655, 6660, 6680, and 6685.	INSTRUMENTS AND LABORATORY EQUIPMENT—environmental analysis equipment, pollution, oceanographic and weather.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
66 II R	6625, 6665, and 6680	INSTRUMENTS AND LABORATORY EQUIPMENT—environmental analysis, pollution control air bag and detecting equipment.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
66 II S	6630, 6640, and 6670	INSTRUMENTS AND LABORATORY EQUIPMENT—Glassware and Scales	
67 II B	6635, 6750, 6720, and 6740.	PHOTOGRAPHIC SUPPLIES—film, chemicals, and photographic paper	
67 IV B	6720, 6730, 6740, 6750, and 6760.	MICROPHOTOGRAPHIC EQUIPMENT AND SUPPLIES—cameras, projectors, printers, developing and duplicating equipment, and chemicals, film, and paper.	Except SINs 21-12-4 a, b and c, 21-21, 21-21a, 21-22, 21-22a, 21-40, and 21-41.
68 III E&F	6830	CHEMICALS AND CHEMICAL PRODUCTS—refrigerant fluorocarbons and sulfur hexafluoride.	
68 III G	6830	CHEMICALS AND CHEMICAL PRODUCTS—helium	
68 III H	6830	CHEMICALS AND CHEMICAL PRODUCTS—fire extinguishing fluorocarbons	
71 I A	7105	HOUSEHOLD AND QUARTERS FURNITURE—ranch style	
71 I B	7105	HOUSEHOLD AND QUARTERS FURNITURE—danish style	Except SINs 29 through 38.
71 I C	7105	HOUSEHOLD AND QUARTERS FURNITURE—traditional style	
71 I D	7105	HOUSEHOLD AND QUARTERS FURNITURE—dormitory and quarters	Except items 1–57 and items 92–100.
71 I E	7105	HOUSEHOLD AND QUARTERS FURNITURE—upholstered (performance tested) furniture	
71 I G	7105	HOUSEHOLD AND QUARTERS FURNITURE—rattan	
71 II A, B&C	7110	OFFICE FURNITURE—executive traditional, unitized and contemporary, wood	
71 II D	7110	OFFICE FURNITURE—filing cabinets, shelf files, card files insulated files and card size files (for desk use); file cabinets, tabulating machine card size.	
71 II E	7110	OFFICE FURNITURE—Systems Furniture	
71 II F	7110	OFFICE FURNITURE-Systems Furniture	
71 III A	7110, 7195	MISCELLANEOUS FURNITURE—classroom, auditorium and theatre seating	
71 III B	7195	MISCELLANEOUS FURNITURE—library, wood or metal	
71 III C	7125	MISCELLANEOUS FURNITURE—storage cabinets for forms and flammable liquids	
71 III D	7110, 7125	MISCELLANEOUS FURNITURE—mail sorting and distribution equipment, modular cabinets for high and low density storage, and molded plastic/corrugated storage bins.	
71 III E	7110	M ISCELLANEOUS FURNITURE—insulated and uninsulated security filing cabinets, safes, vault doors, and map and plan files.	
71 III F	6530, 7105, 7210, and 7230.	MISCELLANEOUS FURNITURE—hospital patient room	Except items 482–7 and 482–8.
71 III H	7105, 7110	MISCELLANEOUS FURNITURE—multi-purpose seating	
71 III J	7125	MISCELLANEOUS FURNITURE—steel vertical blueprint filing cabinets, roll drawing files, and high-density movable shelf filing cabinet systems.	
71 III K	7125	MISCELLANEOUS FURNITURE—special purpose	
71 III L	7110	MISCELLANEOUS FURNITURE—cafeteria and food service	
71 III M	7195	MISCELLANEOUS FURNITURE—acoustical partitions, speech privacy partitions, and vertical surface panels.	Except items 500–2, 500–3, and 500–4.
71 III N	7045, 7110	MISCELLANEOUS FURNITURE—ADP furniture, storage and transportation items	
71 III O	7105, 7195	MISCELLANEOUS FURNITURE—folding chairs and tables	
71 V B	7110, 7125	OFFICE FURNITURE—key cabinets	
71 V D	7105, 7110	OFFICE AND FIELD FURNITURE—office furniture; map and plan filing cabinets and folding tables; modular steel field office furniture: filing cabinets, desk top, and end folding table.	
71 XIV A	7110, 7125, and 7195	SHOP FURNITURE—desks, benches, and tables	
71 XXVII A	6230, 7105, 7110, and 7195.	FURNITURE—office and household, centurion by Federal Prison Industries	
71 XXVII B	7110	OFFICE FURNITURE—contemporary centurion by Federal Prison Industries	

Schedule identification	FSC class	Schedule title	Remarks
72 I A&D	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—carpets, special purpose carpets, rugs, carpet tiles, and carpet cushions.	Not mandatory for use aboard vessels.
72 I B	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—floor coverings; tile, linoleum, and vinyl sheet.	Not mandatory for use aboard vessels.
72 I E	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—mats and matting; entrance-way, interlocking modular, resilient open construction and anti-static types.	Not mandatory for use aboard vessels.
72 II	7230, 8305	HOUSEHOLD AND COMMERCIAL FURNISHINGS—window shades; cloth vinyl, and fiberglass.	Not mandatory for FSC 8305.
73 IV A	7310	APPLIANCES—household gas ranges.	
73 IV B	7310	APPLIANCES—household and commercial electric ranges.	
73 V A	7320	APPLIANCES—household dishwashing machines.	
74 I A	7430	OFFICE MACHINES—electronic typewriters, visual display preparation devices, sound reduction equipment and electric typewriter supplies.	
74 I B	7430	OFFICE MACHINES—typewriters, electric, single element.	
74 I C	7450	OFFICE MACHINES—dictating and transcribing equipment.	
74 II & III	6645, 7420, and 7490	OFFICE MACHINES—adding, calculating, cash registers, time measuring instruments, miscellaneous office machines.	
74 II A	7420	OFFICE MACHINES—calculators, desk top nonprogrammable.	
74 V	7430	OFFICE MACHINES—manual typewriters—portable and nonportable.	
75 I C	7530, 9310	OFFICE SUPPLIES—special use paper; engineering and draftsman papers—graph, drawing, tracing, overlay plastic sheets; cardboard and paper embossing; index sheet sets for looseleaf binders; paperboard, drawing; and labels for automatic data processing.	
75 I D	7530	OFFICE SUPPLIES—plotting paper, supplies; and recording paper.	
75 II A	3540, 7510, 7520, 7690, and 7530.	OFFICE SUPPLIES—pencils, leads, tape label marking, chart supplies and/or letters and figures, sorters, desk correspondence, file suspended folders, plastic book jackets, plastic organizers and sorters, out-of-typewriter correction material, labels, price marking equipment, data binders, binders, looseleaf, typewriter ribbons, word processing ribbons, correction tape, computer ribbons, computer printout ruler, plastic copy holder, and print wheels.	
75 II B	3540, 7510, and 7520	OFFICE SUPPLIES—looseleaf binders, label tape, pamphlet files, multistrike typewriter ribbons, typewriter correction tape, pressure sensitive adhesive tape, correctable typewriter ribbons, plastic desk trays, lead holders, document protector, typist copyholders, gummed tape dispensers, file drawer frames, stapling machines, bristol cardboard, labeling machines.	
75 IV A&B	7520	OFFICE SUPPLIES—rubber stamps.	
75 IV C	7520	OFFICE SUPPLIES—pre-inked rubber stamps.	
75 V	7530	OFFICE SUPPLIES—envelopes; mailing, printed and plain.	Mandatory except for plain envelopes for use in the District of Columbia.
75 VII	7540	OFFICE SUPPLIES—U.S. Government national credit card.	
75 VIII A	7530	OFFICE SUPPLIES—cards; tabulating, aperture, and copy.	
75 X	7530	OFFICE SUPPLIES—xerographic paper.	
75 XI	7530	OFFICE SUPPLIES—xerographic paper and thermal copy paper.	
75 XII	7530	OFFICE SUPPLIES—electrographic paper.	
76 I	7610, 7640	PUBLICATIONS—dictionaries, encyclopedias, other reference books and pamphlets, maps, atlases, charts, and globes.	
76 II	7610, 7630, and 7670	PUBLICATIONS—law, tax, and reporting periodicals, microfilm library systems.	Except SINs 37-5, 6, and 7.
77 I	7740	AUDIO AND VIDEO SUPPLIES—phonograph records, 8-track tape cartridges, and cassettes.	
77 III	7105, 7730	AUDIO AND VIDEO EQUIPMENT—televisions, radios, phonographs and video cassette recorders.	
78 I A	7810	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor equipment.	
78 I B	7810, 7820, and 7830	ATHLETIC AND RECREATIONAL EQUIPMENT—indoor recreational and gymnasium equipment.	
78 I C	7830	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor recreational equipment.	
79 I A	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
79 I B	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
79 II A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered dishwashing compounds with contractor supplied, installed and maintained accessory dispensing systems.	
79 III A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered laundry detergents with contractor supplied, installed and maintained accessory dispensing systems.	
80 II A	8010	PAINT—gloss and semi-gloss latex, interior.	
81 I A	8135	PACKAGING AND PACKING SUPPLIES—cushioning material.	
81 II A	8135	PACKAGING AND PACKING SUPPLIES—steel and nonmetallic strapping.	
99 VI A	9910	TROPHIES AND AWARDS—trophies, awards, plaques, pins and ribbons.	
99 V A	9905	RECRUITING AID PROMOTIONAL MATERIAL.	For requirements of recruiting commands only.
733	7339	TRANSCRIPTS—stenographic reporting services.	

In addition to these National Federal Supply Schedules, there are Regional Schedules (chiefly covering various services) which are mandatory in the region covered. Activities should check with local GSA Region offices for listings of regional schedules applicable in their area.

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 the 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 characteristics; 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, Installations 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 contracting activity sufficient information to permit the determination required by FAR Part 25 to be made.

208.405-2 Order placement.

DD Form 1155 is authorized for use to place orders against Federal Supply Schedules.

(S-70) *Oral orders not to exceed $10,000.*

(1) *General.* Contracting offices are authorized to make acquisitions 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 the contractor 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 13.4) is authorized; *Provided,* the order does not exceed $500, and the contractor agrees to such a procedure.

208.470 Acquisition from GSA Sources.

208.470-1 Applicability.

This subsection applies to the acquisition 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 Acquisition 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 acquisition, 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 SW., 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, mandatory General Services Administration sources for such services shall 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 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 mandatory GSA Term Contract or a waiver is first obtained from the appropriate GSA Federal Supply and Services contracting office (such waivers are not required when the exigency of the contract action 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 Offices 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 contracting activity. Each delivery order which is subject to fiscal year limitations necessitating GSA acquisition 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 Acquisition

208.7000 Applicability.

Although the Department of Defense Coordinated Acquisition 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 Contracting Department as notice to the Requiring Department that a MIPR has been received and accepted for contracting action.

"Coordinated acquisition" means (a) acquisition by contracting 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) acquisition assignments made in accordance with 8.7018. It does not include acquisitions made in Alaska, Hawaii, or outside the United States which do not fall within (a) or (b) above.

"Direct citation acquisition (Category II Method of Funding)" means an acquisition 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 or 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 contracting 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.

"Contracting department" means the Department or the General Services

Administration whichever is assigned the contracting 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 acquisition (Category I Method of Funding)" means the acquisition of supplies for a Requiring Department on a contract funded by the Contracting 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 acquisition.

The Contracting Department is generally responsible for the following under coordinated acquisition:

(a) Operational phases of acquisition 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 acquisition and the settlement of patent infringement claims arising out of the acquisition; 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 of acquisition assignments.

208.7003-1 Standard format-development and promulgation of implementing procedures.

Implementation of acquisition 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 acquisition.

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 acquired 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 vary depending upon the commodity area and 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 or quantity less than the prescribed limitations shall, wherever feasible, be acquired by the Requiring Department. A MIPR for a military type item need not contain such a notation. The Contracting 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 acquisition, purchases may be made without the prior authorization of the Contracting 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 contracting activity of the Contracting Department (the coordinated acquisition 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 acquisition assignments have been made for items required by manufacturing establishments of the Departments, these items shall be obtained through the facilities of the Contracting Department unless such action will unduly hinder or delay production. When acquisitions are made other than through the Contracting Department, one copy of the contractual instrument bearing or accompanied by a statement of the circumstances necessitating such acquisition shall be transmitted promptly to the contracting activity of the Contracting 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 acquisition 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 Assistant Secretary of Defense (Logistics) for decision.

208.7005 Transfer of uncompleted Contracts.

208.7005-1 Effect of assignment of acquisition responsibility.

As a general rule, when the acquisition 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 Contracting Department or 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 Contracting 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 Contracting Department shall be the authority to acquire the supplies or nonpersonal services in accordance with single department acquisition assignments or agreements between the Departments concerned as provided in 208.7018. The Contracting Department is authorized to create obligations against the funds cited in a MIPR without further referral to the Requiring Department. The Contracting 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 acquisition, 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 contract 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 acquisition 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, and preparing an acquisition plan. 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 Justifications and approvals and determinations and findings.

(a) Coordinated procurement shall not be used by Departments to avoid FAR Part 6 requirements concerning full and open competition (see FAR 6.002). When a Requiring Department requests that a Procuring Department obtain supplies or services by contract using other than full and open competition, the Requiring Department shall prepare the justification required by FAR 6.303 and obtain the approval specified in FAR 6.304. The Requiring Department shall also make the Determinations and Findings specified in FAR 6.302-7(c)(1) and FAR 6.202(b)(1), where applicable. The Requiring Department shall preserve the original justification and approval and determination and findings with supporting data as required by 215.3. 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 acquisition 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 acquisition. 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 acquisition 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 therefor.

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 Contracting Department shall determine which type of funding (direct citation or reimbursable acquisitions) shall be used.

208.7007-2 Citation of funds of Contracting Department—Category I method of funding.

Under the conditions listed below, only the funds of the Contracting Department shall be cited in the consolidated contracts; and the contracts and orders thereunder shall provide for payment by the Contracting Department or by the Defense Contract Administration Services as appropriate:

(a) Delivery is from existing inventories of the Contracting Department;

(b) Delivery is by diversion from existing contracts of the Contracting

Department which cite the funds of the Contracting 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 the time of MIPR acceptance;

(e) Acquisition of the end items involves separate acquisition of components to be assembled by the Contracting 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 Contracting 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 Contracting 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 overprint 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 Contracting 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 Contracting 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 of 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 Contracting Department after preparation of the MIPR, the DoDAAD code also shall be provided for each payment office.

(f) Allotment data for the acquisition 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 procedures 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 Contracting 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 Contracting Department prior to submission to ascertain whether or not it will be possible for the Contracting Department to execute a contract or otherwise obligate the funds by the end of the fiscal year. Contracting 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 Contracting Department that all such funds will be obligated. The provisions of these instructions are not to be construed as restrictive in the processing of MIPRs when it is within the capabilities of the Contracting 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 contracting 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 Contracting 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 Contracting 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 Contracting 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 acquisition 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 Contracting 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 Contracting 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 Contracting 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 Contracting Officer for transmittal to the requiring activity.

208.7008–6 Requests for additional funds.

When the Contracting Department requires additional funds to complete contracting 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 Contracting 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 Contracting 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 Contracting Department prior to the expiration of funds cited. When accepted for reimbursable acquisition, the executed DD Form 448–2 is the authority for the Requiring Department to record the obligation of funds. When accepted for direct citation acquisition, the accomplished date and a conformed copy of the contract will be the authority to record the obligation. The accepting activity of the Contracting Department shall remain responsible for the MIPR even though that activity may split the MIPR into segments for actions among other contracting activities.

208.7009–1 Qualified acceptance.

Where contingencies, price revisions or variations in quantities are anticipated by the Contracting Department under reimbursable acquisition, the acceptance will be so annotated on DD Form 448–2. When the acceptance is qualified, the Contracting 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 Contracting Department for anticipated contingencies under reimbursable acquisition, 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 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 Contracting 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 Contracting 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 Contracting Department accepts a MIPR for reimbursable acquisition 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 Contracting Department.

(b) When the Contracting Department has accepted a MIPR for direct citation acquisition, and initial contract placement is completed, any unused funds remaining on the MIPR become excess and are no longer authorized for use of the Contracting Department. Any such excess funds will be immediately reported to the Requiring Department. Although the Contracting 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 acquisition of end items where the contraotor normally secures all components thereof from his own source (not Government-furnished), the acquisition assignment does not apply to the component items required by such contractor.

208.7010-2 Government-furnished components.

In the acquisition of end items where the Government furnishes components which are covered by an acquisition assignment, such components shall be acquired in accordance with the acquisition assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Contracting 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 acquisition of components covered by an acquisition assignment, over and above those initially purchased with the end item, shall be effected in accordance with the acquisition assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Contracting Department or is authorized in accordance with 208.7100.

208.7011 Distribution of contracts and orders.

(See 204.201(c)(3).)

208.7012 Cancellation of requirements.

(a) *Direct citation acquisition.* 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 Contracting Department by telegraphic notice. In the event that the Contracting 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 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 action 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 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 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 contracting 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 contracting 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 acquisition.* 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 Contracting Department by telegraphic notice. Within 30 days, the Contracting 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 Contracting 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 Contracting Department as to release of funds is received.

(2) On the repurchase action, the Contracting 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 Contracting Department shall bear, without reimbursement therefor, the administrative costs incidental to its acquisition of supplies for another Department. However, when an acquisition responsibility is transferred from one Department to another Department, funds appropriated or to be appropriated for defraying the administrative costs of such acquisition responsibility shall be made available to the successor Contracting 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.

208.7015 Execution of contracts.

Generally, the Contracting 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 Contracting 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 Contracting 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 Contracting 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 Contracting 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 Acquisition 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 acquisition 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 acquisition responsibilities from one Department to another or may create joint or combined offices to exercise acquisition 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 contracting activity of another Department, even though based on oral communication, shall establish a one-time agreement. Delegated acquisition responsibilities of a continuing nature shall be considered for coordinated acquisition 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 acquisition assignment.

Subpart 208.71—Commodity Assignments

208.7100 Assignment authority.

The commodity assignments set forth below have been made by the Deputy Assistant Secretary of Defense

(Logistics) 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 acquisition 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 acquisitions, as determined by the Requiring Department;

(b) Acquisitions not in excess of $2,500 per line item;

(c) Acquisitions 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 acquired 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 acquisitions described in FAR Part 35. Generally, this exception can be used only when the acquisition 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 acquired under the authority of 10 U.S.C. 2304(c)(6) and FAR 6.302-6, acquisitions when disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(4) Items to be acquired under the authority of 10 U.S.C. 2304(c)(1) and FAR 6.302-1 (a)(1) and (b)(2), follow-on contracts for the continued development or production of a major system or highly specialized equipment including major components thereof;

(5) Items which are directly related to a weapon/defense/space system and which are design-controlled by, and acquired 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 acquired 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 acquires 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 acquires 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 acquired 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 acquired 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 acquisition 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 acquisition. Neither is the fact that an acquisition would possibly qualify for placement as a negotiated contract. Conversely, an acquisition for an item covered by a reasonably firm specification which can be placed under the sealed bid 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 acquired only with items for which they are designed; and

(8) Emergency acquisitions, as determined by the Requiring Department:

(i) This exception permits the Services to make emergency acquisitions (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 following the normal channels of coordinated acquisition.

(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 acquisitions should be coordinated with the cognizant DLA Center or GSA Support Region by telephone or other rapid communication prior to proceeding with the local acquisition. 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 modify an existing DLA or GSA contract and obtain the material faster than the Requiring Department could by a unilateral acquisition.

(9) Acquisitions of military service-managed or noncataloged items not in excess of $2,500 per line item—This exception permits the Military Departments to acquire 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 acquisitions of recurring requirements for an item based solely on the fact that the item is not stock numbered nor may it be used to acquire items which have only slightly different characteristics from previously cataloged items.

(b) *Defense Logistics Agency and General Services Administration responsibility to acquire excluded items upon request.* Items other than nuclear ordnance materiel which may be acquired by the other Military Departments at their option under (a) above shall be acquired by DLA or GSA at the requests of the Military Departments.

(c) *Exclusions to Defense Logistics Agency or General Services Administration assignments by agreement.* The Military Departments shall process to the appropriate DLA Center or GSA Support Region for acquisition 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 acquired on a Military Service basis. The Military Departments shall insure that subsequent acquisitions of items previously classified as exceptions under (a) above do in fact continue to meet the exception criteria at the time of the subsequent acquisition. Otherwise, such acquisitions 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 contract 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 pyro echnic, 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 Manuals/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, 20mm gun.

1310 P* Ammunition, over 30mm up to 75mm.

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* Ammunition, 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.

1340 P* 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)
MK61 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
Pantaerythrite 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, 4x4, convertible to ambulance;
Truck, 4x4, 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 therefor:
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 6010, ML/IL and SC 6920 ML/IL. It does 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).

**These partial FSC assignments 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 Logistics 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 Plants.

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 procurement.

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 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 for 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 Instrument.

This partial FSC assignment applies only to Stands, Telescope, for use aboard ships assigned to the Navy for coordinated procurement.

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 of 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 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

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 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 the 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 35mm 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.[1]

Federal Supply Class Code	*Commodity*	*DLA Center* [2]
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 [3]	Vehicular Cab, Body, and Frame, Structural Components.	DCSC
2520 P [3]	Vehicular Power Transmission Components.	DCSC
2530 P [3]	Vehicular Brake, Steering, Axle, Wheel and Track Components.	DCSC
2540 P [3]	Vehicular Furniture and Accessories.	DCSC
2590 P [3]	Miscellaneous Vehicular Components.	DCSC
2805 P [4]	Gasoline Reciprocating Engines, Except Aircraft; and Components.	DCSC
2815	Diesel Engines and Components.	DCSC
2895	Miscellaneous Engines and Components.	DCSC
2910 P [3]	Engine Fuel System Components, Nonaircraft.	DCSC
2920 P [3]	Engine Electrical System Components, Nonaircraft.	DCSC
2930 P [3]	Engine Cooling System Components, Nonaircraft.	DCSC
2940 P [3]	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.	DCSC
2990 P [3]	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 [5]	Saws and Filing Machines.	DGSC
3408 P [5]	Machining Centers and Way-Type Machines.	DGSC
3410 P [5]	Electrical and Ultrasonic Erosion Machines.	DGSC
3411 P [5]	Boring Machines	DGSC
3412 P [5]	Broaching Machines	DGSC
3413 P [5]	Drilling and Tapping Machines.	DGSC

Federal Supply Class Code	Commodity	DLA Center [6]
3414 P [4]	Gear Cutting and Finishing Machines.	DGSC
3415 P [4]	Grinding Machines	DGSC
3416 P [4]	Lathes	DGSC
3417 P [4]	Milling Machines	DGSC
3418 P [4]	Planers and Shapers	DGSC
3419 P [4]	Miscellaneous Machine Tools.	DGSC
3422 P [4]	Rolling Mills and Drawing Machines.	DGSC
3424 P [4]	Metal Heat Treating Equipment.	DGSC
3426 P [4]	Metal Finishing Equipment.	DGSC
3431	Electric Arc Welding Equipment.	DGSC
3432 P [4]	Electric Resistance Welding Equipment.	DGSC
3433 P [4]	Gas Welding, Heat Cutting & Metalizing Equipment.	DGSC
3436 P [4]	Welding Positioners and Manipulators.	DGSC
3438 P [4]	Miscellaneous Welding Equipment.	DGSC
3439 P [4]	Miscellaneous Welding, Soldering and Brazing Supplies and Accessories.	DGSC
3441 P [4]	Bending and Forming Machines.	DGSC
3442 P [4]	Hydraulic and Pneumatic Presses, Power Driven.	DGSC
3443 P [4]	Mechanical Presses, Power Driven.	DGSC
3444 P [4]	Manual Presses	DGSC
3445 P [4]	Punching and Shearing Machines.	DGSC
3446 P [4]	Forging Machinery and Hammers.	DGSC
3447 P [4]	Wire and Metal Ribbon Forming Machinery.	DGSC
3448 P [4]	Riveting Machines	DGSC
3449 P [4]	Misc. Secondary Metal Forming and Cutting Machines.	DGSC
3450 P [4]	Machine Tools, Portable	DGSC
3455 P [4]	Cutting Tools for Machine Tools.	DGSC
3456 P [4]	Cutting and Forming Tools for Secondary Metal Working Machines.	DGSC
3460 P [4]	Machine Tool Accessories.	DGSC
3461 P [4]	Accessories for Secondary Metalworking Machinery.	DGSC
3465 P [4]	Production Jigs, Fixtures and Templates.	DGSC
3470 P [4]	Machine Shop Sets, Kits, and Outfits.	DGSC
3510	Laundry and Dry Cleaning Equipment.	DGSC
3520	Shoe Reparing Equipment.	DGSC
3530	Industrial Sewing Machine & Mobile Textile Repair Shops.	DGSC
3610	Printing, Duplicating, and Bookbinding Equipment.	DGSC
3611 P [4]	Industrial Marking Machines.	DGSC
3620 P [4]	Rubber and Plastics Working Machinery.	DGSC
3635 P [4]	Crystal and Glass Industries Machinery.	DGSC
3650 P [4]	Chemical & Pharmaceutical Products Manufacturing Machinery.	DGSC
3655	Gas Generating and Dispensing Systems, Fixed or Mobile.	DGSC
3660 P [4]	Industrial Size Reduction Machinery.	DGSC
3680 P [4]	Foundry Machinery, Related Equipment and Supplies.	DGSC
3685 P [4]	Specialized Metal Container Manufacturing Machinery and Related Equipment.	DGSC
3693 P [4]	Industrial Assembly Machines.	DGSC
3694 P [4]	Clean Work Stations, Controlled Environment & Related Equipment.	DCSC
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 [3]	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.).	DCSC
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

Federal Supply Class Code	Commodity	DLA Center [6]
5999	Miscellaneous Electrical and Electronic Components.	DESC
6105	Motors, Electrical	DGSC
6110	Electrical Control Equipment.	DGSC
6115 P [9]	Generators and Generator Sets, Electrical.	DGSC
6120	Transformers: Distribution and Power Station.	DGSC
3145	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
6504 [1]	Drugs, Biologicals, and Official Reagents.	DPSC
6508 [1]	Medicated Cosmetics and Toiletries.	DPSC
6510 [1]	Surgical Dressing Materials.	DPSC
6515 [1]	Medical and Surgical Instruments, Equipment and Supplies.	DPSC
6520 [1]	Dental Instruments, Equipment, and Supplies.	DPSC
6525 [1]	X-Ray Equipment and Supplies: Medical, Dental and Veterinary.	DPSC
6530 [1]	Hospital Furniture, Equipment, Utensils, and Supplies.	DPSC
6532	Hospital and Surgical Clothing and Textile Special Purpose Items.	DPSC
6540 [1]	Opticians' Instruments, Equipment and Supplies.	DPSC
6545 [1]	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	DPSC
	FSC 8305 does not include laminated cloth used exclusively in the repair of lighter than air envelopes.	
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 Findings 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 Accesssories, Women's.	DPSC
8450	Children's and Infants' Apparel and Accessories.	DPSC
8455	Badge 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, Confectionery and Nuts.	DPSC
8930 [5]	Jams, Jellies, and Preserves.	DPSC
8935 [5]	Soups and Bouillons	DPSC
8940 [5]	Special Dietary Foods and Food Speciality 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
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.	DPSC
	This partial FSC assignment applies only to raw cotton and raw wool.	
9430 P	Miscellaneous Crude Animal Products, Inedible.	DPSC
	This partial FSC assignment applies only to crude hides.	
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.	DFSC
	This partial FSC assignment applies only to crude petroleum and crude shale oil.	
9925	Ecclesiastical Equipment, Furnishings and Supplies.	DGSC
9930	Memorials, Cemeterial and Mortuary Equipment and Supplies.	DGSC
9999	Miscellaneous Items	DGSC

Footnotes for List in 208.7104

[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 208.7100-2 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 (MPEGS). The procurement direction responsibility for MEPGS 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.[1]

Nuclear Ordnance

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.

208.7106 General Services Administration.[1]

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[2] 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 Identifications Plates.
9910 Jewelry.
9915 Collectors' Items.
9920 Smokers' Articles and Matches.

[1] 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.

[1] 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.

[2] This partial FSC assignment does not include landing mats which are assigned to the Defense Logistics Agency.

Subpart 208.72—Acquisition for NASA

208.7200 Authorization and policy.

(a) NASA is authorized by Pub. L. 85-568 to use the acquisition 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 acquisition services, equipment and facilities.

(b) The Department will cooperate fully with NASA in making their acquisition services, equipment, personnel and facilities available on the basis of mutual agreement.

(c) The Departments will not claim reimbursement for administrative costs incident to acquisitions for NASA, except as may be otherwise agreed prior to the time the services are performed.

(d) When acquiring 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 acquiring 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

acquisition 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 initiatior 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 to the Department of Defense acquisition 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 Requests 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 acquired 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 contracting 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 acquired 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 acquired from domestic manufacturing sources to the maximum extent practicable. Accordingly, all acquisitions of miniature and instrument ball bearings and all acquisitions 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 acquired 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 acquired from domestic manufacturing sources to the maximum extent practicable. Accordingly, all acquisitions of precision components for mechanical time devices and all acquisitions of items containing precision components for mechanical time devices shall include, except as provided in 208.7403 below, a requirement that such components delivered under the contract be of domestic manufacture only.

208.7403 Procedures.

(a) All acquisitions 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. 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. 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 the 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.

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.

Subpart 208.76—High Carbon Ferrochrome (HCF)

208.7601 Definitions.

"U.S. manufacture" means high carbon ferrochrome (HCF) manufactured in the United States, regardless of the source of the chrome ore. HCF means ferrochromium alloy that contains three percent or more carbon and 50 percent or more chromium.

208.7602 Policy.

It has been determined that defense requirements for HCF must be acquired from U.S. manufacturing sources (to the maximum extent practical). Accordingly, all acquisitions of HCF and all acquisitions of items containing HCF shall include, except as provided in 208.7603 below, a requirement that such HCF and HCF incorporated in items delivered under the contract be of U.S. manufacture only.

208.7603 Procedures.

(a) The clause set forth at 252.208–7003, Required Sources of HCF, shall be inserted in all contracts except:

(1) When the Contracting Officer knows that the item being acquired does not contain HCF;

(2) In small purchases using small purchase procedures other than in purchase of HCF as the end item;

(3) Purchase of standard commercial end items, other than purchases of HCF as the end item, or steel plate, sheet or ingots and the like that incorporate HCF;

(4) Purchases made overseas for overseas use; or

(5) In cases where DoD has memoranda of understanding (MOU)/offset agreements with U.S. NATO Allies and nondomestic HCF is incorporated in the end item being furnished in support of defense contracts.

(b) Subsequent to the award of a contract, the Contracting Officer may waive the requirements set forth at 252.208-7003, Required Sources for HCF. Such waiver may be granted on a case-by-case basis when adequate U.S. supplies of HCF are not available to meet DoD needs on a timely basis. Such waivers will only be granted to the extent and for the period of time necessary to permit the contractor to acquire and use U.S. HCF.

Subpart 208.77—Utilization of Government-Owned Precious Metals

208.7701 Definitions.

"Defense Industrial Supply Center (DISC)" means the Defense Logistics Agency field activity which is the assigned Commodity Integrated Materiel Manager for refined precious metals and is responsible for the storage and issue of such materiel.

"Refined precious metal" means recovered silver, gold, platinum, palladium, iridium, rhodium, or ruthenium in bullion, granulation or sponge form which has been purified to at least .999 percentage of fineness.

208.7702 Policy.

(a) This section establishes uniform policy, guidance, and procedures for implementing requirements of the Department of Defense Precious Metals Recovery Program (PMRP) concerning the utilization of PMRP recovered precious metals as Government-furnished material (GFM) in contracts as provided in DoD Directive 4160.22, "Recovery and Utilization of Precious Metals", December 1, 1976, and the related DoD Instruction 4140.41, "Government-Owned Materiel Assets Utilized as Government-Furnished Materiel for Major Acquisition Programs", July 26, 1974.

(b) It is the policy of the Department of Defense that DoD Components participate in the PMRP to the maximum extent and promote optimum economic utilization of available Government-owned precious metals as Government-furnished material in lieu of contractor-furnished precious metals in production contracts.

(c) In order to realize more cost-effective contracting, DoD-refined precious metal assets shall be utilized in lieu of open market contracting in acquisition programs for military-designed or commercial material when use of Government-furnished material (GFM) is the more cost-effective manner to accomplish the task, or is otherwise in the Government's best interest. The DISC issue price of GFM precious metals is normally significantly lower than the commercial market price.

208.7703 Applicable procedures.

(a) To assure maximum utilization of PMRP recovered precious metals as GFM in contracts for items which require those precious metals cited in (d) below in their manufacture, the provision in 252.208-7004 shall be inserted in solicitations for items in the Federal Supply Groups listed in (c) below or any subassembly, component, or part thereof except: when using small-purchase procedures; when the contracting officer has determined, through the end item inventory manager, in accordance with the procedures in Chapter XVII of the Defense Utilization and Disposal Manual, DoD 4160.21-M, that the required precious metals are not available from DISC; or when the contracting officer knows that the supplies being acquired do not require precious metals in their manufacture.

(b) When an offeror advises of a precious metals requirement in accordance with 252.208-7004, the contracting officer shall have the end item inventory manager contact the DISC Precious Metal Inventory Manager (M), in accordance with the procedures in Chapter XVII of the Defense Utilization and Disposal Manual, DoD 4160.21-M, to determine availability of required precious metal assets and current GFM unit prices. If the precious metals are available the contracting officer shall evaluate offers and award the contract on the basis of that offer which is in the best interest of the Government.

(c) *Federal Supply Groups.* Acquisition of items in the following Federal Supply Groups are subject to the above-prescribed policy and procedures:

FS	*Groups and Description.*
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.
18	Space Vehicles.
20	Ship and Marine Equipment.
28	Engines, Turbines and Components.
29	Engine Accessories.
31	Bearings.
34	Metalworking Machinery.
58	Communications, Detection, and Coherent Radiation Equipment.
59	Electrical and Electronic Equipment Components.
61	Electric Wire and Power and Distribution Equipment.
65	Medical, Dental, and Veterinary Equipment and Supplies.
66	Instruments and Laboratory Equipment.
67	Photographic Equipment.
68	Chemicals and Chemical Products.
84	Clothing, Individual Equipment, and Insignia.
95	Metal Bar, Sheets, and Shapes.

(d) *Refined precious metals.* The following refined precious metals are currently managed by DISC:

Precious Metal and National Stock Number (NSN)

Silver Bullion/Granules—9660-00-106-9432
Gold Bullion/Granules—9660-00-42-7733
Platinum Granules—9660-00-042-7768
Platinum Sponge—9660-00-151-4050
Palladium Granules—96600-00-042-7765
Rhodium Sponge-96600-01-011-2625
Iridium Sponge—9600-01-011-1937
Ruthenium Sponge—96600-01-039-0313

Subpart 208.78—Forging and Welded Shipboard Anchor Chain Items Used for Military Application for Combat and Direct Combat Support Items

208.7801 Definitions.

"Domestic manufacture" means forging and welded shipboard anchor chain items manufactured in the United States and Canada.

"End item" means a final combination of end products, component parts, and/or materials which is ready for its intended use per JCS Publication #1 (DoD Dictionary of Military and Associated Terms).

208.7802 Policy.

It has been determined that defense requirements for the forging and welded shipboard anchor chain items listed in 208.7802-1 below must be acquired from domestic sources (United States and Canada) to the maximum extent practical. Accordingly, all acquisitions of these forging items and all acquisitions of items containing these forging and welded shipboard anchor chain items shall include, except as provided in 208.7803 below, a requirement that such items and forging items incorporated in end items delivered under the contract be of domestic manufacture only. This restriction does not include forgings

used for commercial vehicles (such as commercial cars and trucks) or to noncombat support military vehicles.

208.7802-1 List of DoD forging and welded shipboard anchor chain items that must be acquired from domestic sources (United States and Canada).

Ship propulsion shafts greater than 50 feet in length
Periscope tubes
Ring forgings for bull gears greater than 120 inches in diameter
Large caliber, thick-walled cannon, 105mm through 8-inch forgings listed below:
- Preform forgings
- Gun tube forgings
- Muzzle brake forgings
- Breach ring forgings
- Breach block forgings

60mm and 81mm mortar forgings listed below:
- Bipod forgings
- Base plate forgings
- Body yoke forgings

Small caliber weapons forgings listed below:
- Barrel extensions
- Bolts
- Receivers
- Sights/handles, etc.

Tank and automotive forgings listed below:
- Turret rings
- Road arms
- Final drive gears
- Shafts
- Sprockets
- Track shoes
- Axle shafts
- Flywheels
- Connecting rods
- Crankshafts
- Roadwheels
- Spindles
- Torsion bars
- Forged DiLok Anchor Chain
- Welded Shipboard Anchor Chain (smaller than four (4) inches in diameter)

208.7803 Procedures.

(a) The clause set forth at 252.208-7005, Required Sources for Forging and Welded Shipboard Anchor Chain Items, shall be inserted in all contracts except—

(1) When the contracting officer knows that the item being acquired does not contain forging items listed in 208.7802-1;

(2) When purchases are made overseas for overseas use;

(3) If the quantity being acquired is determined to be greater than that required to maintain the U.S. defense mobilization base (provided the quantity above mobilization base needs constitutes an economical buy quantity), such greater quantities will not be subject to the U.S., Canadian restriction and shall be awarded competitively to the maximum practical extent. NATO and other qualifying countries may compete for the excess quantities consistent with Part 225 of this Supplement.

(b) A Canadian firm may bid on and supply any of the restricted items if: (1) It normally produces similar items or it is currently producing the item in support of DoD contracts (as prime or subcontractor), and (2) It agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Program (IPP), if it is not already a planned producer for the item.

(c) Subsequent to the award of a contract, the contracting officer may waive the requirements set forth at 252.208-7005, Required Sources for Forging and Welded Shipboard Anchor Chain Items. Such waiver may be granted on a case-by-case basis when adequate domestic supplies of listed forging items are not available to meet DoD needs on a timely basis. Also, these waivers will only be granted to the extent and for the period of time necessary to permit the contractor to acquire and use listed forging items of domestic manufacture.

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, preaward survey forms need not be completed. When the CCC proposal is not consistent with other information which may be available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information or plant surveys the contracting officer may deem necessary to make the determination of responsibility of sources proposed by CCC. Such additional data may be requested on the preaward 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 Department 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 contracting 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 contracting 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 contracting offices of the other Departments. When a contract administration office is requested to perform a preaward survey and it has been notified of the existenc 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) For preaward survey assistance for contracts requiring performance of Contract Administration Services (CAS) on military installations, see 242.270.

209.106 Preaward surveys.

209.106-2 Requests for preaward surveys.

(S-70) Procedure for requesting preaward survey.

(1) Preaward surveys will be accomplished by the cognizant Contract Administration Office as listed in DoD Directory of Contract Administration Services Components, DoD 4105.59-H. The contracting officer shall request a preaward survey on Standard Form (SF) 1403, Preaward Survey of Prospective Contractor (General), indicating in Section III thereof, the scope of the survey desired. An original and 3 copies of the SF 1403 requesting a preaward survey will be provided along with a copy of the solicitation and such drawings and specifications as deemed necessary by the purchasing office.

(2) Factors requiring emphasis not enumerated in Section III should be listed by the contracting officer under item "G" of that Section and explained in block 23, Remarks.

(3) The "Walsh-Healey Public Contracts Act" block of Section I is for information purposes only. If information is needed on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block "G" of Section III and explained in block 23, Remarks.

(4) A survey may be requested by telegraphic communication containing the data required by Sections I, II, and III of the form. A survey may be requested by telephone but shall be immediately confirmed by transmittal of completed SF 1403.

(5) The SF 1403 lists five major factors and seven other factors to be evaluated. One or more of these factors can be checked depending on the contracting officer's concerns regarding the offeror's responsibility. Following is a brief explanation of the factors:

Section III, Block 19, Major Factors

Factors A—Technical Capability—An assessment of the prospective contractor's key management personnel to determine if they have the basic technical knowledge, experience, and understanding of the requirements necessary to produce the required product or provide the required service.

Factor B—Production Capability—An evaluation of the prospective contractor's ability to plan, control, and integrate manpower, facilities, and other resources necessary for successful contract completion. This includes (1) an assessment of the prospective contractor's possession of, or the ability to acquire, the necessary facilities, material, equipment and labor; (2) a determination that the prospective contractor's system provides for timely placement of orders and for vendor follow-up and control.

Factor C—Quality Assurance Capability—An assessment of the prospective contractor's capability to comply with the quality assurance requirements of the proposed contract. It may involve an evaluation of the prospective contractor's quality assurance system, personnel, facilities and equipment.

Factor D—Financial Capability—A determination that the prospective contractor has adequate financial resources, or access to them, to acquire needed facilities, equipment, materials, etc.

Factor E—Accounting System—An assessment by the Defense Contract Audit Agency (DCAA) of the adequacy of the prospective contractor's accounting system. Normally, an accounting system review will be requested when conditions such as progress payment, or a cost or incentive type contract is contemplated.

Section III, Block 20, Other Factors

Factor A—Government Property Control—An assessment of the prospective contractor's capability to manage and control Government property.

Factor B—Transportation—An assessment of the prospective contractor's capability to comply with the laws and regulations applicable to the movement of Government material, or overweight, oversized, hazardous cargo, etc.

Factor C—Packaging—An assessment of the prospective contractor's ability to meet all contractual packaging requirements including preservation, unit pack, packing, marking and unitizing for shipment.

Factor D—Security Clearance—A determination that the prospective contractor's facility security clearance is adequate and current. (When checked, this factor will be referred to the Defense Investigation Service (DIS) by the surveying activity.)

Factor E—Plant Safety—An assessment of the prospective contractor's ability to comply with safety requirements specified in the solicitation.

Factor F—Environmental/Energy Considerations—An evaluation of the prospective contractor's ability to meet specific environmental/ energy requirements contained in the solicitation.

Factor G—Other—This factor is checked when an assessment of other than Major Factors A-E and Other Factors A-F is desired. When Factor G is checked, the desired information will be explained in the Remarks sections. An example of an item that may be included under this factor is Walsh-Healey eligibility.

(6) Factors checked on the SF 1403 will be limited to those essential to the contracting officer's determination of responsibility.

(7) Block 10 of the SF 1403 will show the date preaward survey results are required by the purchasing office. This date will be determined by the contracting officer after due consideration of the urgency of the acquisition, and the scope and complexity of the preaward survey. In particular, consideration must be given to the more time-consuming aspects of a preaward survey such as secondary survey requirements, accounting system review, financial capability analysis, and purchasing office participation in the survey. Routine preaward surveys, with established DoD contractors, are normally accomplished by the Contract Administration Office within 7 workdays after receipt of the request. Preaward survey requests for particularly complex items, or those involving aspects as mentioned above, will usually require more time and should be allowed for by the contracting officer.

209.106-70 Steps for survey performance.

The three steps in performing a preaward survey are the preliminary analysis, the development and evaluation of information, and the preparation and review of the survey report.

(a) *Preliminary analysis.* The request (SF 1403, Sections I, II, and III) shall be reviewed to establish basic administrative information and the factors to be evaluated. The solicitation shall then be reviewed to ascertain those general and special requirements which have a significant bearing on determining contractor responsibility. Examples are the nature of the product, applicable specifications, delivery schedule, documentation requirements, property control requirements, and financing aspects.

(b) *Development of information.*

(1) *Review of available data.* The information already available in the contract administration office pertaining to the prospective contractor and his past performance shall be reviewed. Prior preaward survey reports shall be examined and considered in support of preaward survey recommendations. If

the prospective contractor has current or contemplated Government contracts, the files should be checked for information regarding similarity of product, current status of contracts, quality control experience, and financial status.

(2) *Development of additional data.*

(i) When appropriate, the contract administration office shall supplement the data on hand with any additional information required from other Government sources and from commercial sources, such as banks, business associates, and credit rating and reporting agencies.

(ii) When a prospective contractor proposes to acquire additional resources essential to performance of the proposed contract, the CAO shall as a minimum obtain and evaluate:

(A) An itemized list of the required resources;

(B) A planned method of acquisition; and

(C) A schedule for acquisition of resources. Failure to meet commitments on previous contracts shall be documented in the current preaward survey report and considered in the final recommendation.

(c) *On-site surveys.*

(1) *Interview, evaluation, and review.*

(i) *General.* An on-site survey will consist of an interview with representatives of the prospective contractor and, normally, an evaluation of his resources and procedures.

(ii) *Interview with management.* Management officials of the appropriate level authorized to represent the prospective contractor should be interviewed. The prospective contractor's background shall be reviewed and as much history recorded as necessary to reflect the soundness and reputation of the firm's operation.

(A) The organizational structure of the facility is the basis for management's control and must be reviewed. Assignment of definite tasks and responsibilities should be checked.

(B) Lack of understanding or misinterpretation of the solicitation often results in delinquent contracts and leads to default actions. Therefore, the solicitation shall be discussed with prospective contractors to assure that they understand its requirements, including its technical aspects such as drawings, specifications, prototype, technical data and provisioning technical documentation (including automated data processing requirements when appropriate), testing, packaging, and Government's right to use technical data in accordance with the terms of the solicitation. Any misinterpretations of the requirements of the solicitation which could adversely affect performance, or refusal by the prospective contractor to furnish required data, should be brought to the immediate attention of the official approving the survey by the team coordinator. The official approving the survey shall, in turn, promptly advise the purchasing office.

(iii) *Evaluation of resources and review of procedures.* The resources which the prospective contractor intends to utilize shall be inspected, analyzed, and compared with his overall plans for performing. His procedures relating to performance of the proposed contract shall be reviewed for adequacy.

(iv) *Specific factors to be considered.* In the course of developing information, those factors described in 209.106–70(c)(2) through 209.106–70(c)(4) below and all others needed to provide the report and recommendations in the detail and to the extent required by the purchasing office shall be considered.

(2) *Production.*

(i) *General.* The production portion of the on-site survey consists of an evaluation of the prospective contractor's ability to manufacture the product(s) in accordance with the specifications and delivery schedule of the proposed contract. To achieve the objectives of this portion of the on-site survey, the production plan shall be reviewed, production resources ascertained, and the plan related to such resources.

(ii) *Obtaining the production plan.* The prospective contractor's production plan for meeting the delivery schedule specified in the proposed contract shall be ascertained. The principal milestones within the production plan shall be established, along with target dates for achievement. These target dates must support the delivery schedule of the proposed contract. The controls which will be utilized in order to gear and hold the manufacturing effort to the target dates for the principal milestones shall be analyzed for suitability.

(iii) *Ascertaining production resources.* The information necessary to prepare SF 1405 shall be obtained by discussion with appropriate management personnel of the prospective contractor. This information shall be verified, when necessary, by physical inspection of the manufacturing plant and evaluated in terms of suitability to manufacture the required item(s).

(iv) *Relating production plans to production resources.* When necessary, representatives of the prospective contractor shall be requested to advise how the production resources will be allocated and utilized in order to achieve the target dates for the principal milestones. This shall include both in-house and subcontractor production resources. Pertinent to this is an analysis of projects and contracts which will compete for utilization of those resources within the same time frame as that specified by the prospective contractor's production plan. The information developed as a result of equating the production plan and production resources of the prospective contractor should enable the contract administration office to:

(A) Conclude whether the resources which the prospective contractor is planning to use are suitable for the job;

(B) Determine whether the prospective contractor will be capable of properly controlling, maintaining, protecting and using Government property;

(C) Determine whether the planning and scheduling of effort will result in timely accomplishment of the principal milestones;

(D) Conclude whether achievement of the principal milestones will result in timely delivery.

(3) *Quality assurance (SF 1406).*

(i) The standing of the quality assurance organization in the prospective contractor's overall organization must be evaluated. An inspection or quality control function which reports to some other organizational segment (such as Production) instead of top management may be undesirable. The experience of the company inspection or quality control personnel with the same or similar items shall be evaluated.

(ii) To evaluate the prospective contractor's ability to comply with quality control or inspection requirements, the following areas shall be reviewed:

(A) Methods currently utilized to control product quality as reflected by a documented or verifiable inspection system or quality program plan;

(B) Personnel on hand and available (report both trained and untrained);

(C) Inspection and test equipment on hand and available;

(D) Quality, identification, and storage of materials;

(E) Physical arrangement of plant;

(F) Tool and gauge control; and

(G) Test and inspection records.

(4) *Financial (SF 1407).*

(i) *General.* The normal procedure for determining a prospective contractor's financial capability shall be initial presurvey planning, followed by verification of financial data as required. The extent of the review and analysis of financial matters shall be governed by the nature of the proposed contract. In certain instances, a sound

decision may be possible after a relatively simple review of a company's financial position and production commitments. Under other circumstances, a more comprehensive review and analysis will be required. The approach to financial analysis shall be consistent with the basic policies and regulations outlines in FAR 32.172, 32.173 and 32.174.

(ii) *Procedure.* Aspects to be considered in determining the prospective contractor's financial capability include the following:

(A) The latest balance sheet and profit and loss statement shall be reviewed. The following are indicative of the soundness of the prospective contractor's financial structure:

(*1*) Rates and ratios;

(*2*) Working capital as represented by current assets over current liabilities; and

(*3*) Financial trends such as net worth, sales and profit.

(B) The method of financing the contract shall be evaluated. Where sources of outside financing, other than the Government, are indicated, their availability should be verified.

(C) When financial aid from the Government is to be obtained, the necessity should be verified. Review shall be made concerning the applicability of such financing as progress payments or guaranteed loans.

(d) *Evaluating data and preparing the report.*

(1) *Findings of team members.* When the required information has been gathered, each individual participant shall analyze it and evaluate the prospective contractor's capability to perform with respect to the functional element(s) evaluated. Each participant shall then provide his findings to the official approving the survey. When a negative reply is recorded, or when doubt exists, an explanation must substantiate such action. If a detailed analysis is needed or additional significant information is pertinent, a narrative report shall be supplied.

(2) *Evaluation and recommendation.* Based on all the information received from the team members, the official approving the survey shall thoroughly review and evaluate the findings and recommendations, and forward the report direct to the purchasing office. When advance reports are made by telegraphic communication or telephone, they shall be confirmed by mail without delay. The official approving the survey shall follow up on any requirements for the submission of supplemental reports.

209.106-71 Audit responsibilities for preaward surveys and reviews.

Preaward 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 contracting officer on matters concerning the contractor's financial competence or credit needs.

Subpart 209.2—Qualifications Requirements

209.202 Policy.

(a)(1) The inclusion of qualification requirements in specifications for products which are to be included on a Qualified Products List (QPL) must be approved by the applicable authority listed below:

In the Army, Headquarters, U.S. Army Materiel Command, (AMCPD-SE);

In the Navy, Contracts and Business Management, OASN (S&L);

In the Air Force, Departmental Standardization Office (HQ USAF/RDXM);

In the Defense Logistics Agency, The Executive Director, Contracting;

In the National Security Agency, The Director of Procurement;

In the Defense Communications Agency, The Director;

In the Defense Nuclear Agency, The Director, Acquisition Management; and

In the Defense Mapping Agency, The Director of Acquisition.

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 Subpart 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:

(a) 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

(b) The Government has relied upon first article testing in the absence of complete design specifications to supplement a performance specification; or

(c) 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 contract 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. Notwithstanding the above, if the debarment is based on a felony criminal conviction, exceptions from this section based on compelling reasons shall not be effective without the prior written concurrence of the Secretary concerned or in the case of the Defense Agencies the Under Secretary of Defense for Research and Engineering.

(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.

(c) Debarred or suspended contractors are also excluded from conducting business with the Department of Defense as agents or representatives of other contractors.

209.405-2 Restrictions on subcontracting.

If a debarment is based on a felony criminal conviction, Government consent or approval of a subcontract with a debarred contractor shall not be given unless the Secretary concerned or, in the case of the Defense Agencies the Assistant Secretary of Defense (Acquisition and Logistics), concurs in writing with such consent or approval.

209.406 Debarment.

209.406-1 General.

(d) If the cause for debarment as listed in FAR 9.406-2 is based on a felony criminal conviction, the debarment period should be commensurate with the seriousness of the crime. The period of the debarment should afford adequate time for the contractor to eliminate the circumstances within the contractor's organization that encouraged the belief that the acts or omissions on which the organization's conviction was based would escape accountability or be condoned. Mitigating factors may be considered in making the debarment decision. However, for any decision not to debar or to debar for one year or less, the mitigating factors must demonstrate clearly to the debarring official's complete satisfaction, that the contractor has eliminated such circumstances and has implemented effective remedial measures.

(S-70) If no suspension is in effect under FAR 9.407 at the time debarment 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 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).

209.406-4 Period of debarment.

(a) If the debarment is based on a felony criminal conviction, the period shall be commensurate with the seriousness of the crime and will generally be for more than one year but not more than 3 years. A decision by the debarring official not to debar or to debar for one year or less than one year must be approved in writing by the Secretary concerned or, in the case of the Defense Agencies, by the Assistant Secretary of Defense (Acquisition and Logistics). If the suspension precedes debarment, the suspension period shall be considered in determining the debarment period.

(c) If the debarment is based on a felony criminal conviction, the period or extent of debarment may be only reduced:

(1) If the conviction upon which the debarment was based is reversed; or

(2) If the contractor demonstrates to the debarring official's complete satisfaction that the steps taken to eliminate the circumstances within the contractor's organization that encouraged the belief that the acts or omissions on which the organization's conviction was based would escape accountability or be condoned have been effective.

209.470 Authorized representatives.

For the purpose of FAR Subpart 9.4 the authorized representatives of the Secretaries are:

(a) In the Army, the Assistant Judge Advocate General for Military Law;

(b) In the Navy, the Assistant Secretary of the Navy (Shipbuilding and Logistics);

(c) In the Air Force, the Deputy Chief of Staff, Research, Development and Acquisition;

(d) In the Defense Logistics Agency, the Special Assistant for Contracting Integrity;

(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 principal 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 enclosures, 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 Acquisition outside United States.

209.473-1 General.

The foregoing provisions of this subpart shall be applied by overseas commanders to acquisitions 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 Assistant Secretary of Defense (Procurement), OASD(A&L), 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 authorized representative to have engaged in improper East-West trade activity;

(c) Those found by the Assistant Secretary of Defense (International Security Affairs) or 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), an 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 the Chief of the United States Diplomatic Mission 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

210.001 Definitions.

"Bill of Materials" means a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind.

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.

(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:

(*1*) Complete common generic identification of the item required;

(*2*) Applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and

(*3*) 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 solicitation 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 (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 252.210–7000, 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) above to such component parts would be impracticable, the requirements of (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) above should apply to only certain such component parts, the requirements of (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 acquisitions.*

(A) The policies and procedures prescribed in 210.004(b)(3) (i) and (iii) for acquisitions by sealed bidding shall be generally applicable to negotiated acquisitions.

(B) The clause at 252.210–7000 may be adapted for use in negotiated acquisitions. If use of the clause is not practicable (as may be the case in an unusual and compelling urgency), 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.

210.004-70 Requiring bills of materials.

A bill of materials with respect to all or part of the supplies to be furnished pursuant to a contract, shall be required only if the contracting officer shall determine that such bill is necessary to develop materials or components requirements for production and maintenance programs, for industrial mobilization purposes, or for other specified purposes. In such event, the contract shall specify, with respect to such bill, the following:

(a) The supplies or parts thereof to be covered by the bill of materials;

(b) The type of bill or bills (detailed, modified, expanded summary, or abbreviated summary) to be furnished, with applicable instructions;

(c) The compensation to be paid the contractor for furnishing such bill and any revisions thereto, or a statement that the price of the item to which the bill relates includes compensation for the furnishing of such bill;

(d) The number and kind of copies of such bill to be furnished; and

(e) Delivery dates.

The contract shall also include the clause required by 210.011(72). When a bill of materials is procured by contract separate from the supplies to which such bill of materials relates, such contract shall include such of the terms mentioned above as may be appropriate and shall specify that the bill of materials shall be furnished on DD Forms 346 and 347, if applicable, or authorized reproductions thereof. The contractor shall not be required to obtain data for the bill of materials in greater detail from a subcontractor than the contractor is to furnish under the terms of the above clause.

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) Contracting 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.

(S–72) The contracting officer shall insert the clause at 252.210–7004 as required by 210.004–70.

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

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

211.002 Policy.

Contracting activities may use purchase descriptions which allow offerors to furnish commercial products and allow the Government to use commercial distribution systems whenever these products or distribution systems satisfy the Government's needs, but only if not prohibited by 211.005(b) below.

211.005 Acceptability.

(b) The 1983 Supplemental Appropriations Act (Pub. L. 98–63) contained a provision limiting the acquisition of commercial products by Department of Defense contracts; this same provision was enacted as section 779 of the 1984 DoD Appropriations Act (Pub. L. 98–212). When using funds appropriated by these acts, or any future appropriation act containing the same provision, no solicitation shall impose a requirement that in order to be eligible to submit a bid or an offer on a contract to be let for the supply of commercial or commercial-type products, a small business concern must demonstrate that its product is accepted in the commercial market (except to the extent that may be required to evidence compliance with the Walsh-Healey Public Contracts Act) or satisfy any other prequalification to submitting a bid or an offer for the supply of any such product. Under this prohibition, solicitations may not exclude small business concerns from being considered for award, whether or not former suppliers under detailed specifications, solely because the product of the small business does not meet the definition of a "commercial product" or "commercial-type product" in FAR 11.001.

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 252.212–5 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 and Allocations

212.302 General.

(S–70) *DoD Priorities and Allocations Manual.* Department of Defense implementation of all rules and regulations, published by the Office of Industrial Resource Administration (OIRA) of the Department of Commerce and 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 are published in the Manual.

Subpart 212.4—Variation in Quantity

212.401 Supply contracts.

(a) The permissible variation in the acquisition 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

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

Subpart 213.1—General

213.104 Procedures.

(a) Installation or activity transportation facilities may be used for delivery from local suppliers to the contracting 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 quotations 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 paragraph (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 52.222–41 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;

(iv) When the agreement is for the intended purchase of supplies, the applicable Equal Opportunity Clause at FAR 52.222–26 shall be added; and

(v) The Identification of Sources of Supply clause at 252.217–7270 (see 217.7204).

(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.

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. BPA calls for subsistence are unlimited as to dollar value, however such actions over $25,000 must satisfy the requirements of Part 206. BPA's may also be established with Federal Supply Schedule contractors and ADTS Schedule contractors consistent with the terms of the applicable contract schedule (see FAR 13.203–1(f)).

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 contracting 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. Additional guidance on imprest funds is contained in DoD Instruction 5100.71, Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds.

(b) *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 to 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 (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 contracting 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 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 purchases 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 Proccdures.

(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.

(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 (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 supplier's 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 Standard 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 the 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 supplier's 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 or 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 frequently 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 13A. 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) 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. (Optional Forms 347 and 348 are not authorized for use in the Department of Defense.)

(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 contracting 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 1155r–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 acquisitions.

(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 acquisition is unclassified, except that DD Form 1155 may be used for classified acquisition 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)(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 252.227, 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 232.111 the clause in 252.232–7000, Invoices, shall be used.

(vii) When the order is assigned to other than the purchasing office for administration, or if otherwise desired by the purchasing office, the clause, Material Inspection and Receiving Report in 252.246–7000, 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 252.225–7015, and the clause, United States Products (Military Assistance Program), in 252.225–7016, 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) When required by 217.7204(b), the clause Identification of Sources of Supply at 252.217–7270 shall be used.

(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:

(*1*) The Specifications clause in 252.237–7104;

(*2*) The Delivery and Performance clause in 252.237–7107;

(*3*) The Subcontracting clause in 252.237–7108;

(*4*) The Professional Requirements clause in 252.237–7111;

(*5*) The Facility Requirements clause in 252.237–7112;

(*6*) The Preparation History clause in 252.237–7113;

(*7*) 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:

(a) This clause supplements the "Termination for Default" clause of this contract.

(b) 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 252.225–7009, Preference for Certain Domestic Commodities, 252.225–7011, Preference for Domestic Specialty Metals (Major Programs), and 252.225–7012, Preference for Domestic Specialty Metals, shall be added.

(xv) When required by FAR 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 252.225–7008 may be used (see 225.605(a)(S–70)).

(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) [Reserved]

(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 Educational Training (IMET) and Foreign Military Sales (FMS) shall include the clause, Exclusionary Policies and Practices of Foreign Governments, in 252.225–7019.

(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)(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 identifier 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 US/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.

(l) In accordance with FAR 14.407-3, insert the provision at 252.214-7000, Discounts.

(li) When acquiring qualified products, the terms and conditions at FAR 52.209-1, Qualified Products—End Items, and FAR 52.209-2, Qualifed Products—Components of End Items, shall be used.

(lii) When first Article Approval is required, either the clause at 252.209-3, First Aritlce Approval—Contractor Testing, or 252.209-4, First Article Approval—Government Testing, shall be used in accordance with the instructions at FAR 9.308-1(a) or 9.303-2(s). When either clause is used the contrator's signature shall be obtained on DD Form 1155r.

(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 acquired and used outside the United States, its possessions, and Puerto Rico, *provided;*

(i) The acquisition 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, Inconsistency Between English Version and Translation of Contract.

(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 the clauses in 252.225-7009, Preference for Certain Domestic Commodities; or 252.225-7011, Preference for Domestic Specialty Metals (Major Programs); or 252.225-7012, 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).

(G) 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 52.225-7004 to provide reporting of the balance of payments consequences of Defense acquisition, 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 the contracting officer 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).

213.505-3 Standard Form 44, Purchase Order—Invoice—Voucher.

(b)(1) The $2,500 limitation applies to all purchases except for aviation fuel and oil purchases which will not exceed $10,000.

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 (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 204.70.	—	P	P
2	*Delivery Order Number*—Enter PII number for delivery orders as prescribed in 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: 84 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 office. 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 the 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 from 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
	Small Disadvantaged Business—Check if the contractor/quoter is a small disadvantaged business concern 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 percentages 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 13 "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:	—	P	P

TITLE AND INSTRUCTIONS FOR ENTRIES—Continued

	Block No.	Applicable to—		
		RFQ	PO	DO
	(i) Identify the type of quotation, i.e., oral, 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.			
17	*Accounting and Appropriation Data*—Enter the accounting classification applicable to the order. Enter the Accounting Classification Reference Number(s) in accordance with 204.71.	—	P	P
18	*Item Number*—Enter an item number for each item of supply or service separately identified in accordance with 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 "none" 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 204.71.	P	P	P
	(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-STD726 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 4100.1.	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 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 entity 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 × 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.	—	P	P

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 when a firm price has been established.

PART 214—SEALED BIDDING

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 invitation 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."

214.207 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

214.404 Rejection of bids.

214.404-1 Cancellation of invitations after opening.

(c) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

(e) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

214.406 Mistakes in bids.

214.406-3 Other mistakes disclosed before award.

(e)(1) Authority for making a determination under FAR 14.406-3(a), (b), and (d) may be delegated, without power of redelegation, as follows:

(i) 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 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.

(ii) Department of the Navy: To the Assistant Commander for Contracts, Naval Facilities Engineering Command Headquarters; the Deputy Commander Purchasing, Naval Supply Systems Command Headquarters.

(iii) Department of the Air Force: To the Staff Judge Advocate, Headquarters, Air Force Logistics Command.

(iv) Defense Logistics Agency: The General Counsel and Assistant General Counsel.

(v) National Security Agency: Director of Procurement.

(vi) Defense Communications Agency: The General Counsel.

(vii) Defense Nuclear Agency: The General Counsel.

(viii) Defense Mapping Agency: The General Counsel.

(e)(2) Authority to elect not to correct a bid but to allow withdrawal when clear and convincing evidence establishes only the existence of the mistake may be delegated, without power of redelegation, to any contracting activity or office having legal counsel available. Any case involving evidence that is less than clear and convincing shall be processed under FAR 14.406-3(d) and paragraph (1) above.

(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 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 duplicate bids are attached. This is necessary for legal review and auditing by 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 Sealed Bidding

214.503 Procedures.

214.503-1 Step one.

(a) Requests for technical proposals may be in the form of a letter.

(1) The written notification to offerors required by FAR 14.503-1(i) shall advise offerors of the discontinuance of two-step sealed bidding 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 the 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

215.103 Converting from sealed bidding to negotiation procedures.

Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

215.170 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 Instructions 3900.30 and 3960.2.

(b) In connection with the foregoing, when consistent with FAR 6.302-1(b)(2), 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 research 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 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 advantage in award to another supplier is so substantial as to outweigh the other factors involved. This paragraph 15.170 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.

215.171 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 215.4—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 206.302-2. 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 [Reserved]

Reserved pending determination to what extent guidance may be necessary.

215.407 Solicitation provisions.

(S–70) Pursuant to the policy of FAR 14.407–3, the contracting officer shall insert the provision at 252.214–7000, Discounts, in solicitations where prompt payment discounts may be offered.

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 the requirements of FAR Part 6 and FAR Subpart 15.5 have been met, contracts for studies, analyses, or consulting services (see FAR 37.2) may be entered into on the basis of an unsolicited proposal. However, when so limited by an applicable DoD Appropriation Act, such contracts may be entered into 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 proposal is 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.

215.608 Proposed evaluation.

(b) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

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/price 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 for 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 negotiated 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 most 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 acquired pursuant to FAR 6.302–2;

(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 contractual 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 for 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 (e) and (f) 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 proposal 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/price proposals and clarifications, if required, of technical proposals shall be obtained. Each proposal shall be evaluated and those which have 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 (e) 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 (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 contracts 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 OASD(A&L)(P) 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 15.1002 and 215.1002.

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 contractor's overall share of cost of at least 10 percent (authority may be requested (see FAR 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 $100,000 without the submission of complete cost or pricing data. The contracting officer shall request only that data which the contracting officer considers adequate to support the limited extent of the cost analysis required and he will not require certification.

(b)(1) Cost or pricing data shall not be required merely in anticipation of post-award 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 acquisitions, 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 acquired 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 acquired 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 acquisitions of a catalog item, the contracting officer or the cognizant ACO may make special arrangements for 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 contracting offices with their concurrence.

Note.—A copy of each waiver shall be sent to the Deputy Assistant Secretary for Procurement, Office of Assistant Secretary of Defense, Acquisition and Logistics.

(i) Set forth below is a format for the D&Fs to be made by the agency head with respect to waiving the requirement for submission of cost or pricing data and certification thereof, as required by 10 U.S.C. 2306(f), and for waiving the inclusion of the clauses required by FAR 52.214-27 and 52.215-25. The format may be used also for the D&Fs for such waiver made by the Head of the Procuring Activity for contracts with foreign governments or agencies thereof.

(Military Department or Agency)

Determination and Findings

Authority to Waive Submission of Cost or Pricing Data and Certificate

Upon the basis of the following findings and determination which I hereby make as agency head, the requirement for submission of cost and pricing data and certificate described below may be waived pursuant to the authority of 10 U.S.C. 2306(f), as implemented by FAR 15.804-3(i).

Findings

1. The (2) proposes to enter into a contract with (3) for the acquisition of (4).

2. Pursuant to FAR 15.804-2, the proposed contractor is required to submit certified cost or pricing data. However, waiver of submission of the certified cost or pricing data described below is justified for the reasons indicated: (5).

Determination

1. The requirement for submission of cost or pricing data for the proposed contract action may be waived.

Date

Notes.—

(1) In the case of a contract with a foreign government or agency thereof, delete the words "agency head" and substitute therefor "head of a procuring activity."

(2) Procuring or contracting activity.

(3) Name of supplier.

(4) Brief description of supplies or services.

(5) Describe the cost or pricing data requirements to be waived. (The waiver may be partial, i.e. limited to particular cost or pricing data.) Set forth the circumstances and conditions which make the proposed contract action an exceptional case and state the reasons which justify the proposed waiver.

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—OASN(S&L), CBM-CPR, 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 acquisition.

(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 acquisitions, it is important to know whether the offeror intends to absorb any portion of these costs or whether the offeror 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 acquisitions (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 post-award 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 the 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

(ii) 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; Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), DCBM, 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 31 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, Aggregate Pricing Adjustment, 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.

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 contracting 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 contract action. The method and degree of analysis, however, is dependent on the facts surrounding the particular acquisition 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 acquisitions, 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 the team members 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) Contracting officers shall request field pricing reports for contracts and modifications resulting from a proposal in excess of $100,000 for a firm fixed-price contract, $250,000 for a fixed-price incentive contract, and $500,000 for a cost type contract. The requirement for subject reports may be waived, with adequate justification, at one level above the contracting officer. Requests for field pricing support should be tailored to ask for minimum essential information needed to ensure a fair and reasonable price is achieved. Information of the type described in (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 subcontract 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 contracting officer. To accomplish this end, the Plant Rep/ACO must:

(i) In concert with the auditor and in consideration of the auditor's 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 contracting officer and the contract auditor);

(ii) Identify areas for special consideration (these are areas in addition to those specified by the contracting officer);

(iii) Arrange for exchanges of technical and audit information; and

(iv) Be fully responsive to a request for technical information from the auditor.

(a)(S-70) If an audit review will not be required, either as a separate report or as part of a field pricing report, before negotiating any contract or modification for which a proposal is submitted in excess of $500,000, approval shall be obtained at a level above the contracting officer.

(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 contracting officer requests for field pricing support. Therefore, the contracting officer 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) When the contracting officer knows in advance that field pricing support will be required, the contracting officer shall provide the cognizant Plant Rep/ACO and auditor a copy of the solicitation. In addition, the contracting officer may require the contractor to provide copies of the proposal direct to the Plant Rep/ACO and auditor. In this event the contracting officer 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 contracting actions that are subsequently canceled or unsuccessful, the cognizant auditor shall be notified in writing.

(c)(1)(S-71) When field pricing reports are requested for acquisition of parts or support equipment, the request shall as a minimum include, but will normally be limited to, the following:

(A) A detailed analysis of each line item where the quoted price exceeds 25 percent or more the lowest price of the Government of the item at any time within the most recent 12-month period. These items will be specified in the request for field pricing support.

(B) The results of a review of the description and the price of each line item in the proposal made to assist in identifying any obvious overpricing. Those items, so identified, will be subjected to further analysis.

(C) An analysis of the significant high-dollar-value items. If there are no obvious high-dollar-value items (i.e., the majority of line items are of approximate equal value), a random sampling technique should be used.

(D) An analysis of a random sample of the remaining low-dollar-value line items. Sample size may be determined by subjective judgment, e.g., experience with the contractor, reliability of contractor's estimating/accounting systems, credibility of proposals, etc.

(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 contracting officer'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 services within the individual 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 the auditor can often project trend data. The technical specialist may also analyze the proposed hours on the basis of 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 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 the submission to the contracting officer. If technical analyses are received later by the auditor, the auditor 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 contracting officer determines that deficiencies in the contractor's accounting system or estimating methods are such that the proposed contract cannot be adequately priced or administered, the contracting officer 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 contracting officer 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 contracting officer, 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 is 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 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 of subcontract supervision.

(4) The contracting officer is responsible for the reasonableness of the prime contract price which includes self-satisfaction 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 contracting officer 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 identified 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.

(S–70) When contract audit review of the offeror's proposal has been requested, the contracting officer shall keep the auditor informed of planned prenegotiation and negotiation activities, including related fact-finding sessions and/or discussions with the offeror, and invite contract audit participation where the contracting officer and auditor agree that a significant contribution can be made.

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.

(a)(10) The following applies to documentation of profit or fee negotiated:

(i) Since the profit objective is the contracting officer's prenegotiation 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 215.9), the contract file shall be documented to support the exceptions.

(iii) DD Form 1547 (see 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 FAR 15.807(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 contracting representatives have received notice that changed conditions negate FPRA's, individual contracting actions should not be delayed.

215.810 Should-cost analysis.

(b)(S–70)(i) Should-cost analyses shall be performed prior to award of definitive major systems contracts in excess of $100 million for major systems if each of the following conditions are met:

(A) A production contract for the system is to be awarded on a sole-source basis;

(B) Initial production of the system has already taken place;

(C) The current plans for the Department of Defense include production of substantial quantities of identical or similar items;

(D) The work to be performed under the contract is sufficiently defined to permit an effective analysis of what production of the system by the contractor should cost; and

(E) Major changes in the program are unlikely.

(ii) After an initial should-cost analysis has been performed under (i) above, subsequent should-cost analyses need not be performed annually, but must be accomplished at least every four years on contracts meeting the requirements of (i) above.

(iii) Waiver of a should-cost analysis shall be made in accordance with Service procedures, but in no event at a level lower than a general/flag officer or civilian equivalent.

(e) The content of the should-cost analysis team report shall be prescribed by Service procedure. Team leaders should ensure that activities are coordinated to avoid duplication of effort.

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. Contracting 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 contracting 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, contracting officers 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 acquisitions 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 contracting 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 acquired 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 programs 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 program 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.

(e) *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 no

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 specified 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 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 Subpart 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 contingent 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, AMC.

(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.

(*1*) The profit objective for manufacturing contracts shall be computed, except as indicated in (*5*) below, using the manufacturing weighted guidelines method, which provides profit opportunity based on facilities capital investment.

(*2*) 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.

(*3*) 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.

(*4*) 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:

(*i*) *Manufacturing Weighted Guidelines.* Contracts coded under Section I, Part C, Supplies and Equipment.

(*ii*) *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.

(*iii*) *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)).

(*5*) 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.

(*6*) 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.

(*7*) 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 a 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 31.205–10.

(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 [1] (pct)	R&D (pct)	Services (pct)
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	([2])	N/A	N/A
Independent Development.	1 to 4	1 to 4	N/A
Other	−5 to +5	−5 to +5	−5 to +5

[1] 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). (Also, see 230.70.)

[2] See 15.905–2(a).

(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 Contractor's 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 (B) below, to cstablish 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.

(*1*) 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.

(*2*) 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.

(a)(2)(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 inequitable 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 objective determination. It is intended that the methods will result in 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 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 (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 acquisitions 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 and 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, overhaul contracts priced on a time and material basis, and firm-fixed-price, level-of-effort term contracts 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 demonstrable 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 Part 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 (1) above) shall be given to the contractor's policies and procedures supporting the Government's Labor Surplus Area Program, pursuant to FAR Part 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, Award, and Postaward Notifications, Protests and Mistakes

215.1001 Notifications to unsuccessful offerors.

(b)(1) Within DoD, the threshold for notification is $25,000 in accordance with 10 U.S.C. 2304(g).

(b)(2) Acquisitions 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).

215.1003 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 loses 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 (1) and (2) above require 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.

(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.

216.102 Policies.

(d) Set forth below is a format for the D&Fs to be made by the contracting officer with respect to the use of a cost, cost-plus-fixed-fee, or incentive type contract, as required by 10 U.S.C. 2306(c) (See FAR 16.301–3(c) and FAR 16.403(c)). The format may be modified as appropriate.

(Military Department or Agency)

Determination and Findings

Authority To Use a (1) Contract

Upon the basis of the following findings and determination which I hereby make pursuant to the authority of 10 U.S.C. 2306(c), the proposed contract described below may be entered into on a (1) basis.

Findings

1. The (2) proposes to enter into a (1) contract for the acquisition of (3) at an estimated cost of $ (4).

2. The work to be performed is (5).

Determination

1. It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract.(6)

(Alt: The use of the proposed type of contract is likely to be less costly than other methods.)(6)

(Alt: It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract and the use of such type of contract is likely to be less costly than any other method.)(6)

2. The estimated cost of the proposed contract is $ (4).(7)

Date ———— ————

Notes

(1) Enter type of contract to be used, i.e. fixed-price incentive, cost-plus-incentive-fee, cost, or cost-plus-fixed-fee.

(2) Contracting activity.

(3) Brief description of supplies or services.

(4) Enter amount to nearest thousand.

(5) Describe the nature of the work to be performed and set forth the facts (for the type of contract proposed, see FAR Part 16) that shows why it is impracticable to secure supplies or services of the kind or quality required without the use of such type of contract, or that such method of contracting is likely to be less costly than other methods. The supporting facts should be confined to those pertinent to the specific determination being made. However where the facts adequately support alternative determinations, they should be set forth conjunctively when conjunctive determinations are to be used.

(6) Use the determination responsive to the findings. See Note 5 above.

(7) Determination to be made when a cost-plus-fixed-fee contract is proposed.

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 innovative hardware, equipment or instrumentation necessary to provide a basis for selection among alternatives. It includes systems analyses tradeoff 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, forms 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 engineering 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 demonstration 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 measurable 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 216.2—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

Types of labor and material	Rates of pay and material prices	Quantities and direct costs per unit of procurement
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, if 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 Statistics 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 multiyear contracts, there should be established predetermined expenditure profile tables for each of the annual increments in the multiyear buy, with each of the second and subsequent year tables being cumulative to reflect the total expenditures for all increments funded through the latest multiyear 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, therefore, 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 necessity 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 (8) 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) 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 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.

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 incentivised 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.

(c)(S–70) *Quarterly limitation on payments statements.* The contracting officer must be satisfied that the contractor's accounting system will furnish reliable financial information for preparing the Quarterly Limitation on Payments Statement required under the clauses at FAR 52.216–16 and 17. In computing overpayments or underpayments, the contracting officer shall use the following formula when (1) actual costs for individual items delivered are not available and (2) the necessary cost data are available from an accounting system which meets the Cost/Schedule Control Systems Criteria.

Formula for Computing Overpayment/ Underpayment

COID = Cost of items delivered
TCID = Target cost of items delivered
ACWP = Actual cost of work performed
BCWP = Budgeted cost of work performed
BMR = Budgeted management reserve
BTD = Billings to date
TEP = Total estimated price of the contract
TP = Target profit on items delivered
IP = Incentive profit on items delivered

$$COID = TCID \times \frac{ACWP}{BCWP + \left(BMR \times \frac{BTD}{TEP}\right)}$$

Adjusted price = COID + TP + IP
Overpayment/Underpayment = Amount Invoiced − Adjusted Price.

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 definite 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 if 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

PERFORMANCE EVALUATION REPORT CRITERIA

		Submarginal 0–60	Marginal 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 & 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 system 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 advice.	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 *incompatible* 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 sets & reviews goals for designers.	System planning by 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 Estimate.	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 =			
	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-materials 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 dies, 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 204.70.

Subpart 216.7—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.

(b)(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 effecting 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, Executive 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.* A basic ordering agreement may be used to expedite contracting 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 FAR 52.213–1 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)(1)(S–71) If a contract administration office is authorized to issue orders (see FAR 42.202(c)), that office shall be provided a copy of the synopsis required by FAR 5.201(a), or a copy of the exception determination specified at FAR 5.202(a) or (b), and a copy of the justification and appropriate approvals required by FAR 6.303 and 6.304.

(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 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, OASD(A&L)(P), 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 acquisitions 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 Sup 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)(S-70) When the contracting officer either knows or anticipates that the option may be appropriate to fulfill Foreign Military Sales (FMS) commitments, the solicitation shall notify contractors of the Government's intent in this regard and shall identify the FMS country (countries) and its (their) requirements.

(S-71) When the contracting officer either knows or anticipates that an option may be appropriate to fulfill FMS requirements but the specific country or countries are not identified, the solicitation shall advise contractors that the U.S. Government will subsequently identify the foreign country for the purpose of negotiating any equitable price adjustment for cost or profit considerations attributable to the option if exercised for FMS requirements (see 217.208(S-70)(2)).

(S-72) Such notification shall not be placed in solicitations 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).

217.207 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.

(S-70) *FMS option.*

(1) When the contracting officer either knows or anticipates that a contract option may be exercised to fulfill FMS requirements (see 225.7309) and the parties are able to negotiate a price in advance, insert the clause at 252.217-7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, if a clause at FAR 52.217-6, 52.217-7, 52.217-8, or 52.217-9 is included in the contract.

(2) When the contracting officer either knows or anticipates that a contract option may be exercised to fulfill FMS requirements (see 225.7309) and the parties are unable to negotiate any additional cost or profit considerations attributable to Foreign Military Sales until a specific country or countries are subsequently identified, the clause at 252.217-7001, Exercise of Option to Fulfill Foreign Military Sales Commitment, (Alt. 1) shall be inserted if a clause at FAR 52.217-6, 52.217-7, 52.217-8, or 52.217-9 is included in the contract.

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 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 part 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 217.7003–2 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. Refrigeration and air conditioning components (FSC 4130 only and this authority expires 31 December 1986)
23. Road rollers, wheeled and sheepsfoot
24. Saws, circular or band
25. Scrapers, earth moving, self-powered
26. Scrapers, earth moving, towed
27. Sedans, station wagons, coupes, limousines
28. Shovels, power
29. Spreaders, aggregate and line
30. Tractors, warehouse
31. Tractors, wheeled or crawler, with or without special attachments, up to 65 h.p.
32. Tractors, wheeled or crawler, with or without special attachments, 65 h.p. and up
33. Trailers, general purpose, multiple axle
34. Trailers, general purpose, single axle
35. Trailers, tank mounted
36. Trucks, forklift
37. Trucks, general purpose, cargo and construction, 12,500 GVW and up (including truck tractors, dump, and multiple drive)
38. Trucks, general purpose and utility, up to 12,500 GVW (including suburbans, carryalls, and sedan deliveries)
39. Trucks, straddle
40. Trucks, tank (special purpose truck on which the tank is integral part of the construction)
41. Trucks, warehouse, platform, electric and gasoline powered
42. 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, either sealed bidding or negotiation shall be used as appropriate (see FAR Part 6), except that 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

* 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.

** Except for FSC 4130 items; which may be exchanged (see 217.7003–1).

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 acquired (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

217.7100 Scope of subpart.

Acquisition policies and procedures applicable to the Master Agreement for Repair and Alteration of Vessels are set forth in this part.

217.7101 Definitions

(a) Master Agreement for Repair and Alteration of Vessels—The Master Agreement is not a contract and contains no statement of work. It is a written compilation of both required clauses and clauses used as applicable which establishes in advance the terms and conditions upon which a contractor will effect repairs, alterations, and/or additions to vessels, under the provisions of job orders awarded by contracting activities from time to time. The clauses comprising the Master Agreement for Repair and Alteration of Vessels are set forth in 217.7104.

(b) Job Order—A fixed price contract entered into with a contractor which has previously executed a Master Agreement for Repair and Alteration of Vessels. The job order applies to a specific acquisition and sets forth the scope of work, price, delivery date, and additional matters peculiar to the requirements of the specific acquisition. The job order incorporates by reference or appends the clauses of the Master Agreement as required or applicable.

217.7102 Policy.

(a) The Master Agreement for Repair and Alteration of Vessels shall be entered into with all prospective contractors located within the United States, its possessions, or Puerto Rico, which request ship repair work and which possess the organization and facilities to perform such work satisfactorily. Issuance of the Master Agreement for Repair and Alteration of Vessels does not constitute approval of the contractor's facilities for any particular acquisition.

(b) When using the Master Agreement for Repair and Alteration of Vessels in work with prospective contractors located outside the United States, its possessions, or Puerto Rico, the applicable portions of 217.7104 shall be used as a guide.

(c) The Government may from time to time desire to issue job orders under the Master Agreement for Repair and Alteration of Vessels to effect repairs, alterations, and/or additions to vessels belonging to foreign governments. Vessels of a foreign government will be treated as if they were vessels of the United States Government, whenever so requested by the contracting officer. The IFB, RFP, or RFQ and job order will identify the vessel and the foreign government.

217.7103 Procedures.

217.7103-1 Content and format.

The Master Agreement for Repair and Alteration of Vessels shall contain a set of "Contract Clauses". These contract clauses shall be classified into two groups. The first group, identified as Part 217.7104(a), shall include all clauses made mandatory by statute, Executive order, or the Federal Acquisition Regulation, and shall be incorporated into job orders awarded under the Master Agreement for Repair and Alteration of Vessels. The second group, identified as Part 217.7104(b), shall include those clauses to be incorporated into job orders awarded under the Master Agreement for Repair and Alteration of Vessels, as applicable. The format set forth below may be adapted to fit specific circumstances.

Master Agreement for Repair and Alteration of Vessels

This AGREEMENT is entered into this ___ day of _____ 19___ by 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 _____, hereinafter called the "Contractor". The clauses of the Federal Acquisition Regulation (FAR) and the Department of Defense (DoD) FAR Supplement, as set forth herein, have been agreed upon by the parties hereto for use in Invitations for Bids, Requests for Proposals, Requests for Quotations, and/or Job Orders to effect repairs, alterations, and/or additions to vessels, issued by the Government from time to time under this Agreement. It is further agreed that the clauses set forth in DoD FAR Supplement 217.7104(a) are mandatory and shall, by reference or attachment, be incorporated in each job order awarded pursuant to this Agreement.

This Agreement may be cancelled by either party upon thirty (30) days written notice without affecting rights and liabilities under any job order existing at the time of cancellation; *Provided, however,* that the Contractor shall perform and complete under the terms hereof all work covered by any job order entered into hereunder prior to the effective date of cancellation, as such job order may be modified by any change order issued under Clause 252.217–7101 entitled *Changes*, hereof.

This Agreement may be modified only by mutual agreement of the parties. However, the Government has the right to cancel this Agreement upon thirty (30) days written notice at any time the parties fail to agree upon any modification to this Agreement which is required by statute, Executive order, the Federal Acquisition Regulation, or the DoD FAR Supplement. A modification of this Agreement shall not affect any job order in existence at the time of modification, unless the parties so agree.

The rights and obligations of the parties to this Agreement shall be subject to and governed by the provisions of this Agreement, the provisions of job orders issued hereunder, and the drawings, design plans, and specifications. To the extent of any inconsistency between this Agreement and any job order, including any drawings, design plans, and specifications, the provisions of this Agreement shall govern.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

(Contracting Officer)

_____

(Contractor)

By _____

(Title)

217.7103-2 Period of agreement.

Either party to the Agreement shall have the right to cancel it without affecting the rights and liabilities under any job order in existence at the time of cancellation by giving 30 days written notice: *Provided*, however, that the contractor shall perform and complete under the terms thereof all work covered by any job order, and any modifications thereto, entered into prior to the effective date of cancellation. The Master Agreement for Repair and Alteration of Vessels will remain in force until cancelled by either party thereto.

217.7103-3 Inviting bids, proposals, or quotations for job orders.

(a) When a requirement arises for the type of work covered by the Master Agreement for Repair and Alteration of Vessels within the United States, bids, proposals or quotations will be solicited from prospective contractors which have previously executed a Master Agreement for Repair and Alteration of Vessels and from prospective contractors which possess the necessary qualifications to perform the work and agree to execute a Master Agreement for Repair and Alteration of Vessels before award of a job order.

(b) The contracting officer shall ensure that solicitations are prepared in the Uniform Contract Format and in accordance with FAR Part 14, Subpart 14.2 or Part 15, Subpart 15.4 as applicable. Solicitations shall include the clauses in 217.7104(a) and, as applicable, the clauses in 217.7104(b). Whenever the Government shall invite the contractor to submit a bid or proposal for the repair, completion, alteration of or addition to a vessel, the contracting officer shall notify the contractor in reasonable detail of (1) the nature of the work to be performed, (2) the date the vessel will be available to the contractor, and (3) the date the work is to be completed. Whenever bulk ammunition is aboard the vessel, the notice shall so state. Unless the notice otherwise states, bids or proposals shall be submitted on the basis that the work will be performed at the contractor's site.

(c) In the event that the contractor is willing and able to perform the work, the contractor, where practicable, shall be afforded an opportunity to inspect the items of work to be accomplished on such vessel, and the contractor shall submit a bid, proposal, or quotation as requested by the contracting officer for the performance of the work as set forth in the solicitation. If the contracting officer requests the contractor to negotiate, the contractor shall submit a proposal which shall include a breakdown of the price in such form and supported by such reasonable detail as the contracting officer may request, but in any case indicating at a minimum the amount proposed for (1) direct labor, (2) material, (3) overhead, and (4) contingencies and profit.

217.7103-4 Pre-Award survey.

In addition to the procedures set forth in FAR 9.104 for making the determination called for by FAR 9.100, the contracting officer may make, before awarding a job order, a pre-award survey of the contractor's operations, including any analysis of the contractor's proposed subcontractors, to insure the adequacy and suitability of facilities, including safety standards and adequacy of fire protection, adequacy of facilities for the health, comfort, and welfare of the crew of the vessel, and adequate plant protection to safeguard the vessel and Government property.

217.7103-5 Award of a job order.

After the receipt and evaluation of bids or proposals and selection of the contractor, the price for the work and other pertinent data shall be set forth in a job order (SF 26, SF 33). This job order, by its terms, is subject to the provisions of the Master Agreement for Repair and Alteration of Vessels. When the acquisition has been made under sealed bid procedures, issuance of a job order, signed by the contracting officer only, constitutes an award. When the procurement has been negotiated, the job order must also be signed by the contractor and returned to the contracting officer.

217.7103-6 Emergency work.

Under the following circumstances, the contracting officer, without inviting bids or proposals, may issue a written order for work to a contractor who has previously executed a Master Agreement for Repair and Alteration of Vessels: (a) when a vessel, its cargo, or stores would be endangered by delay in the performance of necessary repair work, or (b) when military necessity requires immediate work on a vessel. As soon as practicable after the issuance of such an order, the parties are required by the Master Agreement for Repair and Alteration of Vessels to negotiate a price for the work. When agreement is reached upon a price, the contracting officer will issue a job order pricing the work.

217.7103-7 Repair costs not readily ascertainable.

If the nature of any repairs is such that their extent and probable costs are not readily ascertainable, the contracting officer may issue a job order on a negotiated or sealed bid basis, to determine the nature and extent of required repairs. The job order shall provide that upon such determination, the contractor, if requested by the contracting officer, shall negotiate prices for the performance of such work as the contracting officer may deem necessary to accomplish the repairs. The prices so agreed upon shall be set forth in a modification to the job order.

217.7103-8 Modification of master agreements for repair and alteration of vessels.

Whenever the Federal Acquisition Regulation and/or the DoD FAR Supplement is revised, the Master Agreement shall also be revised to incorporate all changes made necessary by the revision.

217.7104 Contract clauses.

(a) The contracting officer shall insert the following required clauses in all job orders awarded under the Master Agreement for Repair and Alteration of Vessels:

(1) 252.217-7100 Definitions.
(2) 252.217-7101 Changes.
(3) 252.217-7102 Extras.
(4) 252.217-7103 Job Orders and Compensation.
(5) 252.217-7104 Inspection and Manner of Doing Work.
(6) 252.217-7105 Title.
(7) 252.217-7106 Payments.
(8) 252.217-7107 Assignment of Claims.
(9) 252.217-7108 Bonds.
(10) 252.217-7109 Federal, State, Local and Foreign Taxes.
(11) 252.217-7110 Default.
(12) 252.217-7111 Disputes.
(13) 252.217-7112 Performance.
(14) 252.217-7113 Access to Vessel.
(15) Reserved.
(16) Reserved.
(17) Reserved.
(18) 252.217-7117 Equal Opportunity Clause.
(19) 252.217-7118 Officials Not to Benefit.
(20) 252.217-7119 Covenant Against Contingent Fees.
(21) 252.217-7120 Termination for Convenience of the Government.
(22) 252.217-7121 Authorization and Consent.
(23) 252.217-7122 Notice and Assistance Regarding Patent and Copyright Infringement.

(24) 252.217–7123 Responsibility for Inspection.
(25) 252.217–7124 Liability and Insurance.
(26) 252.217–7125 Pricing of Adjustments.
(27) Reserved.
(28) Reserved.
(29) 252.217–7128 Clean Air and Water.
(30) 252.217–7129 Invoices.
(31) 252.217–7130 Guarantees.
(32) 252.217–7131 Discharge of Liens.
(33) 252.217–7132 Department of Labor Safety and Health Regulations for Ship Repairing.

(b) The Contracting Officer shall insert the following clauses in job orders awarded under the Master Agreement for Repair and Alteration of Vessels as applicable.

(1) 252.217–7200 Workers' Compensation and War Hazard Insurance Overseas.
(2) 252.217–7201 Buy American Act and the Balance of Payments Program.
(3) 252.217–7202 Notice to the Government of Labor Disputes.
(4) 252.217–7203 Patent Indemnity.
(5) 252.217–7204 Filing of Patent Applications.
(6) 252.217–7205 Contract Schedule Subline Items Not Separately Priced.
(7) 252.217–7206 Reporting and Refund of Royalties.
(8) 252.217–7207 Rights in Technical Data and Computer Software.
(9) 252.217–7208 Military Security Requirements.
(10) 252.217–7209 Utilization of Small Business and Small Disadvantaged Business Concerns.
(11) 252.217–7210 Examination of Records by Comptroller General.
(12) 252.217–7211 Gratuities.
(13) 252.217–7212 Convict Labor.
(14) 252.217–7213 Priorities and Allocations.
(15) 252.217–7214 Utilization of Labor Surplus Area Concerns.
(16) 252.217–7215 Limitation on Withholding of Payments.
(17) 252.217–7216 Equal Opportunity Pre-Award Clearance of Subcontracts.
(18) 252.217–7217 Subcontracts.
(19) 252.217–7218 Government Property.
(20) 252.217–7219 Federal, State, Local, and Foreign Taxes.
(21) Reserved.
(22) 252.217–7221 Price Reduction for Defective Cost or Pricing Data.
(23) 252.217–7222 Duty-Free Entry.
(24) 252.217–7223 Duty-Free Entry of Qualifying Country Supplies.
(25) 252.217–7224 Inspection System.
(26) 252.217–7225 Advance Payments.
(27) 252.217–7226 Required Sources for Jewel Bearings and Related Items.
(28) 252.217–7227 Required Sources for Miniature and Instrument Ball Bearings.
(29) 252.217–7228 Interest.
(30) 252.217–7229 Competition in Subcontracting.
(31) 252.217–7230 Audit by Department of Defense.
(32) 252.217–7231 Subcontractor Cost or Pricing Data.
(33) 252.217–7232 Value Engineering.
(34) 252.217–7233 Reserved.
(35) 252.217–7234 Required Sources for Precision Components for Mechanical Time Devices.
(36) 252.217–7235 New Material.
(37) 252.217–7236 Government Surplus.
(38) 252.217–7237 Utilization of Women-Owned Business Concerns (Over $10,000).
(39) 252.217–7238 Material Inspection and Receiving Report.
(40) 252.217–7239 Protection of Government Buildings, Equipment and Vegetation.
(41) 252.217–7240 Government Delay of Work.
(42) 252.217–7241 Distribution of Defense Subcontracts Placed Overseas.
(43) 252.217–7242 Safety Precautions for Ammunition and Explosives.
(44) 252.217–7243 Cost Accounting Standards.
(45) 252.217–7244 Notification of Changes.
(46) 252.217–7245 Engineering Change Proposals (ECP's).
(47) 252.217–7246 Change Order Accounting.
(48) 252.217–7247 Contracts Conditioned Upon the Availability of Funds.
(49) 252.217–7248 Preference for Domestic Specialty Metals.
(50) 252.217–7249 Preference for United States-Flag Air Carriers.
(51) 252.217–7250 Exclusionary Policies and Practices of Foreign Governments.
(52) 252.217–7251 Hazardous Material Identification and Material Safety Data.
(53) 252.217–7252 Certification of Requests for Adjustment or Relief Exceeding $100,000.
(54) 252.217–7253 Qualifying Country Sources as Subcontractors.
(55) 252.217–7254 Stop Work Orders.
(56) 252.217–7114 Certain Communist Areas.
(57) 252.217–7115 Contract Work Hours and Safety Standards Act—Overtime Compensation.
(58) 252.217–7116 Walsh-Healey Public Contracts Act.
(59) 252.217–7126 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.
(60) 252.217–7127 Affirmative Action for Handicapped Workers.
(61) 252.217–7255 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.
(62) 252.217–7256 Subcontractor Cost or Pricing Data.
(63) 252.217–7257 Notice of Total Small Business Set-Aside.
(64) 252.217–7258 Preference for Labor Surplus Area Concerns.
(65) 252.217–7259 Bid Guarantee.
(66) 252.217–7260 Production Progress Reports.
(67) 252.217–7261 Government-Furnished Property (Short Form).
(68) 252.217–7262 Clauses Incorporated by Reference.
(69) 252.217–7263 Aggregate Pricing Adjustment.
(70) 252.217–7264 Small Business and Small Disadvantaged Business Subcontracting Plan (Master Plans).
(71) 252.217–7265 Restrictive Markings on Technical Data.
(72) 252.217–7266 Identification of Technical Data.
(73) 252.217–7267 Data Requirements.
(74) 252.217–7268 Certain Communist Areas.
(75) 252.217–7269 Plant Protection.

Subpart 217.72—Acquisition of Component Parts

217.7201 Privately developed items.

217.7201–1 General.

It is Department of Defense policy 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 permitting full and open 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 policy stated above produces situations which require the contracting officer to decide whether to procure data for future competitive acquisition, the provisions of Part 227, as supplemented by this paragraph, shall govern.

217.7201–2 Specific acquisition 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 development, the contracting officer shall provide for full and open 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 acquisition, the contracting officer shall use one of the following alternative procedures in order of preference (see also 217.7203).

(1) When items of identical design are not required, the contracting officer shall provide for full and open competition using performance or other similar specifications, including purchase descriptions, which do not contain data pertaining to items, components or processes, developed at private expense to which the Government does not have unlimited rights. There are two methods of competitive procurement which may provide items of the same or similar design and suitable performance. One of these is purhcase by two-step sealed bidding. The other is by the use of "brand name or equal" purchase descriptions. To encourage participation by technically oriented firms that are desirous of offering their privately developed products in competition with similar articles, contracting 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 other than full and open competition is authorized under Part 206, procurement should be 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 (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 acquisition 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 acquisition. 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.

217.7202 Component breakout.

217.7202-1 Scope of paragraph.

(a) This section sets forth guidance for making decisions on whether or not components should be acquired 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 acquisition of the end item should be "broken out" from a forthcoming end item acquisition for direct Government acquisition. Thus, except as set forth in Part 7, this paragraph does not pertain to the initial Government-furnished equipment/contractor-furnished equipment decisions that must be made at the inception of an acquisition program.

(b) Parts acquired for replenishment are not covered by this paragraph, but are governed by 217.7203 and Supplement 6, Replenishment Parts Breakout Program.

(c) This section applies to acquisitions of weapons systems or other items of major equipment involving components whose direct acquisition by the Government may result in substantial net cost savings over the life of the acquisition program. Accordingly, it will seldom be applicable to an acquisition 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 acquisition 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 acquired by the prime contractor is on the basis of price competition) whenever substantial net cost savings will result (1) from greater quantity acquisitions 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 acquisition 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 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 acquisition 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 cost 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 it for Government acquisition? (Note that breakout may be warranted even though competitive acquisition 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 acquisition 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) acquired 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 contracting for 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 contracting 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 acquisition, with a decision made as to whether the component will be broken out for the ensuing acquisition. Such reviews, made preferably in the course of requirements determination, but in any event before acquisition 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 Acquisition 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 acquired 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 acquired on a full and open competitive basis, as in the kind of cases described in (b) below. However, where this assurance can be had only if the parts are acquired from the original manufacturer of the equipment or his supplier, the acquisition 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 acquisition purposes (or can be made so available in keeping with the policies in FAR Part 27 are to be acquired on a competitive basis. In general, such parts are of a standard design configuration. They include individual items that are susceptible of separate acquisition, 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.

(e) *Limitations on price increases.*

(1) Except as provided in (2) below, the contracting officer shall not purchase or agree to a price for any centrally managed spare or replacement part, on a sole source basis, when the price of such part has increased by 25 percent or more at any time within the most recent 12-month period.

(2) The purchase of such part is permitted notwithstanding a price increase of 25 percent or more provided the contracting officer certifies in writing to the head of a contracting activity before the purchase is made that:

(i) The contracting officer has evaluated the price of such part and concluded that the price increase is fair and reasonable, or

(ii) The national security interests of the United States require that such part be purchased despite the price increase.

(3) If necessary to implement this paragraph (e), contracting officers may require that vendors supply price and quantity data for any government orders issued within the most recent 12 months for the spare or replacement part as part of their response to a solicitation.

(4) The fact that a particular price has not increased by 25 percent in no way relieves the contracting officer of the responsibility for obtaining a fair and reasonable price.

217.7204 Identification of sources of supply.

(a) 10 U.S.C. 2384(a) requires that, whenever practicable, each contract requiring the delivery of supplies shall require that the contractor identify:

(1) The actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

(2) The national stock number of the item (if there is such a number), and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(3) The source of any technical data delivered under the contract.

This enables contracting officers to obtain sufficient information to allow solicitation of all actual manufacturer(s) of end items, parts, subassemblies and/or components, thereby allowing for enhancing competition and avoiding payment of additional costs where no significant value is added by dealers, distributors and manufacturers other than the actual manufacturer.

(b) The contracting officer shall include the clause at 252.217-7270 in all supply contracts except when:

(1) The contracting officer already has the information required by this clause (for example, the information was obtained as part of the offer or under other acquisitions);

(2) The contract is for subsistence, clothing or textiles, fuels, or supplies purchased and used outside the United States; or

(3) The contracting officer determines that it would not be practicable to require the contractor to provide the information, e.g., nonrepetitive local purchases.

(c) The contracting officer may include the clause at 252.217-7270 in service contracts requiring the delivery of supplies when appropriate.

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 acquisiton 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).

Subpart 217.74—Contracts With Requirements For Provisioned Items

217.7400 Scope of subpart.

This subpart sets forth contract requirements and procedures to be followed with respect to the provisioning process.

217.7401 Definitions.

"Provisioned Item" means any support-type item selected through provisioning procedures to support an end item of equipment. Support-type items include (but are not limited to) spares, repair parts and special support equipment.

"Provisioned Items Order" means an unpriced order issued under a contract which sets forth the Government's requirements for provisioned items. (Provisioned items for which firm prices have been established are acquired by supplemental agreement or by separate contract.)

"Provisioning Activity" means that organization of a using Military Service, or that organization delegated by a using Service, which is responsible for the selection of, and the determination of requirements for, provisioned items.

"Provisioning Procedure" means the contract specification which sets forth the general requirements governing the acquisition of provisioned items and related documentation. It includes various optional provisioning techniques and formats for provisioning lists and data which the Government may elect to use on a particular contract. It also prescribes the sequence and timing of events to be followed and the responsibilities of the Government and the contractor in the provisioning process.

"Provisioning Requirements Statement" means the contractual document by which the Government notifies the contractor of the specific provisioning requirements selected from available options, as applicable to a particular contract. It normally includes instructions such as the provisioning method to be used; the range of provisioning technical documentation and data including the form and schedule of submission, number of copies and distribution instructions; the type and location of provisioning conferences; sample article requirements; the delivery schedule and packaging and marking requirements for provisioned items, and contractor requirements for provisioning screening.

"Provisioning Technical Documentation" means the documentation furnished by contractors to a provisioning activity for use in the identification, determination of initial requirements and cataloging of items to be acquired. It generally includes provisioning lists, priced spare parts lists, and EDP cards and tapes. Engineering drawings or sketches supported by item descriptions (which include technical characteristics) are referred to as supplementary provisioning technical documentation.

217.7402 Acquisition requirements.

(a) *Contract requirements.* Contracts which contain Provisioning Procedures shall specify the functions of the provisioning process to be performed under the contract and the activities responsible for performing these functions. Further, such contracts shall:

(1) Include a Provisioning Requirements Statement or specify a time (e.g., days after award) for its incorporation in the contract by contract modification; revisions to the Provisioning Requirements Statement shall also be incorporated by contract modification;

(2) Provide on the DD Form 1423 a time schedule or milestones for the delivery of provisioning technical documentation or for the subsequent incorporation thereof in the contract by contract modification;

(3) Require a flow-down of the appropriate provisioning technical documentation requirement in subcontracts and purchase orders where the documentation is to be prepared by subcontractors;

(4) Specify, if applicable, procedures for contractor interim release of long lead time items and include ordering and funding instructions for such items. (Such instructions shall require the contractor to advise the PCO or Provisioning Activity within 30 days as to the items released, their estimated cost and the effective date of release.);

(5) Provide a time-frame for contractors to furnish price quotations for Provisioned Items Orders, which normally shall not exceed 60 days from receipt of the order;

(6) Specify exhibit identifiers applicable to the contract line/subline items (see 204.7105).

(7) Specify the activity designated to issue Provisioned Items Orders, i.e.,

Contracting Officer, Provisioning Activity or ACO. (When it is anticipated that more than one department will place Provisioned Items Orders against the contract, the requirements for provisioned items of each department shall be stated as separate contract line items.);

(8) Include procedures for processing changes in quantities of items ordered, including cancellations.

(b) *Issuance of provisioned items orders.* Provisioned Items Orders shall be issued on Standard Form 30, Amendment of Solicitation/Modification of Contract, and numbered in accordance with 204.7004–3.

(1) The Term Provisioned Items Order, in capital letters and underscored, shall be entered in Block 14.

(2) The appropriate exhibit identifier(s) for all attached exhibits shall be entered in Block 14.

(3) The order shall obligate funds to cover the estimated price of the items being ordered. Individual estimated prices will be shown for each exhibit line item on the copy(ies) of the Provisioned Items Order to be provided to the accounting and payment office(s).

(4) The Provisioned Items Order, or other form of contract modification, shall be used to effect decreases in quantities of items ordered, including cancellation.

(5) Upon receipt of advice from the contractor, as provided in (a)(4) above, the contracting officer will normally within 30 days issue an order covering the interim released items or notify the contractor to cancel the items.

(6) Orders shall be given the same distribution as the basic contract (see FAR 4.2) except that the distribution of voluminous spares/repair parts exhibits may be curtailed to the extent determined by the Contracting Officer and provided that the required copies, complete with exhibits, are forwarded to the Contract Administration Office and the payment office.

217.7403 Contract administration requirements.

(a) *Provisioning conferences.* The Contracting Officer or Provisioning Activity shall give the Contract Administration Office (CAO) timely notice of conferences on provisioning matters. The CAO shall: (1) Insure that the contractor understands the basic provisioning requirements of the contract and that all applicable publications are available to the contractor; (2) coordinate, as necessary, with the contractor and the Contracting Officer or Provisioning Activity to determine the types of and schedules for provisioning conferences required, e.g., guidance meetings, long lead time items conferences, source coding meetings, etc.; and (3) assist, if required, in the development of conference agenda. When requested by the Contracting Officer or Provisioning Activity or when otherwise considered necessary for effective contract administration, the CAO shall be represented at provisioning conferences.

(b) *Monitoring by the contract administration office.* The CAO shall monitor each contract which contains requirements for provisioning technical documentation and provisioned items, as follows:

(1) Prepare and maintain a check list of events in the provisioning process, including schedules for use in monitoring such events;

(2) Review contractor progress in the preparation of provisioning technical documentation and, on request of the Contracting Officer or Provisioning Activity, inspect such documentation for format and content;

(3) Insure that the contractor invokes the prime contract provisioning technical documentation requirements in subcontracts and purchase orders when the subcontractor is charged with preparation of any documentation;

(4) Advise the Contracting Officer or Provisioning Activity, in accordance with FAR 42.11 of provisioning technical documentation delivery delays or other related problems.

(5) Ensure contractor compliance with contract requirements relative to the assignment of National Stock Numbers.

(6) Ensure that the contractor adheres to the criteria established by the contract for the release of long lead time items.

(c) *Negotiating and executing supplemental agreements.* The ACO shall accomplish negotiation of prices and execution of supplemental agreements within 180 days after receipt of the Provisioned Items Order *provided* that, when time in excess of 60 days is allowed for submission of price quotations (see 217.7402(a)(5)), the 180 day period shall be adjusted accordingly. The ACO also shall maintain records to reflect the status of Provisioned Items Orders as to adequacy of obligated funds, due dates for price quotations, and actions taken to obtain additional funds or deobligate excess funds.

(1) In the process of negotiating prices, the ACO shall:

(i) Determine the acceptability of pricing methods proposed by the contractor;

(ii) Verify that items and quantities contained in proposals are identical to those ordered, clarifying, as appropriate, any variances with the Contracting Officer or Provisioning Activity; and

(iii) Avail himself of data from similar contracts with the contractor, making use of audit records and information available from the Contracting Officer or Provisioning Activity. Price negotiation policies and techniques set forth in FAR 15.8 shall be followed, including the record of price negotiations required by FAR 15.808.

(2) When delivery dates are not proposed by the Contracting Officer or Provisioning Activity or, when proposed delivery dates cannot be met by the contractor, the ACO shall coordinate the negotiated schedule with the Contracting Officer or Provisioning Activity prior to the execution of the supplemental agreement.

(3) Supplemental Agreements shall be used to increase quantities of priced items and to definitize Provisioned Items Orders. Supplemental Agreements which definitize Provisioned Items Orders may incorporate multiple orders or portions of orders when such action is not inconsistent with the provisions of the applicable contract.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

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

Subpart 219.1—Size Standards

219.102–70 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 implementation 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 Army Materiel Command (AMC), 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 contracting activity; the Wing/Base Commander of each local contracting office 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 surplus area program(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(71)). In addition to performing that portion of the specific program outlined in (2) below that is normally performed in the activity to which the specialist 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 the specialist 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 appropriate to the activity by the appointing officer or by the Departmental or Agency Director or Staff Director of Small and Disadvantaged Business Utilization. The SADBU 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) Ensure 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 may obtain information about formal advertising and negotiated acquisitions and that they may subscribe to the Commerce Business Daily as a source of information on proposed acquisitions;

(xvi) Brief the specialist's 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 acquisitions 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 appropriate media;

(xxi) Assure that the organization maintains a list of products and services which have been placed on repetitive small business setaside;

(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 the specialist's 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:

Army—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Pentagon, Washington, DC 20310;

Navy—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, DC 20360;

Air Force—Director, Office of Small and Disadvantaged Business Utilization, DCS/RD&A, Pentagon, Washington, DC 20330;

Defense Logistics Agency—Staff Director, Office of Small and Disadvantaged Business Utilization, Code DLA-U, Cameron Station, Alexandria, VA 22314;

National Security Agency—Director, Office of Small and Disadvantaged Business Utilization, Fort Meade, MD 20755;

Defense Communications Agency—Director, Office of Small and Disadvantaged Business Utilization, Code 260, Washington, DC 20035;

Defense Nuclear Agency—Director, Office of Small and Disadvantaged Business Utilization, (Code OAFR), Washington, DC 20305;

Defense Mapping Agency—Director, Office of Small and Disadvantaged Business Utilization, Headquarters, Washington, DC 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 the Deputy Director.

(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 the duties of the representative.

(2) A Small Business Technical Advisor (SBTA) shall be a fulltime 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 that person's 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 (213.105), 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 that person's 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.

(S–70) Architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set-aside for small business. Indefinite delivery and indefinite quantity contracts for architectural and engineering services that are set-aside for small business shall not exceed, for the total of orders placed under the contract, $85,000.

(S–71) Every proposed acquisition for construction, including maintenance and repairs, in excess of $5,000 and under $2 million (except dredging under $1 million) shall be considered individually, as though the Small Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of DoD FAR Supplement 219.505 shall apply.

(S–72) Every proposed acquisition of $2 million or more for construction or $1 million or more for dredging, shall be considered on an individual acquisition basis under FAR Subpart 19.502–2.

(S–73) Every proposed acquisition for A–E services and construction design under $85,000 for military construction projects shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedure of DoD FAR Supplement 219.505 shall apply.

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.

219.502–70 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).

(c) Contracts utilizing this procedure may be entered into by sealed bidding or negotiation (see FAR 6.102, FAR Parts 14 and 15.) 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 (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 (i)

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. The contractor's 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 (2) and (3) above. Also, the award shall reference in Block 26 of the 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-LSA-set-aside portion shall be reported separately. (See FAR 19.507 for automatic dissolution of set-asides.)

219.502-71 Small business set-asides under foreign military sales.

Small Business set-asides shall not be authorized under the Foreign Military Sales Program if the foreign purchaser specifies the sources qualified to meet the requirement and only one of those sources is a small business concern. This prohibition shall expire 18 October 1986.

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 the 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 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 final, and if the decision approves the action of the contracting officer, the small business 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 designee as identified in 219.201(c)(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) When the contracting officer makes a determination that a small business concern is not responsible on a proposed award, the contracting officer will refer the matter directly to the SBA. 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.

219.602-3 Resolving differences between the agency and the Small Business Administration.

(a) Prior to final SBA action, the contracting officer (or the preaward survey activity when authorized to act as contracting officer's 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 case. Copies of significant data developed by SBA that are pertinent to the case will be available, upon request, to the contracting officer or contracting officer's 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 contracting officer's 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 Departmental or Agency Director or Staff Director of Small and Disadvantaged Business Utilization identified in 219.201(S-71)(1). 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(S-71)(1), 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-A&L(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.

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 acquisition 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 contracting 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) 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)(a) See subsection 225.103 regarding acquisitions 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 in 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-asides 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 inquiries to determine the number and expected classification of interested concerns.

(ii) In determining whether a proposed acquisition 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 acquisition 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 acquired.

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 acquisitions are 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 acquisitions of the item in question has been placed with LSA concerns;

(ii) The item to be acquired is on an established planning list under the Industrial Readiness Planning Program;

(iii) The item to be acquired is on a Qualified Products List;

(iv) A period of less than 30 (see FAR 5.203) days from the date of issuance of solicitations is prescribed for the submission of offers;

(v) The acquisition is classified; or

(vi) LSA concerns are receiving a fair proportion of contracts.

(3) 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 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 an acquisition is to be set aside, the acquisition 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 pursuant to 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 acquisitions 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 (ii) below).

(ii) When experience indicates 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. Acquisition 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) & (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 negotiations 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 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 acquired by sealed bidding or negotiation, as appropriate, in accordance with existing regulations. 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 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. The contractor's 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 (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 acquisition by sealed bidding 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.

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 its program, the contractor 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 its best efforts to place 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 Emergency Management Agency (FEMA) may, under Defense Manpower Policy No. 4, establish appropriate measures on an industrywide, rather than on an area, basis. Designations of such industries are made by the FEMA 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

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

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 oommunications with contractors, labor organizations or Federal agencies relative thereto shall be handled in accordanoe 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 Assistant Secretary of Defense (Production Support) 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: Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), OASN(S&L), CBM-CM

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-PL; 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 contracting offices, their Heads of Contracting Activities and their Departmental headquarters labor relations office (see listing at 222.101-1(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 change 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, may be obtained in accordance with procedures set forth below:

(1) The 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, or 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 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 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, the Commander of the CAO 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 DASD(A&L)(PS).

(4) Upon review and verification that the material is urgently or critically needed and cannot be moved with the consent of the parties, the DASD(A&L)(PS) 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 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 Assistant Secretary of Defense (A&L)(PS).

(1) Upon specific request; or

(2) When considered by the Department to be of sufficient urgency to warrant the attention of the DASD(A&L)(PS).

(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 Acquisition 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 of 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) Considerati.on 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 therefor 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 from 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 headquarters 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 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 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 acquisition 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 Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), Deputy Director, Contracts & 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, for the Defense Mapping Agency; are authorized, without power of delegation, to designate without power of redesignation, officers 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, division, or company, as most practicable, and shall ordinarily be prospective, but may be retroactive when justified by the circumstances. When two or more contracting offices have current contracts at a single facility, and the approval of overtime by one contracting 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 contracting office may rely on the contractor's statement that such approval will not affect the performance, or payments in connection with any contract of another contracting 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.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604–2 Regulatory exemptions.

(c) In addition to the requirements contained in FAR 22.604–2(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 Region*—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 Contract Compliance Programs").

222.806 Inquiries.

(b) Matters requiring the attention of OFCCP, Washington, DC 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 222.101–1(S–74)) for departmental coordination and submission, if favorably endorsed, to the Deputy Assistant Secretary of Defense (Production Support) (DASD(A&L)(PS)). If the request is submitted under FAR 22.807(a)(1), the DASD(A&L)(PS) 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 DASD(A&L)(PS) 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 to 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, DC 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 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 this 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 employees; and

(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, DC headquarters are 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 22.1008–1, 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, NW., Washington, DC 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) issued 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; or

(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, DC 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 contracting 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 OASD(A&L)(P) 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. 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 contracting 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 OASD(A&L)(P) for waiver by the Secretary of Defense. Only the Secretary of Defense may make waiver under FAR 22.1403.

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). 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. Procedures have been established, by agreement between the Department of Justice and the Departments governing the defense of 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.

Subpart 222.72—Section 8078, 1986 Defense Appropriations Act—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7200 Policy.

(a) Except as provided in (b) and (c) below, Section 8078 of the 1986 Defense Appropriations Act requires that notwithstanding any other provision of law, every contract awarded during FY 1986 calling for construction or services to be performed in whole or in part within the State of Alaska or the State of Hawaii shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract work within the particular state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) This section shall not apply at any time during FY 1986 when the unemployment rate in Alaska is not in excess of the national average rate of unemployment as determined by the Secretary of Labor.

(c) This section shall not apply to contracts to be performed in whole or in part within the State of Hawaii unless in FY 1986 the unemployment rate in Hawaii is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

222.7201 Waivers.

This section may be waived by the Secretary of Defense, the Deputy Secretary of Defense, the Assistant Secretary of Defense for Acquisition and Logistics, and any Secretary, Undersecretary, or Assistant Secretary of the Army, Navy, and Air Force, in the interest of national security. Requests for waiver shall be processed in accordance with Departmental or agency procedures.

222.7202 Contract Clause.

The contracting officer shall insert the clause of 252.222–7002, Restrictions on Employment of Personnel, in all solicitations and contracts in accordance with 222.7200.

PART 223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

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

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.303 Contract clause.

(S–70) The contracting officer shall insert the clause at 252.223–7000, Notice of Radioactive Materials, in all contracts for items, components thereof, and materials which are radioactive in which the radioactivity per gram is greater than 0.002 microcuries. Such contracts include, but are not limited to, contracts for aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses and identification markers.

Subpart 223.70—Safety Precautions for Ammunition and Explosives

223.7001 Definition.

The term "ammunition and explosives", as used in this subpart, means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in any of the following: bulk form, ammunition, rockets, missiles, warheads, devices, and components thereof, except for wholly inert items.

223.7002 Policy and contract clauses.

(a) The requirements of DoD 4145.26–M, "DoD Contractors' Safety Manual for Ammunition and Explosives", are to be applied to all contracts involving ammunition or explosives. To

accomplish this policy, all solicitations/requests for quotations, and resulting contracts involving development, testing, research, manufacturing, handling, loading, assembling, packaging, storage, transportation, renovation, demilitarization, modification, repair, disposal, inspection, or other use of ammunition and explosives shall include, in its entirety, the clause set forth in 252.223-7001, except as noted below:

(i) The clause is not to be included in contracts solely because of inert components containing no explosives, propellants, or pyrotechnics.

(ii) The clause is not to be included in contracts which are solely for flammable liquids, acids, oxidizers, powdered metals, or other materials having fire or explosive characteristics. However, the clause shall be included in contracts which require the use or incorporation of such materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or a weapon system.

(iii) When work is to be performed on a Government-owned installation, ammunition and explosives regulations of the DoD Component or installation for handling ammunition and explosives may be used to supplement or substitute for DoD 4145.26-M (the manual). The regulations used to supplement or substitute for the manual must be cited in the contract.

(b) The purpose of incorporating the DoD Manual into the contract is to minimize the potential for mishaps that could interrupt DoD operations, delay project/product completion dates, adversely impact upon DoD production base or capabilities, damage or destroy DoD-owned material/equipment, or cause injury to DoD personnel.

(c) The clause at 252.223-7002 shall be inserted in all solicitations and contracts containing the clause at 252.223-7001.

223.7003 Preaward considerations.

(a) The contracting officer shall obtain a preaward ammunition and explosives safety survey before awarding any contract (including purchase orders) involving ammunition and explosives. When the prospective contractor proposes subcontracting any ammunition and explosives work, the preaward safety survey will also include the subcontractor(s) facility.

(b) Omission of the clause from solicitations and contracts referred to in 223.7002, or waiver of mandatory requirements of the manual prior to contract award, must be approved by the HCA or 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 thereto. When requested deviations from mandatory requirements of the manual are rejected by the HCA or designee, but the prospective contractor proposes corrective action acceptable for compliance, then the contractor's proposed corrective actions must be set forth in the schedule of the resulting contract. All requested waivers, deviations, or omissions of the clause must be reviewed by safety personnel responsible for ammunition and explosives safety prior to forwarding for HCA or designee approval.

(c) In contracts involving shipment of ammunition and explosives, applicable Department of Transportation (DOT)/Military Traffic Management Command (MTMC) requirements and other needed transportation, packaging, marking, and labeling requirements will be addressed within the schedule of the contract.

(d) The contracting office will include instructions within the contract concerning final disposition of excess (to include defective/reject) Government-Furnished Material (GFM) containing ammunition and explosives.

223.7004 Postaward considerations.

(a) Compliance with the standards required by the clause is the responsibility of the contractor (see 242.302(a)(39)). Contract administration personnel have the responsibility to verify that these contract requirements are being implemented in a manner which will tend to reduce or eliminate the probability of a mishap occurrence to the maximum extent practicable. As provided in the clause, the standards of the manual are to be applied only to the contractor's operations relating or exposed to ammunition and explosives.

(b) The contracting officer will review contractor requests for waiver of contractual safety standards and submissions for site plan modification or construction review. The manual requires the contractor to submit these requests through the ACO. If the request for review does not include the ACO review and recommendation, coordination with the ACO or return of the submission to the ACO is required. The contracting officer must also obtain a review and recommendation from the appropriate servicing safety department responsible for ammunition and explosives safety. The approval/disapproval determination by the contracting officer should be made to the contractor, through the ACO, as soon as practicable.

(c) *Subcontracts.* (1) The clause at 252.223-7001 requires the contractor to notify the contracting officer prior to placing subcontracts for ammunition and explosives. When notifications are received, the contracting officer should, in coordination with safety personnel, request supporting contract administration in accordance with FAR 42.204, and should normally request supporting administration when the nature of the subcontract work potentially endangers Government property, Government personnel, production capability or contract completion.

(2) When a preaward safety survey identifies areas in which the subcontractor is in noncompliance with the manual and those noncompliances could be corrected prior to the starting up of production, the contracting officer shall require a preoperations survey to verify that the corrections have been made.

(3) When postaward safety reviews by the Government uncover safety deficiencies in the subcontractor's operation (whether or not they are immediately corrected or correctable), the cognizant ACO for the subcontractor shall be informed. The ACO cognizant of the subcontractor shall immediately notify the ACO cognizant of the prime contractor, who shall formally notify the prime contractor of the subcontractor deficiencies requiring correction. In the event of critical safety deficiencies, the foregoing notifications shall be accomplished by the most expeditious means available.

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 225—FOREIGN ACQUISITION

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

225.000 Scope of Part.

This part supplements FAR Part 25 and provides special guidance (including pricing guidance) for Military Assistance Program acquisitions and Foreign Military Sales; procedures to promote liaison with overseas activities and compliance with government-to-government agreements for acquisition from foreign contractors; and procedures for the solicitation and evaluation of offers of defense equipment which are qualifying country end products.

225.001 Definitions.

As used through this part, the words and terms defined in this paragraph shall have the meanings set forth below, unless a different definition is prescribed for a specific subpart.

"Defense cooperation agreement country end product" means an item listed in the defense cooperation country agreement and produced in that country.

"A defense cooperation country" is a foreign country which has a defense cooperation agreement and for which a Determination and Findings (D&F) was made by the Secretary of Defense waiving the Buy American Act restrictions for a list of mutually agreed items. These countries are listed at 225.7501.

"Defense cooperation country offer" means an offer of a defense cooperation country end product, including transportation to destination.

"Defense equipment" means any equipment, item of supply, component, or end product purchased by the Department of Defense.

"Domestic concern" means an incorporated concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States. (In the context of this part, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agent on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.)

"Domestic end product" means (i) an unmanufactured end product which has been mined or produced in the United States; or (ii) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or (ii) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (FAR 25.102(a)(3)).

"FMS/Offset arrangement country offer" means an offer of a FMS/Offset arrangement country end product, including transportation to destination.

"FMS/Offset arrangement country" is a foreign country which has an offset arrangement negotiated in conjunction with a Foreign Military Sale and which arrangement provides for obtaining a waiver of the Buy American Act restrictions on a case-by-case basis. These countries are listed at 225.7310(a).

"FMS/Offset arrangement country end product" means (i) an unmanufactured end product mined or produced in a FMS/Offset arrangement country; or (ii) an end product manufactured in a FMS/Offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty, whether or not duty is in fact paid.

"Foreign concern" means a concern that is not a domestic concern.

"Participating country" is a NATO country which has a Memorandum of Understanding (MOU) or similar agreement with the U.S., and for which a blanket D&F was made by the Secretary of Defense waiving the Buy American Act restrictions. These countries are listed at 225.7401.

"Participating country end product" means (i) an unmanufactured end product mined or produced in a participating country; or (ii) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation to the place of incorporation into the end product and any duty, whether or not duty is in fact paid.

"Participating country offer" means an offer of a participating country end product, including transportation to destination.

"Qualifying country" means any country defined as a defense cooperation country, a FMS/Offset arrangement country, or a participating country.

"Qualifying country component" means (i) an item mined, produced, or manufactured in a participating country or in a FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (ii) any item listed in a defense cooperation country agreement.

"Qualifying country end product" means (i) a participating country end product; (ii) a FMS/Offset arrangement country end product when the applicable D&F has been made waiving the Buy American Act restrictions; or (iii) a defense cooperation country agreement listed item.

"Qualifying country offer" means an offer of a qualifying country end

product, including transportation to destination.

"Source" (when restricted by such words as foreign, domestic, qualifying country, etc.) refers to the actual manufacturer or producer of the end product or component (product may encompass a report).

"United States" means the States, the District of Columbia, Puerto Rico, and possessions. It does not include leased bases or trust territories.

Subpart 225.1—Buy American Act—Supplies

225.102 Policy.

(S–70) *Buy American Act requirements.* Except as provided in this section, the Buy American Act requires that in the acquisition of supplies, only domestic end products shall be acquired for public use in the United States. In determining whether an end product is a domestic end product, only the end product and its components shall be considered. The act and its implementation by E.O. 10582 and the Balance of Payments Program require the use of evaluation factors specified in 225.105.

(1) *Use outside the United States.* The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States. However, the Balance of Payments Program is not so restricted. In order to uniformly implement the Balance of Payments Program worldwide, the preferences and procedures of the Buy American Act for soliciting and awarding contracts for supplies and applicable services have been extended as a matter of policy to acquisition of supplies and applicable services for use outside the United States.

(2) *Unreasonable cost or inconsistency with the public interest.* The restrictions of the Buy American Act and the Balance of Payments Program do not apply when it is determined by the Secretary concerned that the cost of a domestic end product would be unreasonable, or that acquisition of a domestic end product would be inconsistent with the public interest.

(3) *Nonavailability in the United States.* The Buy American Act does not apply to (i) end products of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or (ii) components of end products manufactured in the United States or a qualifying country if the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Certain items determined to be exempt under these exceptions are set forth in FAR 25.108(d)(1).

(4) *Commissary resale.* The provisions of the Buy American Act do not apply to supplies purchased specifically for commissary resale. However, nonsubsistence items of foreign origin purchased for resale in domestic commissaries must meet the evaluation criteria in this subpart.

(S–71) A nonavailability determination is not required for end products or components listed in (S–72) below or in FAR 25.108(d)(1). Otherwise, acquisitions of foreign end products or components on the basis of nonavailability shall be made only after a determination of nonavailability has been made and the acquisition is approved:

(1) At a level above the contracting officer, if the amount involved is estimated not to exceed $25,000;

(2) By the chief of the contracting office concerned, if the acquisition is estimated not to exceed $250,000;

(3) By the head of the contracting activity (HCA) or his immediate deputy, or in the case of the Defense Advanced Research Projects Agency (DARPA), the Director, DARPA, if the acquisition is estimated not to exceed $2 million; or

(4) By the Secretary of the Department concerned, or his designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

In making such determination, and granting such approval, the feasibility of foregoing the requirement or providing a U.S. substitute shall be considered.

(S–72) Acquisitions in the following categories may be made without determinations or approvals otherwise required by this subsection.

(1) Spare and replacement parts, if the acquisition must be restricted to the original manufacturer or his supplier.

(2) Foreign drugs by the Defense Personnel Support Center when the Chief of the Division of Technical Operations, Directorate of Medical Materiel, has determined that only the requested foreign drug will fulfill the requirements.

(S–73) *Balance of payments program requirements.* The 50% evaluation factor in favor of domestic offers, implemented in 225.105, is an interim measure designed to alleviate the impact of DoD expenditures on the Nation's balance of international payments. The Department of Defense does not expect to use the 50% factor beyond the time when the U.S. balance of payments deficit is corrected.

(1) Although the evaluation procedures in 225.105 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budgetary costs, this result is an average and overall result rather than one precisely obtained in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified absolutely as "foreign" or "domestic" and varying degrees within each class are not recognized. However, deviations (see FAR Subpart 1.4) from the evaluation procedures of 225.105 should be considered for acquisitions over $250,000 when it is anticipated that the low domestic offer will involve relatively substantial foreign expenditures or that the low foreign offer will involve relatively substantial domestic expenditures. Any request for such a deviation should be made sufficiently in advance of solicitation to permit the solicitation to describe the evaluation procedure that will be used. Such deviations require the advance approval of the Assistant Secretary of Defense (Acquisition and Logistics)(ASD(A&L)) or his designee.

225.103 Agreements with certain foreign governments.

(See Subparts 225.73, 225.74, and 225.75.)

225.105 Evaluating offers.

In lieu of the procedures set forth in FAR 25.105, the following procedures are applicable to the Department of Defense.

(S–70) In accordance with the Buy American Act, the Secretary of Defense has determined that where the procedures in (S–71) below result in the acquisition of foreign end products, the acquisition of domestic end products would be (i) unreasonable in cost or (ii) inconsistent with the public interest.

(S–71) Except as provided in this subparagraph (S–71) and in (S–73) and (S–74) below, offers shall be evaluated so as to give preference to domestic offers as follows:

(1) Each nonqualifying country offer of defense equipment (but see exception (ii) below) shall be adjusted for purposes of evaluation either by excluding any duty from the nonqualifying country offer and adding 50% of the offer (exclusive of duty) to the remainder, or by adding to the nonqualifying country offer (inclusive of duty) a factor of 6% of that offer,

whichever results in the greater evaluated price, except that a 12% factor shall be used instead of the 6% factor if (i) the firm submitting the low acceptable domestic offer is a small business concern, or a labor surplus area concern, or both; (ii) small purchase procedures are not used; and (iii) any contract award to a domestic concern which would result from applying the 12% factor, but which would not result from applying the 6% or 50% factor, would not exceed $100,000. If an award for more than $100,000 would be made to a domestic concern if the 12% factor is applied, but would not be made if the 6% factor or 50% factor is applied, the matter shall be submitted to the Secretary of the Department concerned for decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In other instances, use the tiebreaking procedures in 214.407-6. When more than one line item is offered in response to a solicitation, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items as to which the solicitation specifically provides that award may be made on a particular group of items.

(2) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subject to the price differentials (see Example E below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example F below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example G below).

(S-72) The following examples illustrate how the procedure in (S-71) above should be applied. Throughout these examples, "domestic offer—large" means a domestic offer which is not from a small business or labor surplus area concern; "domestic offer—small" means a domestic offer which is from either a small business concern or a labor surplus area concern, or both.

Example A

Nonqualifying Country Offer, including duty of $4,500	$14,500
Domestic Offer—Large	15,100
Domestic Offer—Small	15,110

Award on Domestic Offer—Large. Domestic Offer—Small is out because it is not the low acceptable domestic offer. Nonqualifying Country Offer, if adjusted by the 50% factor, would be $14,500 less $4,500 duty (i.e., $10,000), plus 50% of $10,000 (i.e., $5,000), or $15,000; but if adjusted by the 6% factor, it would be $14,500 plus 6% of $14,500 (i.e., $870), or $15,370; therefore, the 6% factor is added, and the Domestic Offer—Large is the low evaluated offer.

Example B

Nonqualifying Country Offer, including duty of $2,000	$12,000
Domestic Offer—Large	15,000

Award on Domestic Offer—Large. Nonqualifying Country Offer, adjusted by 50% factor, is $15,000; adjusted by 6% factor, it is $12,720. Therefore, Nonqualifying Country Offer is evaluated at $15,000, resulting in a tie and consequent award on the Domestic Offer—Large.

Example C

Nonqualifying Country Offer, including duty of $3,500	$13,500
Domestic Offer—Large	17,000
Domestic Offer—Small	15,100

Award on Domestic Offer—Small. Nonqualifying Country Offer, adjusted by 50% factor is $15,000; adjusted by 12% factor, it is $15,120. Therefore, it is evaluated at $15,120, resulting in award on the Domestic Offer—Small.

Example D

Nonqualifying Country Offer, including duty of $70,000	$270,000
Domestic Offer—Large	310,000
Domestic Offer—Small	302,000

Submit the case to the Secretary of the Department concerned. Nonqualifying Country Offer, adjusted by 50% factor is $300,000; adjusted by 12% factor, it is $302,400; adjusted by 6% factor, it is $286,200. Therefore, Domestic Offer—Small is in line for possible award only because of the bidder's small business or labor surplus area status. But since the contract award would exceed $100,000, the matter requires Secretarial decision.

Example E

Nonqualifying Country Offer, including duty of $2,000	$8,000
Domestic Offer—Large	10,500
Domestic Offer—Small	8,900
Qualifying Country Offer	8,800

Award on Qualifying Country Offer. Nonqualifying Country Offer, adjusted by 50% factor is $9,000; adjusted by 12% factor it is $8,960. Therefore, it is evaluated at $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

Example F

Nonqualifying Country Offer, including duty of $2,000	$8,000
Domestic Offer—Large	10,000
Domestic Offer—Small	9,500
Qualifying Country Offer	8,800

Award on Nonqualifying Country Offer. Nonqualifying Country Offer, adjusted by 50% factor is $9,000; adjusted by 12% factor it is $8,960. Therefore, it is evaluated at $9,000 which is still lower than both domestic offers. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offers had never been submitted, and the award is made on the nonqualifying country offer.

Example G

Nonqualifying Country Offer	$10,000
Qualifying Country Offer	11,500

Award on Nonqualifying Country Offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis, and the award is made on the nonqualifying country offer.

(S-73) When a qualifying country offer is received for defense equipment listed in 225.7405 or FAR 8.203, rejection of that offer in the interest of protecting the domestic mobilization base is required, except when the quantity for which the offer is made has been identified as a quantity in excess of that required to maintain the U.S. defense mobilization base for those items. In those instances when it has been determined prior to solicitation that the item is not to be supplied from any foreign source, offerors shall be so notified in the solicitation. When rejection of a qualifying country offer is contemplated for reasons of national interest or for mobilization base considerations and the defense equipment involved is not listed in 225.7405 or FAR 8.203, a copy of the proposed decision shall be forwarded to OASD(A&L)(P) (International Acquisition), 10 working days in advance of issuance of the rejection.

(S-74) When proposed awards are submitted for Secretarial decision pursuant to (S-71) above, each submission shall include a copy of each offer being considered for award, the date the offer expires, including extensions, a copy of the abstract of bids or proposals, and a statement justifying the proposed awards. Submissions should be forwarded to

allow 21 days for processing and Secretarial consideration, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(S–75) When performing the evaluation in (S–71) above for items for civil works activities, offers of qualifying country end products shall not be subject to the 50% evaluation factor of the Balance of Payments Program, but shall be subject to the 6% and 12% evaluation factors of the Buy American Act, unless a specific waiver of the Buy American Act is otherwise obtained for that acquisition through the procedures of this subpart.

225.107 Acquisition from or through other government agencies.

Balance of Payments evaluation procedures are not applicable to transactions described in FAR 25.107 (a), (b) and (c).

(S–70) Defense activities have the responsibility for compliance with the Buy American Act and Balance of Payments evaluation procedures when they purchase a foreign end item from (1) a mandatory Federal Supply Schedule which includes a domestic end product; or (2) a nonmandatory Federal Supply Schedule.

(S–71) Defense activities purchasing items of equipment and supplies for civil works projects for use in the United States by civil agencies or departments shall not apply the Balance of Payments Program 50% evaluation factor when evaluating offers; only the evaluation factors of the Buy American Act, as implemented by Executive Order 10582, dated 17 December 1954, shall be applied.

(S–72) In the case of coordinated acquisition under Part 8, compliance with the Buy American Act and Balance of Payments evaluation procedures is the responsibility of the Contracting Department, except when the Requiring Department specifies a foreign end product; in which case, the determination that a domestic end product is not available, including consideration of foregoing the acquisition or providing a U.S. substitute, shall be the responsibility of the Requiring Department.

225.108 Excepted articles, materials, and supplies.

(a) Pursuant to the Buy American Act, it has been determined that the articles, materials, and supplies listed in FAR 25.108(d)(1) and below, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. When required to be incorporated into (i) an end product or construction material manufactured in the United States, or (ii) a qualifying country end product or construction material, these items or components may be regarded as being of domestic origin. (For construction material, see FAR 25.2.)

(d)(1) Sperm oil.

(d)(S–70) *Scrap.* Scrap generated in, collected in, and prepared for processing in the United States, shall be considered as of domestic origin.

225.109 Solicitation provisions and contract clauses.

(a)(S–70) The provision at 252.225–7000, Buy American-Balance of Payments Program Certificate, shall be used in lieu of the provisions at FAR 52.225–1, Buy American Certificate, and FAR 52.225–6, Balance of Payments Program Certificate, and shall be inserted in any solicitation which includes the clause at 252.225–7001.

(a)(S–71) For small purchases using DD Form 1155, the provision at 252.225–7000 shall be used with the clause, Foreign Supplies, on DD Form 1155r. When so used, the provision may be modified by inserting a period after ". . . products" in subparagraphs (b)(i), (b)(ii), and (b)(iii) and then deleting the balance of the respective sentences.

(b) When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable, other than those items which have been excepted either on a blanket or an individual basis, or the price of the offered foreign end product meets the evaluation criteria in 225.105.

(d)(S–70) The clause at 252.225–7001, Buy American Act and Balance of Payments Program, shall be used in lieu of the clauses at FAR 52.225–3, Buy American Act-Supplies, and FAR 52.225–7, Balance of Payments Program. The contracting officer shall insert the clause at 252.225–7001 in all solicitations and contracts (i) not utilizing small purchase procedures, (ii) which do not contain the clause at 252.225–7006, and (iii) for supplies and for services, which services require the furnishing of supplies (e.g., the leasing of equipment), except as cited in 225.302(S–72)(1).

(d)(S–71) For small purchases using DD Form 1155, the clause at 252.225–7001 may be inserted in lieu of the clause, Foreign Supplies, on DD Form 1155r.

(d)(S–72) The contracting officer shall insert the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, whenever the clause at 252.225–7001 or the clause 252.225–7006 is used in the solicitation or contract.

(S–70) *Solicitation of offers.* Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 225.108(d)(1)) is available to prospective contractors upon request. When only domestic end products are acceptable, the solicitation shall so state.

Subpart 225.2—Buy American Act—Construction Materials

225.202 Policy.

(a)(1) and (2) The restrictions of the Buy American Act do not apply when it is determined by the Secretary concerned that the use of a particular domestic construction material would (i) unreasonably increase the cost, or (ii) be impracticable. When proposed awards are submitted for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials. Submissions shall allow 21 days for processing, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(a)(3) The Buy American Act does not apply to articles, materials, and supplies of a class or kind determined to be not mined, produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. Certain construction materials determined to be exempt under this exception are set forth in FAR 25.108(d)(1). Purchase of nondomestic construction material on the basis of "nonavailability," when the material is not listed in FAR 25.108(d)(1), shall be made only if the determination for the purchase and use of such material is approved by:

(i) The Secretary of the Department concerned, if the cost of such materials is estimated to exceed $100,000;

(ii) The Head of the Contracting Activity or his immediate deputy, if the cost of such materials is estimated not to exceed $100,000;

(iii) The principal staff officer responsible for procurement within the contracting activity (or, in the Air Force, within the major air command) concerned, if the cost of such materials is estimated not to exceed $10,000; or

(iv) An official at a level above the contracting officer, if the cost of such materials is estimated not to exceed $2,500. Before granting such approval or

making such determination, the feasibility of foregoing the requirement or providing a United States substitute shall be considered. When proposed awards are submitted for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials. Submissions shall allow 21 days for processing, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(S–70) *Panamanian materials for use in the Canal Zone.* In accordance with the Memorandum of Understanding ancillary to the Treaty with the Republic of Panama, signed 25 January 1955, articles, materials, and supplies that are mined, produced, or manufactured in Panama and are purchased for use in the Canal Zone are excepted from the Buy American Act.

225.205 Solicitation provision and contract clause.

(S–70) *Nondomestic construction material.* When a determination has been made that certain construction materials may be used without regard to The Buy American Act, the clause at 252.225–7003, Nondomestic Construction Materials, shall be included in the contract by the contracting officer, and the excepted item shall be listed therein. When this clause is used, the contracting officer shall place in the contract file a copy of the signed approval, and a copy thereof shall be available for public inspection.

Subpart 225.3—Balance of Payments Program

225.300 Scope of subpart.

This subpart implements the Department of Defense Balance of Payments Program with respect to all acquisitions of (a) services which require the furnishing of end items (e.g., leasing of equipment) and supplies required for use outside the United States, except petroleum and Military Assistance Program acquisitions (see 225.72); and (b) scientific and technical knowledge, resulting in dollar expenditures outside the United States and Canada. However, the exception regarding Military Assistance Program acquisitions does not apply to 225.370. Defense requirements as to the use of U.S. Flag vessels, which effect the Balance of Payments Program, are set forth in FAR 47.5.

225.302 Policy.

(a) It is the policy of the Department of Defense to implement the Balance of Payments Program using evaluation procedures similar to those which implement the Buy American Act.

(S–70) *Prohibition against fragmenting acquisitions.* As to those provisions of this subpart which state dollar limitations below which exceptions permitting the purchase of foreign items may be made if certain conditions are satisfied, requirements aggregating more than any such limitations shall not be broken into separate purchases which are less than such limitations merely for the purpose of allowing such exceptions.

(S–71) *Real property construction, repair, and maintenance.*

(1) Contracts for construction, repair, and maintenance of real property outside the United States will, to the extent required by DoD Directive, specify that U.S. materials will be used, or that Government materials and equipment will be furnished, only when the cost of the U.S. items (including costs associated with transportation and handling) does not exceed the cost of acceptable foreign items plus 50 percent. A differential greater than 50 percent may be used when specifically authorized in accordance with departmental procedures.

(2) The evaluation referred to in (1) above is normally accomplished in the estimating process prior to solicitation for award of a real property construction, repair or maintenance contract. This paragraph does not apply to direct contracts for acquisition of construction materials and equipment for use outside the United States. The procedures of 225.303 shall be used for such acquisitions (also see 225.302(S–73)).

(S–72) *Exceptions.*

(1) Acquisitions of end products (including construction materials) and applicable services for use outside the United States should be made in the following cases without regard to the origin of the end products. In these cases, the provision at 252.225–7000 and the clauses at 252.225–7001 and 252.225–7002 shall not be used.

(i) *Treaty or executive agreement*—acquisitions required to be made from indigenous sources pursuant to a treaty or executive agreement between governments.

(ii) *Small purchases*—acquisitions by contracting officers located outside the United States, which are estimated not to exceed $25,000 in foreign cost.

(iii) *Perishable subsistence*—acquisitions of perishable subsistence items when it is determined that delivery from the United States would destroy or significantly impair their quality at the point of consumption. The determination shall be made prior to acquisition by the individuals designated in (2)(i) below or their immediate deputies, except that this authority may be redelegated for acquisitions estimated not to exceed $500,000 in foreign cost. A determination is not required for the acquisition of perishable subsistence items for commissary resale.

(iv) *Panamanian products used in Panama*—acquisitions of articles, materials or supplies that are mined, produced, or manufactured in Panama when acquired by, and for use of, U.S. Forces in Panama.

(v) *Services*—Services which do not primarily involve the acquisition of equipment or supplies.

(vi) *Certain food items*—acquisition of bananas, tea, coffee, spices, herbs, sugar, cocoa, cream of tartar, tapioca, and coconut.

(vii) *Miscellaneous*—acquisition of the requirements listed below, *Provided*, they do not duplicate or replace an existing organic service capability.

(A) All items on the list at FAR 25.108(d)(1);

(B) Utilities, including gas, water, electricity, steam, sewage, refuse collection and disposal;

(C) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery and system; *Provided*, in the case of parts, That this exception applies only if the acquisition must be restricted to the original manufacturer or its supplier in accordance with DoD Standardization policy (see DoD 4120.3);

(D) Industrial gases;

(E) Brand drugs specified by the Defense Medical Materiel Board;

(F) The following bulk construction materials: sand, gravel and other soil materials, stone, concrete masonry units; and fired brick;

(G) Overhaul and repair of vessels, aircraft, and vehicles which are home-ported/stationed/deployed overseas and which, because of their operating commitments, cannot return to the United States or to U.S.-operated repair facilities;

(H) Ice (wet or dry);

(I) Books, pamphlets, newspapers, magazines, periodicals, and printed briefs and films not printed in the United States and for which there are no substitutes of U.S. origin which are intended for use in the Department of Defense Overseas Dependents Schools; and

(J) Ready-mixed asphalt and portland cement concrete; *Provided*, That foreign cost is estimated not to exceed $10,000.

(viii) *Excess and near-excess foreign currencies*—acquisitions made with excess or near-excess foreign currencies when acquisition costs are in accordance with 225.7604.

(ix) *Commissary resale*—purchases of subsistence items of foreign origin which are intended for resale in overseas commissary stores.

(x) *Nonavailability in the United States*—acquisitions as to which it is determined in advance by the individuals designated in (2) below that (A) the requirements can only be filled by foreign end products because U.S. end products are not available per se, or are not available within the time required to meet urgent military requirements directly related to maintaining combat capability, the health and safety of DoD personnel, or to protect property, and (B) that it is not feasible to forego filling the requirements or to provide a U.S. substitute for it. This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required.

(xi) *Unreasonable cost*—acquisitions, other than those covered in (i) through (x) above where United States end products or services are available and the difference between the domestic cost and the foreign cost exceeds 50% of the foreign cost, if so determined in advance by the individuals designated in (2) below.

(2) The individuals listed below, and their immediate deputies are designated to make the determinations required by (1) (iii), (x), and (xi) above.

(i) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to other individuals specifically designated for this purpose for acquisitions estimated not to exceed $500,000:

Department of the Army—

Deputy Chief of Staff for Procurement and Production, U.S. Army Materiel Command;
Commander in Chief, U.S. Army, Europe; and DCSLOG, U.S. Army, Europe;
Commander, Eighth U.S. Army; and Chief of Staff, Eighth U.S. Army;
Commander, Corps of Engineers Command;
Commander, U.S. Army, Japan;
Commander, U.S. Army Medical Research and Development Command;
Commander, U.S. Army Forces Command.

Department of the Navy—

Commander-in-Chief, U.S. Naval Forces, Europe;
Commander, U.S. Naval Forces, Japan;
Commander, U.S. Naval Forces, Philippines;
OASN(S&L), CBM;
Commander-in-Chief, U.S. Atlantic Fleet;
Commander, Naval Logistics Command, Pacific Fleet;
Commander, Military Sealift Command (MSC);
Commandant, U.S. Marine Corps;
Commander, Naval Facilities Engineering Command;
Commanding General, III Marine Amphibious Force.

Department of the Air Force—

Commander, U.S. Air Forces in Europe;
Commander, Pacific Air Force;
Commander, Military Airlift Command (MAC);
Commander, Air Force Logistics Command;
Commander, Air Force Systems Command;
Commander, Strategic Air Command;
Commander, Tactical Air Command;
Commander, Air Force Communications Command;
Commander, Space Command.

Defense Logistics Agency—

Executive Director, Contracting.

Defense Communications Agency—

Director.

(ii) For acquisitions estimated to exceed $2 million in foreign cost—Secretary of the Department concerned.

(3) Acquisition of scientific and technical knowledge resulting in expenditures outside the United States and Canada shall be made only in the following cases:

(i) Those set forth in (1) (i), (ii), and (viii) above;

(ii) When it is determined in advance, by the individuals designated in (4) below, that the requirement can only be filled by foreign end products or services and that it is not feasible to forego filling the requirement or to provide a U.S. substitute for it; and

(iii) Acquisitions other than those covered in (i) and (ii) above when U.S. end products or services are available, and the difference between the domestic cost and the foreign cost exceeds 50% of the foreign cost as determined by the individuals designated in (4) below. Whenever practicable, such acquisitions shall be made on a cost-sharing basis or other arrangement designed to limit any adverse effect on the balance of payments. Policy questions concerning such arrangements should be directed to the Assistant Secretary of Defense (Acquisition and Logistics).

(4) The individuals listed below and their immediate deputies are designated to make the determinations required by (3) (ii) and (iii) above.

(i) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to individuals specifically designated for this purpose for acquisitions estimated not to exceed $100,000:

Department of the Army—

Commanding General, Army Materiel Development and Readiness Command;
Commander, Corps of Engineers Command;
Surgeon General, Army Medical Corps;
Chief of Research, Development and Acquisition;

Department of the Navy—

Chief of Naval Research;
Commander, Naval Air Systems Command;
Commander Naval Electronics Systems Command;
Commander, Naval Sea Systems Command;
Chief, Bureau of Medicine and Surgery;
Commander, Naval Supply Systems Command;
Chief of Naval Development;
Oceanographer of the Navy;
Commander, Naval Facilities Engineering Command;
Military Sealift Command;
DC/S Installations and Logistics Department Headquarters, U.S. Marine Corps;

Department of the Air Force—

Commander, Air Force Systems Command;
Commander, Air Force Logistics Command;

Defense Agencies—

Director, Advance Research Projects Agency;
Director, Defense Nuclear Agency;
Director, Defense Communications Agency;
Director, Defense Intelligence Agency.

(ii) For acquisitions estimated to exceed $2 million in foreign cost—Secretary of the Department concerned, or the Assistant Secretary of Defense (Acquisition and Logistics) in the case of agencies set forth in (4)(i).

(5) Complete documentation justifying acquisitions under (1) and (3) above shall be prepared except for acquisitions made pursuant to (1)(ii) and (1)(vi). Such documentation shall be prepared by requiring activities, furnished in requests for determination submitted to the individuals listed in (2) and (4) above, and included in the contract file.

(S–73) *Construction materials.* Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, or to avoid taxation, or to obtain other advantages, purchase may be by the United States. Contracting Officers shall consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, shall take advantage of tax exemptions available under existing agreements. See 229.402–70. In specifying materials, supplies, and equipment for construction in foreign countries, contracting officers shall make maximum use of foreign currencies available for the project, shall encourage the use of American

materials, equipment, and supplies and shall obtain the maximum feasible competition from indigenous, other foreign and American suppliers.

225.303 Procedures.

Except as provided in 225.302(a)(S-72), proposed acquisitions of supplies and applicable services for use outside the United States shall be accomplished in accordance with the evaluation procedures in (b) below.

(a) *Solicitation of offers.* When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable other than those items which have been excepted either on a blanket or an individual basis or the price for the nonqualifying country end item meets the evaluation criteria in (b) below. When only domestic end products are acceptable, the solicitation shall so state.

(b) *Evaluation.*

(1) In accordance with the Balance of Payments Program, when these procedures result in the acquisition of foreign end products, the acquisition of domestic end products is deemed unreasonable in cost or inconsistent with the public interest. Except as provided herein and in 225.105, offers shall be evaluated so as to give preference to domestic offers as follows:

(i) Each nonqualifying country offer of defense equipment (but see exception in (ii) below) shall be adjusted for purposes of evaluation by increasing such offer by 50%. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In all other instances, use the tie-breaking procedures in FAR 14.407-6.

(ii) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example A below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example B below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example C below).

(2) The following examples illustrate how the procedure in (1) above should be applied.

Example A

Nonqualifying Country Offer	$6,000
Domestic Offer	8,900
Qualifying Country Offer	8,800

Award on qualifying country offer. The nonqualifying country offer, adjusted by 50% factor is $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

Example B

Nonqualifying Country Offer	$6,000
Domestic Offer	9,500
Qualifying Country Offer	8,800

Award on nonqualifying country offer. Nonqualifying country offer, adjusted by 50% factor is $9,000. It is still lower than the domestic offer. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offer had never been submitted and the award is made on the nonqualifying country offer.

Example C

Nonqualifying Country Offer	$10,000
Qualifying Country Offer	11,500

Award on nonqualifying country offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis, and the award is made on the nonqualifying country offer.

225.304 Excess and near-excess foreign currencies.

(See Subpart 225.76.)

225.305 Solicitation provision and contract clauses.

(c) *Clauses.* The contracting officer shall insert the clause at 252.225-7004, Identification of Expenditures in the United States, under the conditions set forth at 225.370 (see 225.109 for use of clauses at 252.225-7000, 7001, and 7002).

225.370 Identification of expenditures in the United States.

DoD balance of payment reporting instructions require the reporting of the amount of acquisitions of U.S. end products and services accomplished under these regulations. The following provisions are designed to facilitate such reporting by cognizant accounting and disbursing officers. In implementing these provisions, it is essential that there be appropriate liaison between acquisition, accounting, and disbursing personnel at each activity involved.

(a) Except as provided in (b) below, the clause at 252.225-7004, Identification of Expenditures in the United States, shall be included in each contract in excess of $25,000 that—

(1) Requires the contractor to furnish U.S. end products, except that the clause in 252.225-7004 is not required if the contractor is a domestic concern and the Government will take title to the end products within the United States; or

(2) In the case of a contract for construction, repair or maintenance of real property, or for services, to be performed outside the United States, either—

(i) Requires the contractor to acquire specified materials, equipment, or services from U.S. sources (whether or not the contractor is a domestic concern), or

(ii) Is with a contractor who is a domestic concern (whether or not specified items must be acquired from U.S. sources).

(b) In lieu of the clause specified at (a) above, the following statement may be placed prominently on the face of each such contract, where the contracting officer considers that greater accuracy will be achieved or that inclusion of the contract clause is impracticable:

U.S. Expenditures for:

U.S. end products—_____% of each invoice.

U.S. services—_____% of each invoice.

Transportation on U.S. carriers—_____% of each invoice.

(See DoD FAR Supplement 252.225-7004 for definitions.)

(c) Contracts and purchase orders of $25,000 or less, which otherwise meet the criteria in (a) above for including the clause at 252.225-7004, shall have the statement in (b) above placed prominently on their face.

Subpart 225.4—Purchases Under the Trade Agreements Act of 1979

225.401 Definitions.

"Eligible product" means a designated or Caribbean Basin country end product listed at 225.403(S-70).

225.402 Policy.

(b) There shall be no purchase of a foreign end product listed in 225.403(S-70) with a total value at or above that specified in the FAR which is not a designated or Caribbean Basin country end product except as provided below:

(1) National interest exceptions must be approved on a case-by-case basis. An exception request with supporting rationale shall be submitted in accordance with Departmental procedures to DASD(A&L)(P) or designee.

(2) End products from countries listed at 225.7310(a) and 225.7401, and from countries at 225.75 are limited to those items listed on appropriate annexes.

225.403 Exceptions.

(d) This exception includes purchases from foreign sources where prohibited by the Department of Defense Annual Appropriations Act (see 225.7002). The products listed at 225.403(S–70) generally do not come under this exception, but in the event a Department considers an individual acquisition of such a listed product to be a purchase "indispensable for national security or national defense purposes," and appropriate for exclusion from the provisions of this subpart, a request with supporting rationale shall be submitted in accordance with Departmental procedures for approval by DASD(A&L)(P) or designee.

(S–70) *List of eligible products.* The following list is arranged according to Federal Supply Classifications. If an item is not within an FSC listed below, FAR Subpart 25.4 does not apply. As noted in FAR 25.401, Caribbean Basin country end products are limited to those which are eligible for duty-free treatment under 19 U.S.C. 2703(b). The list below of eligible products has been annotated to indicate those products which are eligible for designated countries, but are not presently eligible for Caribbean Basin countries due to this limitation. (Note: Most of the excluded product categories for Caribbean Basin countries mentioned in FAR 25.401 are not mentioned below, such as textiles, apparel articles, flat goods, footwear, handbags, work gloves, leather wearing apparel, and tuna, because these products do not fall into any of the eligible product categories due to other restrictions on foreign purchases.)

FSC Category/Description

22 Railway equipment
23 Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24 Tractors
25 Vehicular equipment components
26 Tires and tubes
29 Engine accessories
30 Mechanical power transmission equipment
32 Woodworking machinery and equipment
34 Metalworking machinery (except 3408, 3410–3419, 3426, 3433, 3441–3443, 3446, 3448, 3449, 3460, 3461)
35 Service and trade equipment
36 Special industry machinery (except 3690)
37 Agricultural machinery and equipment
38 Construction, mining, excavating, and highway maintenance equipment
39 Materials handling equipment
40 Rope, cable, chain and fittings
41 Refrigeration and air conditioning equipment
42 Fire fighting, rescue and safety equipment
43 Pumps and compressors
44 Furnace, steam plant and drying equipment (except 4470)
45 Plumbing, heating and sanitation equipment
46 Water purification and sewage treatment equipment
47 Pipe, tubing, hose and fittings
48 Valves
49 Maintenance and repair shop equipment (except 4920–4927, 4931–4935, 4960)
52 Measuring tools
53 Hardware and abrasives
54 Prefabricated structures and scaffolding
55 Lumber, millwork, plywood and veneer
56 Construction and building materials
61 Electric wire, and power and distribution equipment
62 Lighting fixtures and lamps
63 Alarm and signal systems
65 Medical, dental, and veterinary equipment and supplies
66 Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.401 exclusion of certain watches and watch parts for certain Caribbean Basin countries
67 Photographic equipment
68 Chemicals and chemical products
69 Training aids and devices
70 General purpose ADPE, software, supplies and support equipment
71 Furniture
72 Household and commercial furnishings and appliances
73 Food preparation and serving equipment
74 Office machines, visible record equipment and ADP equipment
75 Office supplies and devices
76 Books, maps, and other publications
77 Musical instruments, phonographs, and home type radios
78 Recreational and athletic equipment
79 Cleaning equipment and supplies
80 Brushes, paints, sealers and adhesives
81 Containers, packaging and packing supplies (except 8140)
8460 Luggage—See FAR 25.401 for exclusion of luggage for Caribbean Basin countries
85 Toiletries
87 Agricultural supplies
88 Live animals
91 Fuels, lubricants, oils and waxes—See FAR 25.401 for exclusion for Caribbean Basin countries
93 Nonmetallic fabricated materials
94 Nonmetallic crude materials
96 Ores, minerals and their primary products
99 Miscellaneous

225.404 Labor surplus area set-asides.

(See 252.220–7000 and 252.220–7001.)

225.405 Procedures.

(d) This requirement does not apply to offshore procurements or to Defense Fuel Supply Center post, camp, or station overseas requirements. (See 225.501.)

225.407 Solicitation provision and contract clause.

(a)(1) The provision, Buy American-Trade Agreements-Balance of Payments Program Certificate, at 252.225–7005, shall be used in all solicitations in which the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause at 252.225–7006 is used. This provision is to be used in lieu of that at FAR 52.225–6.

(a)(2) The clause at 252.225–7006, Buy American Act, Trade Agreements Act, and the Balance of Payments Program, shall be used in lieu of the clause at FAR 52.225–9 and shall be inserted along with the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in all solicitations and contracts subject to the Trade Agreements Act. The clause at 252.225–7006 may also be used in lieu of the clause at 252.225–7001.

Subpart 225.5—Payment in Local Foreign Currency

225.501 Policy.

(a) Offshore contracts with local firms will be priced and paid in local currency unless (i) there exists a Status of Forces Agreement providing for payment in U.S. currency; or (ii) the use of local currency is determined to be inequitable, and the use of U.S. currency is authorized at a level above the contracting officer. An example of a situation where pricing and paying in dollars may be appropriate or necessary would be a contract requiring significant purchases in the United States (see 225.76).

Subpart 225.6—Customs and Duties

225.600 Scope of subpart.

This subpart sets forth policies and procedures for excepting from import duty certain supplies that are imported into the United States in connection with Defense contracts. Ordinarily, duty is payable for the importation of non-Defense supplies obtained outside the United States. Two exceptions to this rule are available to the Department of

Defense: "Emergency purchases of war materials abroad" by a Military Department may be imported duty-free pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States; and certain supplies (not including equipment) for vessels or aircraft operated by the United States may be imported duty-free pursuant to 19 U.S.C. 1309. This subpart prescribes the uses and limits of these two exceptions. This subpart does not deal with or affect the evaluation of offers of foreign supplies as set forth elsewhere in Part 225. Although the procedures of this subpart may require or permit duty-free entry to be accorded foreign supplies in a given case, this in itself neither precludes nor requires the inclusion of duty in evaluating an offer of such supplies.

225.601 Definitions.

Emergency Purchase of War Material means any acquisition of foreign supplies if:

(1) The supplies comprise—

(i) Weapons, munitions, aircraft, vessels, or boats;

(ii) Agricultural, industrial, or other supplies used in the prosecution of war or for the national defense; or

(iii) Supplies, including components or equipment, necessary for the manufacture, production, processing, repair, servicing, or operation of supplies within (i) or (ii) above; and

(2) The acquisition—

(i) Is made in time of war or during a national emergency;

(ii) Is made because of a shortage of domestic supply, pursuant to a decision that the supplies are necessary for the adequate maintenance of the Armed Services;

(iii) Is made for the use of U.S. forces abroad or U.S. vessels in foreign waters; or

(iv) Consists of captured enemy war material, materials requisitioned by U.S. forces abroad, or materials rebuilt from other materials owned by, or turned over to U.S. forces, or materials loaned or given to a Military Department of the U.S. Government under exchange agreements with foreign governments.

225.602 Policy.

The issuance of duty-free entry certificates in appropriate situations will result in important savings to military appropriations. Such certificates must be limited to carefully selected situations so that they do not result in unanticipated profits to contractors, especially under fixed-price-type contracts, and involve the Government in administrative expenses outweighing any possible savings to military appropriations. It is DoD policy to use duty-free entry certificates whenever there is *reasonable assurance* that advantages in the form of savings to military appropriations will outweigh the administrative and other costs of processing duty-free entry certificates and of maintaining controls to verify that a full benefit of the certificates inures to the Government. As a rule, a contractor which has been awarded a fixed-price-type contract based on providing a domestic end product or component cannot subsequently furnish a foreign end product or component (including a qualifying country end product or component) and receive a duty-free entry certificate in accordance with FAR 52.225–10 or 252.225–7008 of this supplement without an appropriate reduction in contract price.

225.603 Procedures.

(a) *General.*

(1) To assure that the policy of 225.602 is carried out for emergency purchases of war materials abroad, the clauses at FAR 52.225–10 and 252.225–7014 of this supplement shall be used in each negotiated contract in excess of $100,000. Notwithstanding this dollar limit, the clauses may be inserted in any other negotiated contract when the contracting officer determines that to do so would further the policy in 225.602 and would be consistent with the limitations in (4) below, and in any such case the dollar figure in paragraphs (b)(1) and (i)(2) of the clause in FAR 52.225–10 may be reduced appropriately.

(2) When the clause at FAR 52.225–10 is used, the contracting officer shall insert the solicitation provision at 252.225–7007.

(3) In order to provide for duty-free entry for foreign supplies as required by various Memoranda of Understanding between the Department of Defense and allied nations and as required to fully implement the Trade Agreements Act, a clause entitled Duty-Free Entry—Qualifying Country End Products and Supplies is used in most DoD contracts (see 225.605).

(4) Duty-free entry certificates shall be issued as required by contracts containing any of the contract clauses described in 225.605. Consistent with 225.602, duty-free entry certificates may also be issued in connection with any other contract for an "emergency purchase of war material" (i.e. one not containing an appropriate clause) that falls within one of the following categories:

(i) Direct purchases of foreign supplies under a DoD prime contract regardless of whether title passes at point of origin or at destination in the United States; *Provided*, the contract states that the final price is exclusive of duty;

(ii) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), regardless of whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, the criteria stated in (iii) below should be followed; and

(iii) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes; *Provided*, (A) the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty; (B) the prime contractor and, where applicable, the subcontractors concerned certify that the supplies so purchased are to be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and that the duty will be paid if such supplies or any portion thereof are utilized for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and (C) such acquisition abroad is authorized by the terms of the contract, the applicable subcontract, or by the contracting officer. In any case, the procedures required by the clauses prescribed in 225.605 shall be followed to the extent practicable.

(5) When the clauses cited at 225.605 are used, the Contracting Officer shall list in the contract the name and address of the CAO administering the contract and its activity address number (Appendix N of this supplement) in paragraph (d) of the clause at 252.225–7014 or paragraph (k) of the clause at 252.225–7008.

(b) *Formal entry and release.*

(1) *CAO responsibilities.* Contracting Officer assigned to administer the contract must assure that prime contractors are aware of and understand the clause requirements which are summarized below. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in the shipment being treated as a shipment without benefit of free entry under Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(i) Written notice from the contractor or any tier subcontractor to the CAO immediately upon award to a foreign supplier. The notice includes:

(A) Prime contract number plus delivery order number, if applicable;

(B) Total dollar value of the prime contract or delivery order;

(C) Expiration date of the prime contract or delivery order;

(D) Foreign supplier name;

(E) Number of the subcontract/purchase order for foreign supplies;

(F) Total dollar value of the subcontract for foreign supplies;

(G) Expiration date of the subcontract for foreign supplies;

(H) List of items purchased; and

(I) Contractor certification by the purchaser of foreign supplies that supplies to be entered duty-free are intended to be delivered to the Government or incorporated in the end item delivered under the contract.

(ii) Contractor and subcontractor responsibilities to instruct foreign supplier regarding shipping document information including the Activity Address Number as set forth by the clause and as listed in Appendix N.

(iii) Contractor duties to prepare and submit to the District Director of Customs all customs forms required to enter foreign purchased supplies in the United States, its possessions, or Puerto Rico for shipments other than to a military installation in the United States.

(iv) Understanding of the flow down provision of clauses.

(v) Procedure for adjustment to prime contract price with regard to duty not previously excluded (see 225.602).

(2) *Duty-free entry entitlements.* Upon receipt of the required notice of purchase of foreign supplies from the prime contractor or any tier subcontractor, the contracting officer administering the prime contract will verify the duty-free entitlement of goods to be entered under the contract. A review of the prime contract should ensure foreign supplies (quantity and price) identified in the notice are required for the performance of the contract.

(3) *Adjustment to prime contract price.* When notification is received from the contractor by the administrative contracting officer indicating that a foreign purchase is being placed that was not identified at the time of the prime contract award, a reduction to the prime contract price may be required in accordance with the Duty-Free Entry clause at FAR 52.224-10, the Duty-Free Entry—Qualifying Country End Products and Supplies clause at 252.225-7008 or pursuant to 225.603(a)(4) of this supplement. After determining the amount of duty that would be payable if duty-free entry certificates were not issued, an equitable adjustment to the prime contract price shall be made unless otherwise approved by the procuring contracting officer. Unless retained in accordance with 242.203, the authority to negotiate and issue such modifications reducing the contract price has been delegated to the ACO in accordance with 242.203(a)(S-74). After determining the price of foreign supplies exclusive of duty, the contracting officer administering the contract shall advise the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(4) *Data required by DCASR New York.*

(i) Within 20 days of receipt of the notification of purchase of foreign supplies, ACOs will forward the following information to DCASR New York in the format shown below:

TO: Commander
DCASR New York
ATTN: Customs Function
201 Varick Street
New York, NY 10014

A contractor notification of the purchase of foreign supplies has been received in accordance with FAR 52.225-10 and 52.225-7014 of the DoD FAR Supplement or 252.225-7008 of the Supplement. Verification has been made that foreign supplies are required for the performance of the contract. If required, prime contract price has been or will be adjusted in accordance with 225.603(b)(3) of the DoD FAR Supplement.

In accordance with 225.603(b)(4) of the Supplement, the following information is provided:

Prime Contractor Name:
Prime Contract Number plus Delivery Order
Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name:
Number of the Subcontract/Purchase Order for
Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number (Appendix N of the DoD FAR Supplement):

Signature:

Title:

(ii) If a contract modification results in a change to any data previously furnished to DCASR New York to verify duty-free entitlement, a revised notification of the changed data shall be forwarded to DCASR New York.

(3) *Customs forms and duty-free entry certificates.*

(i) *Execution of duty-free entry certificates.* The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Transportation Officer, DCASR New York. Upon receipt of import documentation for incoming shipments from the contractor, his agent, or the U.S. Customs Service, the Transportation Office, DCASR New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(ii) *Customs import documentation.* Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or his agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506 and U.S. Customs Form 3461, with the District Director of Customs.

(6) *Immediate entry and release.* Immediate release permits, executed on Customs Forms 3461 (Application for Special Permit for Delivery of Perishable and Other Articles, Immediate Delivery of Which is Necessary), entitle all shipments qualifying as "emergency purchase" of war material abroad to be released immediately by the District Directors of Customs at the various ports of entry, prior to and pending the filing of Customs Forms 7501, 7501A, or 7506 and a duty-free entry certificate. The existence of an immediate release permit on file at a port of entry does not dispense with the necessity of filing Customs Forms 7501, 7501A, or 7506 and appropriate duty-free entry certificates. Each Department designates the individuals responsible for issuance of Immediate Release Permits.

225.604 Exempted supplies.

(b) *Supplies for vessels or aircraft operated by the United States.*

(1) Subject to the considerations set forth in FAR 25.605, a duty-free entry certificate may be issued when "certain supplies (not including equipment)" are purchased for vessels or aircraft operated by the United States. As used in this paragraph, the term "certain supplies (not including equipment)" includes articles known as "stores", such as food, medicines and toiletries, and, in addition, all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes. It does not include portable articles necessary and appropriate for

the navigation, operation or maintenance of vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment." The procedures to be followed in the issuance of such certificates shall be prescribed by the respective Departments.

(2) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501, or attached thereto, and shall be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

(Date)_____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the Untied States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name) _____

(Title)_____

(Organization) _____

225.605 Contract clause.

(a) When the contract is required to contain the clause at FAR 52.225–10, the contracting officer shall include the clause at 252.225–7014 and the provision at 252.225–7007 of this Supplement. Notwithstanding FAR 25.605, the clauses shall only be used within the limits contained at 225.603(a) of this supplement.

(S–70) *Duty-free entry—qualifying country end products and components.* The clause at 252.225–7008 shall be inserted in all contracts for supplies and in all contracts for services involving the furnishing of supplies, except that it need not be inserted when simplified small purchase procedures are used or in contracts for supplies exclusively for use outside the United States.

Subpart 225.7—Restrictions on Certain Foreign Purchases

225.703 Exceptions.

(b) For other than small purchases, an exception shall be approved by the Secretary of the Department concerned. Before granting an exception for other than small purchases, the Secretary concerned shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs); however, such advice is not required for emergency purchases, or where supplies are not available from any other source and substitute supplies are not acceptable.

Subpart 225.8—International Agreements and Coordination

225.800 Scope of subpart.

This subpart concerns the applicability of international agreements other than those in Subparts 225.73, 225.74, 225.75, and coordination with overseas commands and activities in purchasing from foreign sources.

225.801 International agreements.

Treaties and international agreements in effect between the United States and governments receiving military and economic aid under the Foreign Assistance Act of 1961, affect acquisition in foreign countries. Copies of international agreements are filed with the United States European Command covering existing agreements in the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and in the Middle East. Agreements with countries in the Pacific and Far East are filed with the United States Pacific Command (CINCPAC). Military Assistance Advisory Groups, Naval Missions, and Joint United States Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

225.870 Coordination with overseas commands and activities.

When it has been determined that an acquisition will be made from a foreign contractor, overseas contracting offices shall be utilized to the maximum practical extent. Contracting offices not within the command jurisdiction of a unified or specified command, anticipating placement of contracts with foreign contractors, shall maintain liaison with the appropriate component commander during preaward negotiations and postaward administration. When an acquisition may result in a requirement for logistic support of contractor employees or additional Government employees in an overseas location, in support of US or FMS requirements, the contracting officer shall obtain advance approval from the appropriate component commander of the types of logistic support needed and of the costs associated with it. The contract file shall include documentation reflecting specific advance approval for such commitment from the appropriate component commander.

Subpart 225.9—Omission of the Examination of Records Clause

225.903 Conditions for omission.

(b) A determination of the Secretary under FAR 25.903(a)(2) does not require the concurrence of the Comptroller General or his designee. However, when a determination is the basis for exclusion of the Examination of Records by Comptroller General clause, the statute requires that a written report be furnished to the Congress. This report, which shall explain the reasons for the determination, shall be submitted in triplicate by the Department of Defense component concerned, to the Director for Information Operations and Reports, Washington Headquarters Services, Washington, DC 20301 (see also 225.7203).

225.904 Determination and findings.

Request for determination and findings for exclusion ordinarily will be initiated by the contracting officer. The report shall consist of a letter submitted through normal acquisition channels, addressed to the Secretary, setting forth all the facts necessary to arrive at an appropriate determination and findings.

Subpart 225.70—Appropriations Act Restrictions

225.7000 Scope of subpart.

This subpart implements the Defense Appropriations Act restriction on the availability of appropriated funds for the acquisition of any article of food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, specialty metals, or hand or measuring tools. However, reference should be made to the current Department of Defense Appropriations Act as a check on the current applicability of such restriction. This subpart also implements the restriction on acquisition of foreign buses contained in section 404 of Pub. L. 90–500 (see 225.7006), the restriction on R&D contracting with foreign sources contained in section 744 of Pub. L. 92–570 (see 225.7007), the restriction for the construction of major components of the hull or superstructure of any naval vessel or the construction of any naval vessel in foreign shipyards (see 225.7005), and the restriction on acquisition of manual typewriters which were manufactured by facilities located within states which are signatories of the Warsaw Pact (see 225.7004). Nothing herein shall affect the applicability of the Buy American Act or the Balance of Payments Program.

225.7001 Definitions.

As used in this subpart, the following terms have the meaning set forth below.

"Hand or Measuring Tools", means those tools listed in Federal Supply Classification 51 and 52 respectively.

"Possessions", as used in the phrase "United States or its possessions," includes Puerto Rico.

"United States" means the States and the District of Columbia.

"Specialty metals" means:

(a) Steels where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65%; silicon, 0.60%; or copper, 0.60%; or which contains more than 0.25% of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(b) Metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10%;

(c) Titanium and titanium alloys; or

(d) Zirconium and zirconium base alloys.

225.7002 Restriction on food, clothing, fabrics, and speciality metals.

Except as provided in (a) below, contracting activities shall not acquire supplies consisting in whole or in part of any food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, which have not been grown or produced in the United States or its possessions; or specialty metals, including stainless steel flatware which have not been melted in steel manufacturing facilities located within the United States or its possessions, but this does not restrict the acquisition of cotton or wool reprocessed or reused in the United States or its possessions or of foods manufactured or processed in the United States or its possessions.

(a) *Exceptions.* The following exceptions apply:

(1) Acquisitions outside the United States in support of combat operations;

(2) Acquisitions by vessels in foreign waters;

(3) Emergency acquisitions or acquisitions of perishable foods by establishments located outside the United States for the personnel attached thereto;

(4) Acquisitions of those supplies listed in FAR 25.108(d)(1) as to which the list does not make this subpart expressly applicable;

(5) Small purchases (for the purpose of this exception, a small purchase shall mean an acquisition action, as distinguished from a single line item, involving a total dollar amount not in excess of $10,000);

(6) Acquisitions of end items incidentally incorporating cotton or wool, of which the estimated value is not more than 10% of the total price of the end item; *Provided*, That the estimated value does not exceed $10,000 or 3% of the total price of the end item, whichever is greater;

(7) Any articles of food or clothing or any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool, as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices,.

(8) Supplies purchased specifically for commissary resale (see 225.102(70)(4));

(9) Purchases of specialty metals or any item incorporating specialty metals, as to which the Secretary concerned or his authorized designee has determined that a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(10) Purchases of specialty metals below the prime contract level for programs other than those for aircraft, missile and space systems, ships, tank-automotive, weapons, and ammunition; and

(11) Purchases of specialty metals or chemical warfare protective clothing when such purchases are necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements, or when such acquisition is in furtherance of an agreement with a qualifying country.

(b) *Preference for certain domestic commodities.* The contracting officer shall insert the clause at 252.225-7009, Preference for Certain Domestic Commodities, in all solicitations expected to have, and all small purchases and contracts which do have, a value of $10,000 or more.

(c) *Preference for domestic wool.*

(1) The Secretaries have determined that to the extent that application of the procedures in this subparagraph results in the acquisition of any articles of wool (except mohair) not grown, reprocessed, reused, or produced in the United States or its possessions, a satisfactory quality and sufficient quantity of such articles grown, reprocessed, reused, or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices.

(2) Offers for supplies of which wool is a part will be solicited on the following alternative bases:

(i) Manufactured in the United States or its possessions from domestic wool;

(ii) Manufactured in the United States or its possessions from foreign wool; and

(iii) Manufactured in the United States or its possessions from a blend of (percent) domestic wool and (percent) foreign wool.

(3) For each solicitation for supplies of which wool is a component part or end product, the contracting officer will insert the clause at 252.225-7010, Domestic Wool Preference. The evaluation factor will be computed in accordance with (6) below, and the amount of the factor will be inserted in place of the blank in (c) of the provision at 252.225-7010.

(4) If, on the date of opening of offers, the average market price of domestic wool of usable grades is no more than 10% above the average of the prices of representative types and grades of domestic wools in the wool category that includes the wool required by the specifications (see (6) below), which prices reflect the current incentive price as established by the Secretary of Agriculture, and if reasonable offers have been received for the advertised quantity offering 100% domestic wools, the contract will be awarded for domestically produced articles using 100% domestic wools, and the procedure set forth in (5) and (6) below will be disregarded.

(5) In the evaluation of offers under this subpart, an evaluation factor computed in accordance with (6) below will be added to that portion of the offered price that represents foreign wool to be furnished or used in performance of the contract, and award will be made accordingly. In the event that tie offers result from such evaluation, award will be made to the offeror proposing to furnish or use the most domestic wool.

(6) The evaluation factor to be used under (5) above will be 10% of the average of the following prices of representative types and grades of domestic wools within that one of the following categories which includes the wool required by the specifications. (The following prices reflect the current incentive price of $0.62 per pound grease basis converted to grade and type clean basis.)

Representative type and grade	Price clean basis per pound (dollars)
Group 1—Grades 60's and finer	
Category 1—Staple, Average and Good French Combing (worsted type)	
The average of the following grades:	
Territory Original Bag Wool: Average and Good French Combing, 64's and finer	1.7748
Graded Territory and Texas Wool: Staple and Good French Combing, One-Half Blood, 60's/62's	1.6946
Graded Fleece Wool:	
Staple and Good French Combing, 64's and finer	1.7862
Staple and Good French Combing, One-Half Blood, 60's/62's	1.6259
Category 2—Short Average and Good French Combing and Clothing (woolen type)	
The average of the following grades:	
Territory Original Bag Wool: Short, French Combing and Clothing, fine (64's, not to exceed 15% of 60's/62's)	1.5801
Graded Territory and Texas Wool: Average and Good French Combing, One-Half Blood, 60's and 62's	1.6145
Graded Fleece Wool:	
Average and Good French Combing, 64's and finer	1.7061
Average and Good French Combing, One-Half Blood, 60's/62's	1.5343
Group 2—Grades 50's-60's	
Category 3—Staple and Good French Combing (worsted)	
The average of the following grades:	
Graded Territory and Texas Wool:	
Staple and Good French Combing, Three-Eighths Blood, 56's/58's	1.3646
Staple and Good French Combing, 50's/48's, One-Quarter Blood	1.3397
Graded Fleece Wool:	
Staple and Good French Combing, Three-Eighths Blood, 56's/58's	1.3626
Staple and Good French Combing, 50's/48's, One-Quarter Blood	1.2710
Category 4—Average French Combing (woolen type)	
The average of the following grades:	
Graded Territory and Texas Wool:	
Average French Combing, Three-Eighths Blood, 56's/58's	1.3053
Average French Combing, 50's/48's, One-Quarter Blood	1.2023
Graded Fleece Wool:	
Average French Combing, Three-Eighths Blood 56's/58's	1.2137
Average French Combing, 50's/48's, One-Quarter Blood	1.0878
Group 3—Grades Below 50's	
Category 5—Staple and Good French	
The average of the following grades:	
Graded Fleece Wool:	
Low One-Quarter Blood, 46's, 4 inches or more in length	1.1565
Common and Braid, 44's/36's, 5 inches or more in length	1.0763

(7) See Subpart 225.76 for procedures for using U.S.-owned foreign currency for payment of contracts for foreign-end products.

(d) *Preference for domestic specialty metals.*

(1) The contracting officer shall insert the clause at 252.225–7011, Preference for Domestic Specialty Metals (Major Programs), in all solicitations and contracts over $10,000 that call for the delivery to the Government of an article containing specialty metals within the following six major classes of programs: aircraft, missile and space systems, ships, tank-automotive, weapons, and ammunition.

(2) The contracting officer shall insert the clause at 252.225–7012, Preference For Domestic Specialty Metals, in all solicitations and contracts over $10,000, other than those covered by the clause in (d)(1) above, calling for the delivery of an article that contains specialty metals.

225.7003 Restriction on domestic hand or measuring tools.

Public Law 97–377 and subsequent laws appropriating funds for the Department of Defense have provided restrictions on the acquisition of hand or measuring tools. The contracting officer shall insert the clause at 252.225–7013, Preference for Domestic Hand or Measuring Tools, in all small purchases of $10,000 or more and in all contracts calling for delivery of hand or measuring tools.

225.7004 Restriction on sources for manual typewriters.

Public Law 97–377 provides that none of the funds available to the Department of Defense shall be available for the procurement of manual typewriters which were manufactured by facilities located within States which are Signatories to the Warsaw Pact.

225.7005 Restriction on the hull and superstructure of naval vessels.

Each year the Department of Defense Appropriations Authorization Act contains the Burns-Tollefson Amendment which reads:

Provided, That none of the funds herein provided for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign shipyards for the construction of major components of the hull or superstructure of such vessel: *Provided further*, That none of the funds herein provided shall be used for the construction of any naval vessel in foreign shipyards.

This Amendment is incorporated into the Department of Defense Appropriations Act each year and is located under "Shipbuilding and Conversion, Navy".

225.7006 Restriction on acquisition of foreign buses.

(a) Section 404 of the Act of September 20, 1968 (Pub. L. 90–500), the Department of Defense Appropriation Authorization Act for Fiscal Year 1969, provides that:

No funds authorized for appropriation for the use of the Armed Forces of the United States under the provisions of this Act or the provisions of any other law shall be available for the purchase, lease, rental, or other acquisition of multipassenger motor vehicles (buses) other than multipassenger motor vehicles (buses) manufactured in the United States, except as may be authorized by regulations promulgated by the Secretary of Defense solely to insure that compliance with this prohibition will not result in either an uneconomical procurement action or one which would adversely affect the national interests of the United States.

(b) The objective of this statutory provision is to assure that only buses manufactured in the United States shall be used to satisfy requirements of United States Armed Forces located throughout the world for bus transportation, where such buses are available and where their use would not be uneconomical or contrary to the national interests of the United States. It should be applied whether the buses are purchased, leased, rented, or made available under contracts for transportation services. The use of foreign manufactured buses is authorized where the Head of the Contracting Activity determines that the use of U.S.-manufactured buses would be uneconomical or would adversely affect the national interests of the United States. However, foreign buses may be acquired without such determination in the following circumstances:

(1) When U.S.-manufactured buses are not available in time to satisfy requirements which cannot be postponed, foreign-manufactured buses may be used for a temporary period of time but not to exceed the lead time required for acquisition and delivery of U.S.-manufactured buses.

(2) When the requirement for buses is of a temporary nature to meet a special but nonrecurring requirement or where a recurring requirement is sporadic and infrequent, foreign-manufactured buses may be used for the temporary periods of time not to exceed the period of time needed to meet the nonrecurring or the recurring infrequent requirement.

(3) When foreign-manufactured buses are made available at no direct or indirect acquisition cost to the U.S. Government, foreign-manufactured buses may be used.

225.7007 Restriction on R&D contracting with foreign sources.

(a) Section 744 of the Defense Appropriations Act for FY 1973 (Pub. L. 92–570) provides that no funds appropriated for the Department of Defense are available for entering into any contract or agreement with any foreign corporation, organization, person, or other entity for the

performance of research and development in connection with any weapon system or other military equipment for the Department of Defense when there is a U.S. corporation, organization, person, or other entity equally competent to carry out such research and development and willing to do so at a lower cost.

(b) The above provision does not change the rules for the selection of research and development contractors set forth in FAR Part 35. However, when a U.S. and a foreign source are considered equally competent, the contracting officer will make a determination as to which of the sources will provide the services required at the lowest estimated cost to the Government.

Subpart 225.71—Canadian Purchases

225.7101 Mutual Canadian-American interests.

(a) Because of the close geographical proximity of the United States and Canada, and because of the mutual interest of both nations in the defense of North America, various steps have been taken during and since World War II to coordinate their economic efforts in the common defense, so as to achieve:

(1) Greater integration of military production;

(2) Greater standardization of military equipment;

(3) Wider dispersal of production facilities;

(4) Establishment of supplemental sources of supply; and

(5) Greater flow of defense supplies and equipment between the two countries.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs of Canada and the United States and to assure Canada a fair opportunity to share in the production of military equipment and materiel involving programs of mutual interest to Canada and the United States and in the research and development connected therewith. Accomplishment of these purposes requires (i) the exemption of the restrictions of the Balance of Payment Program and the Buy American Act with respect to acquisitions for public use of supplies mined, produced, or manufactured in Canada in the manner prescribed in Subparts 225.1 and 225.3; and (ii) the Canadian Commercial Corporation, in placing contracts with Canadian or U.S. concerns, to insert suitable provisions in such contracts, obtaining for the Department of Defense the same production rights, data and information that the Department of Defense would obtain for itself pursuant to the FAR and this supplement if the Department were placing the contracts with U.S. concerns.

225.7102 Agreement with the Government of Canada.

(a) The agreement, dated 27 July 1956, as amended 17 December 1956, 31 May 1957, 6 January 1961, and 15 October 1962, between the Department of Defence Production (Canada) and the Department of Defense (see Appendix T Subpart 2), sets forth policies and provides for the implementation of procedures with respect to all contracts for supplies and services placed with the Canadian Commercial Corporation (an agency of the Government of Canada) on or after 1 October 1956.

(b) Subsequent to the execution of the agreement referred to in (a) above, the reorganization of the Canadian Government's departments and agencies vested the contracting authority of the former Canadian Department of Defence Production in the Department of Supply and Services. Pursuant to that reorganization, the authority of the Department of Defence Production to enter into cooperative development projects under the Memorandum of Understanding (see Appendix T) is vested in the Canadian Department of Industry, Trade and Commerce.

(c) This agreement and associated enabling provisions permit Canadian firms, including Canadian Crown corporations, a fair opportunity to participate in the production of defense equipment and materiel involving defense programs of interest to both nations.

(d) A contract with a supplier or contractor located in Canada should normally be made with and administered through the Canadian Commercial Corporation. (See 225.7104(b).)

(e) In connection with contracts placed with the Canadian Commercial Corporation, the Department of Supply and Services (Canada) provides without charge to the Defense Departments and Agencies, among other things, such contract administration services as cost and pricing analysis, industrial security, accountability and disposal of Government property, production expediting, compliance with Canadian labor laws, processing of termination claims and disposal of termination inventory, customs documentation, processing of disputes and appeals, and such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier. Additionally, in connection with such contracts, audits, when required, are performed by the Audit Services Bureau, Department of Supply and Services (Canada), and the Department of National Defence (Canada) provides inspection personnel, services and facilities, at no charge to the Defense Departments and Agencies.

225.7103 Guarantee by Canadian Government.

The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation in connection with any contract or order issued to said Corporation by any contracting activity of the U.S. Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations, or covenants.

225.7104 Procedures for Canadian Purchases.

(a) *Bidding Procedures.*

(1) *Solicitation of Canadian firms.*

(i) Except as provided in (ii) below, Canadian firms shall be included on bidders mailing lists and comparable source lists only upon request by the Canadian Commercial Corporation. Such requests shall be forwarded by the Canadian Commercial Corporation to the activity having acquisition responsibility for the supplies or services involved.

(ii) Canadian planned producers under the Industrial Readiness Planning Program shall be included on bidders mailing lists for their planned items (see FAR 14.205–1).

(iii) Solicitations shall be sent directly to Canadian firms appearing on the appropriate bidders mailing lists. A complete copy of the solicitation and a listing of Canadian firms solicited shall be sent to the Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A–OS6, Canada.

(iv) Upon request by the Canadian Commercial Corporation, solicitations shall be furnished to it even though no Canadian firms were solicited.

(v) Small purchases (see FAR Part 13) normally should be handled directly with Canadian firms and not through the Canadian Commercial Corporation.

(2) *Submission of offers.*

(i) As indicated in 225.7104(b) below, the Canadian Commercial Corporation should normally be the prime contractor. In order to indicate its acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information: name of the

Canadian offeror; confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and a statement that the Corporation shall subcontract 100% with the offeror.

(ii) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid-opening requirement or the closing date for receipt of proposals, the Corporation is authorized to permit Canadian firms to submit offers directly; *Provided*, That the Canadian offer and the Canadian Commercial Corporation endorsement are both received by the contracting officer prior to bid opening or the closing date for receipt of proposals.

(iii) All sealed bids shall be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Contracts placed as a result of such sealed bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(iv) All offers and quotations submitted by the Canadian Commercial Corporation, except those in which competition is obtained, shall be in terms of Canadian currency. However, the Corporation may, at the time of submitting the offer, elect to quote and receive payment in terms of U.S. currency; in which event, contracts arising therefrom shall provide for payment in U.S. currency and shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(b) *Contracting procedures.*

(1) Individual contracts covering purchases from suppliers located in Canada, except as noted in (2) below, shall be made with the Canadian Commercial Corporation, which has offices located at the Export Supply Centre, 11 Laurier Avenue, Hull, Quebec, Canada (mail address—Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A–OS6 Canada), and at 2450 Massachusetts Avenue, NW., Washington, DC 20008. Contracts should normally be awarded to and administered through the Export Supply Centre Office in Hull, and all payments under such contracts awarded to the Canadian Commercial Corporation shall be made to that office. Under contracts with the Canadian Commercial Corporation, direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract; *Provided*, however, that the approval of the Corporation shall be obtained on any matters involving changes to the contract.

(2) The general policy in (1) above need not be followed for negotiated purchases for experimental, developmental, or research work unless the contract is for a project under the Defense Development Sharing Program; purchases of unusual or compelling urgency; small purchases; or purchases made by U.S. Defense activities located in the Dominion of Canada.

(3) Prices in the contracts shall identify the type of currency; i.e., United States or Canadian. When contracts provide for payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall identify the amount by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(c) *Administration procedures.*

(1) The following policy and procedures are applicable only to cost-reimbursement type contracts with Canadian contractors:

(i) On contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Supplies and Services (DSS) Canada (see 225.7102). Audit reports are furnished to DSS. Upon advice from DSS, the CCC will certify the invoice and forward it with Standard Form 1034 (Public Voucher) to the ACO for further processing (see 242.803(a)) and transmittal to the disbursing officer.

(ii) On contracts placed directly with Canadian firms, audits are requested by the ACO from the Audit Services Bureau (ASB), Ottawa, Ontario, Canada. Invoices are approved by the ASB/DSS auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by Standard Form 1034 (Public Voucher) are forwarded to the ACO for further processing (see 242.803(a)) and transmittal to the disbursing officer. Periodic advisory audit reports are furnished directly to the ACO.

(d) *Termination procedures.* The Canadian Commercial Corporation will continue to administer contracts that may be terminated by the U.S. contracting officer and settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government in the termination and settlement of Department of Defence Production (Canada) contracts. The U.S. agency administering the contract with the Canadian Commercial Corporation shall render such services as are required by the Canadian Commercial Corporation with respect to settlement of any subcontracts placed in the United States, including disposal of inventory. The settlement of such U.S. subcontracts shall be in accordance with this regulation.

(e) *Acceptance of Canadian supplies.* Under f.o.b.-origin contracts with the Canadian Commercial Corporation where inspection has been performed by the Department of National Defence (Canada), pursuant to paragraph 6 of the Letter of Agreement (see Appendix T), acceptance of supplies or services which are in accordance with the terms of the contract, shall be made by the Department of National Defence (Canada) on behalf of the Defense Departments and Agencies. Signing of the acceptance certificate on the applicable United States Department of Defense inspection and acceptance form shall be considered satisfactory evidence for payment purposes.

(f) *Industrial security.* Industrial Security for Canada shall be in accordance with 225.7403(d) and pursuant to the United States-Canada Industrial Security Agreement of 31 March 1952, as amended.

225.7105 Contract administration.

(a) When services are requested from the Defense Contract Administration Services on contracts to be performed in Canada, the request shall be directed to:

Defense Logistics Agency, Defense Contract Administration Services, Management Area, Ottawa, 365 Laurier Avenue West, Ottawa, Ontario, Canada, K1A OS5

(b) When contract administration is performed in Canada by Defense Contract Administration Services, the paying office activity to be named in the contract for disbursement of DoD funds (DoD Department Code: 17—Navy; 21—Army; 57—Air Force; 97—All other DoD Components), whether payment is in Canadian or U.S. dollars, shall be:

Disbursing Office, Defense Contract Administration, Services Region, Cleveland, 1240 East 9th Street, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

Subpart 225.72—Military Assistance Program Acquisitions

225.7200 Scope of subpart.

This subpart implements the Military Assistance Program portion of the Foreign Assistance Act of 1961 (section 604, 22 U.S.C. 2354) and the policies set forth in the President's Determination under section 604(a) of the said act (Memorandum of October 18, 1961) and in Executive Order 10973 dated 3 November 1961.

225.7201 Statutory requirements.

(a) Section 604(a) of the Foreign Assistance Act of 1961, as implemented, provides that funds made available under the Act shall not be used for acquisition outside the United States except:

(1) To acquire items required for military assistance which are not produced in the United States;

(2) To make local purchases for administrative purposes;

(3) To use local currency available for military assistance purposes; or

(4) Where the Assistant Secretary of Defense (ISA) certifies that exclusion of acquisition outside the United States would seriously impede attainment of Military Assistance Program objectives.

(b) Where a MAP order involves acquisition covered by a certification issued in accordance with (a)(4) above, the Director of Military Assistance, Office of the Assistant Secretary of Defense (International Security Affairs), will specify in the order that the Military Department is authorized to contract offshore.

225.7202 Procedures.

The following procedures apply to all contracts for the Military Assistance Program (other than those excepted pursuant to 225.7201) citing funds authorized by the Foreign Assistance Act of 1961, or citing funds made available under Department of Defense Appropriation Acts when it is known at the time of acquisition that the items being acquired are to fill existing Military Assistance Program orders and that DoD appropriations are to be reimbursed from Foreign Assistance Act funds. The requirements of this paragraph do not apply to issues from DoD inventories or to replenishment of such inventories.

(a) *Method of purchase.* Acquisition for the Military Assistance Program shall be restricted to domestic concerns and to U.S. end products as defined in 252.225–7016. The Foreign Assistance Act of 1961 shall not be used as authority to contract without full-and-open competition under 10 U.S.C. 2304(c)(5).

(b) *Certificate.* When the acquisition is solely to fill existing Military Assistance Program orders, the solicitation shall so state. When the acquisition consists of both Military Assistance Program items and Non-Military Assistance Program items, the solicitation shall clearly designate the Military Assistance Program items. In either instance, the solicitation shall require that each offer for end products include either the certificate at 252.225–7000 or the certificate at 252.225–7005 and the certificate at 252.225–7015.

225.7203 Exemptions from examination of records requirement.

(a) *General.* Military Assistance Program purchases authorized to be made outside the United States under the Foreign Military Sales Act of 1968, as amended, and the Arms Export Control Act of 1976, as amended, are exempt (Executive Order No. 11223, dated 12 May 1965) from the requirement for examination of records by the Comptroller General (10 U.S.C. 2313(b) and section 3(b), Pub. L. 85–804) in the following circumstances:

(1) Contracts with foreign contractors (including foreign governments) to be performed outside the United States; and

(2) Contracts, and amendments and modifications thereof, entered into pursuant to Pub. L. 85–804 (see FAR Part 50), *Provided,* That the Department concerned shall make a determination that it is impracticable to include the Examination of Records clause or to obtain compliance therewith; such determinations may be made by any officer or official authorized to approve contracts, and amendments and modifications thereof, pursuant to FAR Part 50.

(b) Notwithstanding the exemptions permitted above, the contracting officer, where practicable, shall include the Examination of Records clause in contracts covered in (a)(1) above.

225.7204 Department of Defense audit and records.

Contracts exempted under 225.7203(a)(1) from the requirement for examination of records by the Comptroller General shall nevertheless include the clause at FAR 52.214–26, Audit—Sealed Bidding or at FAR 52.215–2, Audit—Negotiation, as appropriate, in accordance with the requirements of that paragraph.

225.7205 Contract provision and clause.

(a) The provision at 252.225–7015, United States Products Certificate (Military Assistance Program), shall be inserted in all solicitations which, in whole or in part, are subject to this subpart 225.72 under the conditions at 225.7202(b).

(b) The clause at 252.225–7016, United States Products (Military Assistance Program), shall be inserted by the contracting officer in all solicitations and contracts which call for end products which, in whole or in part, are subject to this Subpart 225.72, unless excepted pursuant to 225.7201 and in all solicitations which include the provision at 252.225–7015.

Subpart 225.73—Acquisitions for Foreign Military Sales

225.7300 Scope of subpart.

This subpart sets forth policies and procedures applicable to acquisitions made for the purpose of Foreign Military Sales (FMS) pursuant to the Arms Export Control Act. It does not apply to Foreign Military Sales made from inventories or stocks, to acquisitions for replenishment of inventories or stocks, or acquisitions made under DoD Cooperative Logistic Supply Support Arrangements. An FMS Agreement is an accepted Letter of Offer and Acceptance which is the document by which the U.S. Government agrees to sell defense articles and services to a foreign government or international organization.

225.7301 Applicable statutory provisions.

(a) *Contract authorization.*

(1) Pursuant to section 22 of the Arms Export Control Act (Pub. L. 90–629, as amended), the Department of Defense is authorized to enter into contracts for purposes of resale to foreign countries or international organizations.

(2) The Act provides in part that:

(i) The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the acquisition of defense articles or defense services for sale for U.S. dollars to any foreign country or international organization if such country or international organization provides the U.S. Government with a dependable undertaking (A) to pay the full amount of such contract which will assure the U.S. Government against any loss on the contract; and (B) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net

arrearage and shall be computed from the date of net arrearage.

(ii) The President may, if he determines it to be in the national interest, issue letters of offer under section 22 of the Arms Export Control Act, as amended, which provides for billing upon delivery of the defense article or rendering of the defense service and for payment within 120 days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this Act.

(b) *Commercial availability.* DoD policies and procedures with respect to commercial availability are contained in the Military Assistance and Sales Manual (DoD Manual 5105.38–M), Part III, Chapter H, entitled *Commercial Availability*, published by the Defense Security Assistance Agency. (See DoD Manual 5105.38–M.)

225.7302 Applicability.

The FAR and this supplement shall apply to all purchases and contracts made by the Department of Defense in support of Foreign Military Sales.

225.7303 Preparation of DoD offer and acceptance, DD Form 1513.

(a) DD Form 1513 lists the items and/or services, estimated costs, the terms and conditions of sale, and provides for the foreign government's signature to indicate acceptance.

(b) *Procedures.*

(1) In connection with each Foreign Military Sale expected to involve a contract in excess of $10,000 which cannot be placed on the basis of price competition (as, for example, when the foreign customer has designated only one source as acceptable), before the Department of Defense furnishes prices for information purposes to potential foreign customers, prices, delivery and other relevant information shall be requested from the prospective source, and such request shall state that it is for information for the purpose of a potential Foreign Military Sale and shall identify the customer.

(2) As a general rule on FMS programs requiring new acquisitions, the contracting officer should participate in the preparation of Price and Availability Data to support the tendering of the DoD Offer and Acceptance (DD Form 1513) by the U.S. Government to foreign countries and international organizations. In addition to the identification and review of sales commissions and fees, the contracting officer shall request contractors to identify in advance of the DoD Offer and Acceptance any unusual provisions or deviations, particularly those proposed for the contract which could affect the prices quoted. Such unusual contractual requirements shall also be identified in the submittal of the price and availability data to the Departmental activity responsible for providing the DoD Offer and Acceptance to the foreign country. If the Departmental activity expands, modifies or does not accept such requirements, the contractor shall be advised prior to the submission of the offer to the foreign country.

(3) Whenever applicable, the contracting officer shall request contractors to identify any anticipated logistic support necessary in order to perform the contract.

225.7304 Pricing acquisitions for foreign military sales.

(a) *General.* When the Department of Defense undertakes purchasing for sale to a foreign country which has committed itself to bear the cost of the acquisition, the Department of Defense assumes responsibility to see to it that no more than a fair price is paid for the acquisition. Accordingly, FMS contracts shall be priced on the same principles and with the same care as are used in pricing normal defense contracts. This does not mean that prices of normal defense contracts for an item are automatically applicable to FMS contracts for the same item. On the contrary, application to FMS contracts of the pricing principles established by FAR Part 15 and FAR Part 31 may require pricing results that differ from normal defense contract prices for the same item because certain kinds of costs may reasonably and allocably arise in different amounts for the former than for the latter. In this regard, known FMS requirements shall be separately identified in solicitations.

(b) *Commercial sales to foreign customers.* If the contractor has made sales of an item to foreign customers under comparable conditions, including quantity and delivery, the pricing of FMS contracts shall be in accordance with FAR Part 15.

(c) *Cost of doing business with a foreign government or an international organization.*

(1) In pricing FMS contracts, where non-U.S. Government prices as described in (b) do not exist, recognition should be given to costs of doing business with a foreign government or international organization (even though the form of the transaction is a defense purchase for the purpose of FMS) whenever comparable costs of doing business with the United States would be recognized in pricing normal defense contracts. Thus, recognition should be given to reasonable and allocable costs, even though such costs might not be recognized in the same amounts in pricing normal defense contracts. Examples of such costs include, but are not limited to, the following:

(i) Selling expenses (not otherwise limited by FAR Part 31); e.g.:

organizations;

(A) Maintaining international sales and service organizations;

(B) Sales commissions and fees in accordance with FAR Subpart 3.4;

(C) Sales promotions, demonstrations, and related travel for the purposes of sales to foreign governments; however, such costs shall not be recovered against U.S. Government contracts for U.S. Government requirements. These expenses may be recovered; *Provided*, That when required by paragraph 123.16 of the International Traffic in Arms Regulations (ITAR) (22 CFR Part 121), such promotion or demonstration has received U.S. Government approval.

(D) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(ii) Product support and postdelivery service expenses; e.g.:

(A) Operations or maintenance training, training or tactics films, manuals, or other related data;

(B) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(iii) Costs associated with the implementation of DoD offset arrangements.

(iv) Costs that are the subject of advance understanding, in accordance with the appropriate provisions of FAR Part 31, or where the advance understanding places a limit on the amounts of cost that will be recognized allowable in defense contract pricing, and the understanding contemplated that it will apply only to DoD contracts for the U.S. Government's own requirements (as distinguished from contracts for FMS).

(2) Costs that are not allowable under FAR Part 31 are not allowable in pricing FMS contracts.

(3) The provisions of Section 203, Pub. L. 91–441, do not apply to contracts for Foreign Military Sales. Therefore, the ceiling limitations or the formula constraints on bid and proposal (B&P) costs incorporated in Part 231, and on independent research and development (IR&D) costs incorporated in Part 231 shall not be applicable to contracts for Foreign Military Sales. IR&D and B&P costs allowed on contracts for Foreign Military Sales shall be limited to their allocable share of the total expenditures. In pricing contracts for Foreign Military Sales, the best estimate of reasonable costs shall be used in forward pricing. Actual expenditures, to the extent that they are reasonable, shall be used in determining final cost.

(4) Pursuant to section 21(e)(1)(A) of the Arms Export Control Act, as amended, the United States shall make appropriate charges for administrative services in order to recover the estimated cost of administration of sales made under the Arms Export Control Act.

(d) *Government-to-government agreements.* In the event a government-to-government agreement between the United States and a foreign government, for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item or support item, contains language in conflict with the provisions of (a) through (c) above, the language of the government-to-government agreement shall prevail.

225.7305 Sales commissions and contingent fees on foreign military Sales.

(a) *Scope.* This section provides policies and procedures for determining the applicability and allowability of sales commissions and contingent fees on FMS purchases. It supplements the policies contained in 225.7304(c)(1)(i), FAR Part 31, and FAR Subpart 3.4.

(b) *Policy.* Sales commissions and contingent fees are allowable under defense contracts; *provided;* that, in accordance with FAR Part 31 and FAR Subpart 3.4, the commissions or fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor (hereinafter referred to as contractor) for the purpose of securing business (but see 225.7305(f)). For FMS, it is extremely difficult for the Department of Defense to verify the services rendered or the value of services by bona fide employees or bona fide established commercial or selling agencies. Therefore, it is the policy of the Department of Defense that the allowable cost of sales commissions and contingent fees (as defined in FAR Subpart 3.4) anticipated to be included in FMS contracts is limited to $50,000, and such fees or commissions shall be made known to the purchasing government prior to or in conjunction with the submission of the DoD Offer and Acceptance (DD Form 1513) to that government.

(c) *DoD offer and acceptance procedures.*

(1) In submitting an Offer and Acceptance to a foreign government which is known to contain a sales commission or fee, the Department of Defense will include:

(i) The name and address of the sales representative;

(ii) The estimate of the proposed fee, along with a statement as to the percentage of sale involved if such fee is based on a percentage of the sale price; and

(iii) A statement indicating one of the following, whichever is applicable:

(A) Appropriate officials within the U.S. Department of Defense consider the fee to be fair and reasonable;

(B) In the event only a portion of the proposed fee is considered fair and reasonable, a statement to this effect, together with the rationale therefor; or

(C) The U.S. Department of Defense cannot determine reasonableness of the proposed fee.

The notification in the Offer and Acceptance may also include the contractor's explanation of or justification for the proposed charge, together with any other data which may be requested by the purchasing government.

(2) The Offer and Acceptance also will include a statement to the effect that acceptance of the offer by the purchasing government, after receipt of the appropriate notification outlined above, will constitute that government's approval of the sales commission or fee involved. No fee shall be accepted by the Department of Defense if disapproved by the purchasing government.

(3) There may be occasions, as when FMS requirements are to be fulfilled by competitive acquisitions, when it is not possible to determine prior to presentation of the Offer and Acceptance whether or not the price to be paid for material or services will include sales commissions and fees. In such cases, the purchasing government will be notified (by DoD officials responsible for presentation of the Offer and Acceptance) as soon as possible if subsequent contract negotiations indicate that a sales representative's charges will be claimed by the contractor. This notification will include the information outlined in (1) above, along with an indication that the Department of Defense will determine whether or not to accept such costs as a valid charge to the contract, unless contrary notification is received from the purchasing government within 30 days of the date of the notification.

(4) If in making the determination required by FAR Subpart 3.4 and (d)(3), the responsible contracting official determines that a sales representative is not bona fide for reasons other than reasonableness of fee, no Offer and Acceptance will be tendered pending withdrawal by the prospective contractor of the fee for such sales representative from his proposal.

(d) *Applicability and allowability of sales commissions or fees.*

(1) When a contracting officer is requested to obtain price and availability data from a contractor to support the tendering of an Offer and Acceptance, he shall require the contractor to identify the amount of any sales commissions or fees. Allowable costs for sales commissions or fees applicable to contracts for FMS shall not exceed $50,000 per contract (including all modifications and subcontracts thereto) for each foreign customer served by that contract. Although commissions and fees may be less than $50,000 per contract, all such commissions and fees must be justified and supported, based on the criteria in (2) below. If deviations to this policy are considered necessary, FAR 1.4 shall apply. In addition, sales commissions or fees shall not be allowed for follow-on spares provided under DoD Cooperative Logistic Supply Support Arrangements.

(2) In order to provide the appropriate notice and advice regarding sales commissions and fees to a foreign government at the time an Offer and Acceptance is submitted, the contracting officer, except with respect to those contracts excluded in FAR Subpart 3.4, shall:

(i) Require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (including any such fees claimed by subcontractors);

(ii) Determine under FAR Subpart 3.4 whether a bona fide employee or agency relationship exists (for the purposes of FMS, the definition in FAR Subpart 3.4 of improper influence also extends to officials of the foreign government);

(iii) Require the contractor to submit a breakdown of the fee related to the services performed by the sales representative. Even though a bona fide employee or agency relationship is determined to exist, the basic test of

reasonableness for the purposes of making the statement required by 225.7305(c)(1)(iii) is an assessment of the services provided, or to be provided, compared to the amount of the fee. In addition to the fee breakdown of services, a comparative analysis may be made of the proposed fee/commission with recent payment for comparable services under commercial sales (non-FMS) of the same or similar items, and sales commissions and fees allowed on previous FMS sales of comparable scope and dollar amounts. In analyzing the fee, consideration should be given to whether the sale is the initial or follow-on sale because the effort for follow-on sales of additional quantities, spares and support equipment would not normally be as great as the effort for the initial sale.

(3) The PCO shall make a determination with respect to a bona fide employee or agency relationship and reasonableness of the commission or fee (i.e., one of the 225.7305(c)(1)(iii) fee statements), subject to the approval of the chief of the contracting office.

(e) *Contracting procedures relating to sales, commissions and fees.* If, after notification by DoD officials responsible for presentation of the Offer and Acceptance to a foreign government as required by (c) above, the foreign government disapproves the fee, or a portion of the fee, the contracting officer shall notify the prospective contractor and request withdrawal of the fee for the sales representative from the proposal. Should the contractor refuse to withdraw the fee, the Department of Defense will notify the foreign government that the Department of Defense is unable to purchase the items or services from that contractor.

(f) *Special country requests with respect to sales commissions and fees.* Pursuant to DoD Manual 5105.38–M (Military Assistance and Sales Manual), Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Iran, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, United Arabe Emirates, or Venezuela (Air Force) are required to provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of sales commission and fee unless such payments have been identified and payment thereof approved in writing by the government involved before contract award. Therefore, the contracting officer shall on behalf of these purchasers, insert the clause at 252.225–7017, Limitation of Sales Commissions and Fees for Foreign Governments, in all solicitations and contracts for FMS requirements unless such payment has been approved.

225.7306 Recovery of nonrecurring costs.

(a) *Policy.* It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to defense products, and/or a fair price for its contribution to the development of related technology, when such 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. 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 a foreign military sales case when subsequent customers purchase the same specialized feature.

(b) *Applicability.*

(1) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(i) 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.

(ii) Nonrecurring production costs.

(iii) 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.

(2) In the event an end item contains one or more components which individually meet the above thresholds, recoupment will be made on a component when sold separately.

(3) 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.

(c) *Procedures.* Charges shall be computed and assessed by the DoD officials responsible for presentation of the DD Form 1513. Such charges shall not be included in the contractor's proposed price.

225.7307 Source selection.

(a) Purchases for FMS customers shall be implemented under normal acquisition and contract management procedures set forth in the FAR and this supplement, and other directives. However, the FMS customer may request that a defense article or defense service be obtained from a particular prime source. In such cases, FAR 6.302–4 provides authority to contract without full-and-open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only as specified in the Letter of Agreement or other written direction by the military sales organization.

(b) Representatives of the FMS customer shall not be permitted to direct the deletion of names of firms from bidders mailing lists or slates of proposed A-E firms. They may, however, suggest that certain firms be included. Contracting offices shall not accept directions from the FMS customer as to source selection decisions or contract terms (other than the special contract provisions and warranties referred to in Condition A.2 of the DD Form 1513), nor shall the FMS customer be permitted to interfere with a prime contractor's placement of his subcontracts. Requests by the FMS customer for rejection of any bid or proposal shall not be honored unless the rejection is justified on the basis of reasons which would be sufficient in the case of a purchase by the Department of Defense to meet its own needs.

225.7308 Limitation of Liability.

In acquisitions for FMS, the foreign purchaser shall be advised that the appropriate Liability clause(s) (see FAR Subpart 46.8) is included in the FMS contract (see Condition C on the DD Form 1513). If the foreign customer does not agree to assume the risk for loss or damage as provided in the clause(s) and objects to the inclusion of such clause(s) in the Offer and Acceptance, the contractor shall be so advised. The costs of necessary insurance, if any, to be obtained by the contractor to cover such risk of loss or damage shall be considered in establishing the FMS contract price of such items.

225.7309 Exercise of options for foreign military sales.

Exercising an option to satisfy an FMS requirement may introduce the need to consider changes to costs and profit attributable to pricing differences between U.S. and FMS contract requirements. Such consideration may also be necessary if the option is already identified for FMS but it is exercised for country B requirements instead of the country A requirements to which it was priced. In order to provide for and better permit the inclusion of priced options in the contract and their

subsequent exercise for FMS requirements whether or not the specifics are fully known at the time of award, the contracting officer should consider the use of the clauses prescribed at 217.207(S–70).

225.7310 Implementation of offset arrangements negotiated pursuant to foreign military sales agreements.

(a) *Scope.* This section sets forth policies and procedures concerned with the fulfillment of Department of Defense offset arrangements negotiated pursuant to an FMS agreement. An "FMS/offset arrangement" is that which is negotiated pursuant to an FMS agreement wherein the Department of Defense agrees to place on a contractual basis and consistent with the guidance in 225.7310(b)(2), a certain percentage of the FMS agreement dollar value or a stated dollar objective in that country with which the FMS agreement has been negotiated. The purpose of an FMS/offset arrangement is to fulfill commitments negotiated pursuant to an FMS agreement. Australia, Belgium, Denmark, Netherlands, Norway, and Switzerland have FMS/offset arrangements negotiated pursuant to FMS agreements. However, Belgium, Denmark, Netherlands, and Norway are also participating NATO countries and are accorded preferences under Subpart 225.74.

(b) *General.*

(1) Since May 4, 1978, it has been DoD policy not to enter into government-to-government offset agreements because of the inherent difficulties in negotiating and implementing such arrangements. Exceptions to this policy must be approved by the Secretary of Defense or his Deputy and will only be made when there is no feasible alternative to ensure the successful completion of FMS transactions considered to be of significant importance to the national security interests of the United States.

(2) When authorized, offset provisions typically require the Military Departments or U.S. prime contractors, or both, to identify items for which foreign sources may obtain contracts up to a specified offset level and in accordance with the terms and conditions of the particular DoD offset agreement. Normally, FMS/offset arrangements should be negotiated prior to the FMS agreement Offer and Acceptance in order that the Department of Defense and its prime contractors will have an opportunity to assess in advance the DoD's or contractor's ability to fulfill the FMS/offset arrangement, and include in the offer those DoD and contractor costs associated with such arrangements.

(3) If an exception is granted pursuant to paragraph (1) above, the policy of the Department of Defense is that the domestic concerns involved in the FMS and the foreign customer will make suitable arrangements to fulfill an FMS/offset arrangement. Only if it is determined that the FMS/offset arrangement cannot be fulfilled in this fashion will the Department of Defense seek to fulfill the offset commitments through other defense purchases. When practical, the U.S. prime contractor shall be contacted and coordination obtained prior to the Government's committing the U.S. prime contractor's participation.

(4) The Defense Security Assistance Agency (DSAA) acts as the focal point within the Executive Branch for interagency coordination on offset policy in consultation with the Office of the Assistant Secretary of Defense (International Security Affairs), from which DSAA derives overall policy guidance. The Office of the Assistant Secretary of Defense (Acquisition and Logistics) (OASD(A&L)) is responsible for matters pertaining to the fulfillment of the offset portion of FMS agreements. General information regarding the existence of FMS/offset arrangements with particular countries or implementation of such arrangements may be obtained by submitting inquiries through the Departments to the Director for International Acquisition, OASD(A&L)(P)(IA).

(c) *Procedures.*

(1) Whenever an FMS agreement involves a single major weapon system, the Department responsible for acquisition of the weaponsystem will be responsible for managing any resulting FMS/offset arrangement. If an FMS agreement involves the sale of items from two or more Departments, OASD(A&L) may either direct that one Department be responsible for coordinating the implementation of the FMS/offset arrangement, or apportion responsibility for managing the offset program among two or more Departments. Such management includes (i) the development of special contractual provisions consistent with (4) below; (ii) the consideration of other DoD contract items for competition by foreign sources (to the extent other defense purchasing is involved or becomes necessary); and (iii) the obtaining of appropriate exemptions by the Secretary of the purchasing Department concerned from the Buy American Act under FAR 25.102, the Balance of Payments Program, duty and other applicable acquisition restrictions on a purchase-by-purchase basis of defense equipment. (See sample Determination and Findings set forth in (2)(i) below for the exemption of the Buy American Act.) Even though a Military Department or Defense Agency is not responsible for the management of a certain FMS/offset arrangement, it will consider, for competitive acquisitions, offers of defense equipment from FMS/offset arrangement country sources.

(2) Solicitation of FMS/offset arrangement country sources shall be accomplished using procedures like those set forth in 225.7403(a)(1) for participating countries (see also 225.402(b)). When soliciting sources outside the United States, international air mail shall be utilized where security classification permits. See 214.202–1, FAR 14.203–1, and FAR 15.408(c). For the purpose of evaluating an FMS/offset arrangement country offer, it shall be treated as if it were a participating country offer and evaluated in accordance with 225.7403(a)(3). If after such evaluation, it is clear that the FMS/offset arrangement country offer is low or otherwise eligible for award, the contracting officer shall request from the Secretary of the Department concerned the appropriate exemptions for the acquisition as set forth in (2)(i) below. The list set forth at 225.7405 shall also apply to FMS/offset arrangement countries as shall 225.402(b).

(i) To obtain an exemption, under FAR 25.102, of the Buy American Act, the contracting officer shall process a Determination and Findings for the signature of the Secretary of the Department or Agency concerned. The Determination and Findings shall be substantially as follows for end items, or modified as necessary for components.

Service or Agency Exemption of the Buy American Act (41 U.S.C. 10a–d) Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.102, acquisition of an (FMS/offset arrangement country) (describe item) may be made as provided below.

Findings

1. The (Contracting Activity) proposes to purchase _____, under contract number _____, mined, produced or manufactured in (country of origin). The total estimated cost of this acquisition is _____.

2. The United States Government (USG) and the Government of _____ have entered into an FMS/offset arrangement whereby the Government of _____ will purchase US defense articles and services and the USG, through the Department of Defense (DoD), if necessary, will offer potential DoD requirements suitable for purchases of (FMS/offset arrangement country) defense items.

3. The Agreement provides that competitive offers of (FMS/offset

arrangement country) end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that (FMS/offset arrangement country) items may better compete, for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of (FMS/offset arrangement country) items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In order to achieve the above objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, 252.225–7001, or the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause, 252.225–7006 which state that an exemption from the application of the Buy American Act may be granted by the Secretary of the Department concerned. Offers were solicited from other sources and the offer received for an (FMS/offset arrangement country end item) is found to be acceptable.

Determination

Pursuant to the Buy American Act (41 U.S.C. 10a–d), I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the proposed offer.

(Date)

(Secretary of Department)

(3) To assure that the policy of 225.602 is carried out regarding the issuance of duty-free entry certificates, the contracting officer shall include the clauses at FAR 52.225–10, Duty-Free Entry, and 252.225–7007, Supplies to be Accorded Duty-Free Entry, in contracts which either contribute, or anticipate to contribute, to the fulfillment of an FMS/offset arrangement.

(4) The clause set forth at 252.225–7018, Offset Arrangement, shall be used in a contract when the domestic concern involved in the Foreign Military Sale has accepted responsibility for accomplishing any portion of an FMS/offset arrangement. (Paragraph (a) of the clause should be modified as necessary to state any special terms and conditions of the FMS/offset arrangement, such as competitive prices or otherwise, period of offset accomplishment, special type or nature of offset required, and so forth.)

(5) When an FMS/offset arrangement program is structured to provide offset potential on a number of DoD purchases, as opposed to only within the prime FMS contracts, DoD solicitations which contemplate proposals of FMS/offset arrangement country end products should indicate that the price evaluation of offers will be accomplished without the application of the Buy American Act or the Balance of Payments Program differentials or duty, which would otherwise be applied to the price evaluation in accordance with other paragraphs of this Part 225. If on the basis of such evaluation, an offeror proposing an end product from an FMS/offset arrangement country source is low, the matter will be forwarded to the Secretary of the Department for consideration as to whether it would be in the public interest to exempt the end product from the restrictions of the Buy American Act (see FAR 25.102) and the Balance of Payments Program regulations. FMS/offset arrangement country sources, in competing for DoD purchases under a DoD FMS/offset program, must be responsive to the terms and conditions of DoD solicitations unless otherwise specifically provided for in the FMS/offset arrangement with the FMS/offset arrangement country. DoD contracting activities must also comply with all other laws and regulations governing foreign purchases, such as security restrictions and disclosure of information to foreign nationals.

(6) In a general FMS/offset arrangement which contemplates foreign competition with U.S. sources for defense contracts (as opposed to one structured to be accomplished within the FMS prime contracts for that sale), the preferable procedure is to require the foreign government to propose, from time to time, specific defense-related items which appear susceptible to competition by companies in that country. When such proposals are made, the foreign government will include the names and addresses of the foreign sources which that foreign government considers qualified to perform the work. However, in order to ensure fulfillment of the FMS/offset arrangement within the specified time limits, the Departments are also expected to exercise initiative in seeking out items which might be suitable for such foreign competition and in making arrangements through the foreign government, if necessary, to identify suitable sources.

(d) *Quality Assurance Agreement with Australia.* The Department of Defense of the United States and the Department of Defense of Australia have agreed to provide to each other, quality assurance services upon request for all contracts involving defense supplies and services in accordance with the terms of the Details of Agreement (D of A), Mutual Acceptance of Government Quality Assurance. (See Appendix T–101.1 and 246.406(73).)

225.7311 Use of Government production and research property on work for foreign governments or international organizations.

See 245.405.

225.7312 Exclusionary policies and practices of foreign governments.

All contracts for the purchase of goods or services for Military Assistance Programs (MAP), International Military Educational Training (IMET), and Foreign Military Sales (FMS) shall include the clause in 52.225–7019, Exclusionary Policies and Practices of Foreign Governments.

225.7313 Nonapplicability of rates under 49 U.S.C. section 10721 (formerly "Section 22 Rates").

(See FAR 47.104–2.)

225.7314 Specific FMS/offset agreements.

Specific FMS/offset agreements are included in Appendix T, Subpart 1.

Subpart 225.74—Purchases From NATO Participating Country Sources

225.7400 Scope of subpart.

This subpart implements the Memoranda of Understanding (MOU) between the United States and participating countries.

225.7401 Policy.

In order to increase the defense capabilities of NATO through more efficient cooperation in the field of research and development, production, and acquisition of defense equipment, the United States has entered into Memoranda of Understanding with Canada, the Federal Republic of Germany, the Government of Italy, the United Kingdom of Great Britain and Northern Ireland (U.K.), the Government of Norway, the Kingdom of the Netherlands, the Government of Portugal, the Government of Belgium, the Government of Denmark, the Government of France, the Government of Turkey, the Government of the Grand Duchy of Luxembourg, and the Government of Spain. The objective of each MOU is to facilitate the defense of North America and Europe so as to achieve:

(a) Greater cooperation in research, development, acquisition, and production;

(b) The most rational use of their respective industrial, economic, and technological resources;

(c) The greatest attainable military capability at the lowest possible cost; and

(d) Greater standardization and interoperability of their weapon systems.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs between the participating countries and the United States and to ensure that sources from participating countries are provided every opportunity to compete on a fair and equal basis with U.S. sources for research and development and for production contracts consistent with 225.7402(b). Accomplishment of this policy requires exemption of foreign acquisition restrictions with respect to all items of defense equipment from participating countries. (See also 225.402(b).)

225.7402 MOUs with NATO participating countries.

(a) The MOUs set forth acquisition policies with respect to defense equipment from sources in participating countries.

(b) *Applicability.* This subpart applies except where restricted by (1) provisions of U.S. National Disclosure Policy (NDP), DoD Directive 5230.11; (2) U.S. defense mobilization base requirements as specified in 208.73, 208.74, and 208.75; (3) U.S. laws or regulations (e.g., the annual DoD Appropriations Act (225.70); and (4) U.S. Industrial Security Requirements.

225.7403 Procedures for purchases from participating countries

(a) *Solicitation procedures.*

(1) *Solicitation of sources in participating countries.*

(i) Participating country sources shall be included on bidders mailing lists and comparable source lists upon request by such sources in accordance with the procedures in FAR 14.205. Requests of this nature should be forwarded by participating country sources to the activity having acquisition responsibility for the supplies involved.

(ii) The normal criteria for soliciting and making awards under FAR Part 19 for small business concerns and FAR Part 20 for labor surplus area firms shall be utilized without regard to the fact that there are potential participating country sources for the end product, except items developed under the U.S./Canadian Development Sharing Program. Offers of a foreign end product shall not be considered on any acquisition, or part thereof, identified for the exclusive participation for such firms.

(iii) Solicitations shall be sent directly to participating country sources appearing on the appropriate bidders mailing list except when restricted by 225.105, 225.7402(b), 225.7405 and (ii) above. In addition, Canadian sources shall also be solicited through the Canadian Commercial Corporation in accordance with 225.7104. When solicitation destinations are outside the United States, international air mail shall be utilized where security classification permits (see FAR 14.202 and FAR 14.203).

(iv) Upon request, solicitations shall be furnished to the embassy or other designated place or representative of the participating country.

(v) If unusual technical or security requirements would preclude the acquisition of otherwise acceptable defense equipment from participating country sources, the need for such requirements should be specifically reviewed. Under no circumstances will unusual technical or security requirements be imposed solely for the purpose of precluding the acquisition of defense equipment from participating countries.

(vi) Participating country sources shall not be automatically excluded from submitting offers because their supplies have not been tested and evaluated by a Department. Departments which find it necessary to limit solicitations to sources whose items have been service tested and evaluated by the department shall make provision for considering supplies from participating country sources which have been tested and accepted by the participating country for service use, subject to U.S. confirmatory test, if necessary. Where it appears that these provisions might adversely delay service programs, the concurrence of the Department of Defense Acquisition Executive, USDRE, shall be obtained prior to exclusion of the participating country item from consideration. Sufficiency of participating country service testing should be considered on a case-by-case basis. When confirmatory tests of participating country end products are deemed necessary by the department, U.S. test and evaluation standards, policies, and procedures shall apply.

(vii) Subject to 225.7402(b), industry representatives from a participating country shall be permitted to attend symposia, program briefings, prebid conferences (FAR 14.207 and FAR 15.409), and like meetings which address U.S. defense equipment needs and requirements. When practical, these meetings should be structured so as to allow attendance by representatives of participating country concerns.

(2) *Submission of offers.* Participating country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(3) *Evaluation of offers from participating country sources.*

(i) In furtherance of the objectives set forth in 225.7401, the Secretary of Defense has determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act and the Balance of Payments Program with respect to acquisition of defense equipment (for items for civil works activities, see 225.105(S-75)) which is mined, produced, or manufactured in a participating country.

(ii) In accordance with the above, offers of participating country end products shall be evaluated without the application of the price differentials normally applied pursuant to the Buy American Act and Balance of Payments Program requirements contained in 225.105 and subpart 225.3. This exemption shall further include the following consideration: In the event that a domestic offer, a participating country offer, and a nonqualifying country offer compete for defense equipment, the participating country offer shall be evaluated without applying the price differentials of 225.105, whereas the nonqualifying country offer shall be subjected to the price differentials. (See 225.105(S-72), Example E.) However, in the event that the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted. (See 225.105(S-72), Example F.) In the event that a participating country offer competes against a nonqualifying country offer and no domestic offer is submitted, the participating country offer shall be evaluated on an equal basis with the nonqualifying country offer. (See 225.105(S-72), Example G.) Participating countries are listed at 225.7401.

(iii) As to any end product that is manufactured in the United States, all components from participating countries are treated as components mined, produced, or manufactured in the United States for the purpose of determining whether the end product is a domestic source end product.

(iv) In keeping with the policy to enhance cooperation with the participating countries, U.S. duty-free entry shall be accorded supplies from participating countries by the issuance of duty-free entry certificates. Offers of defense equipment from participating country sources shall be evaluated without application of duty. Such duty-free entry shall be accorded whenever

such supplies are acquired at a prime contract or at a subcontract level. (See also 225.602 for postaward circumstances of fixed-price type contracts.) The resulting contract shall include the appropriate clause(s) referenced in 225.605.

(v) If, when evaluated in accordance with the above, an offer of a participating country end product is determined to be from the lowest, responsive, responsible offeror, the cognizant contracting officer shall normally proceed to make award to that offeror. However, there is no restriction on the authority or responsibility of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a participating country source in those instances where such restriction or rejection is considered necessary for reasons of the national defense.

(b) *Subcontracting with participating country sources.* In reviewing prime contractor subcontracting procedures, the contracting officer shall assure that the prime contract does not preclude participating country sources from competing for subcontracts, except when restricted by national security interest reasons or mobilization base considerations.

(c) *Required clause.* As prescribed at 225.109(d)(S–72), the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, shall be inserted in solicitations and contracts.

(d) *Industrial security for participating countries.* Required procedures designed to safeguard classified defense information which may be necessary for the performance of contracts awarded to participating country sources are set forth in the DoD Industrial Security Regulation DoD 5220.22–R (implemented for the Army by AR 380131; for the Navy by OPNAV Instruction 5540.8E; for the Air Force by AFR 205–4; for the Defense Logistics Agency by DLAM 8500.1; for the Defense Communications Agency by DCA Inst. 240–50–7; and for the Defense Mapping Agency by DMA Inst. 5520.22).

225.7404 Contract administration.

When contract administration services are requested on contracts to be performed in participating countries, except Canada, the request should be directed to the cognizant activity in accordance with DoD 4105.59–H, section II, Part 2 (DoD Directory of Contract Administration Services Components). Contract administration services required with respect to DoD subcontracts placed by participating country sources, except Canada, in the United States will be arranged by the cognizant activity in accordance with DoD 4105.59H, section II, Part 2 (DoD Directory of Contract Administration Services Components).

225.7405 List of excluded items.

The policies and procedures of this subpart do not apply to offers of the following items of defense equipment unless the quantity being acquired is greater than that required to maintain the U.S. defense mobilization base. This restriction does not apply to Canadian Planned Producers. Items may be added to or deleted from the list from time to time. Information concerning this list may be obtained from OASD(A&L)(IR). (See also Subparts 208.73, 208.74, and 208.75.)

Navy

- Fuzes, Safe and Arm Devices, and Similar Items
  - MK–13 Safe and Arm Device
  - MK–13 Triggering Device
  - MK–17 Safe and Arm Device
  - MK–33 Safe and Arm Device
  - MK–330 Fuze
  - MK–334 Fuze
  - MK–404 Fuze
  - MK–407 Fuze
  - FMU–109 Fuze
- Missiles and Missile Components
  - AIM–7F Sparrow Missile
    - Guidance and Controls Section
    - MK–58 Rocket Motors
    - MK–71 Warhead Metal Parts
  - AIM–9L Sidewinder Missile
    - Guidance and Control Section
    - MK–36 Rocket Motors
    - DSU–15 Target Detector
    - AN/WDU–17 Warhead
    - MK 1 Wing and ANM/BSU–32 Fins
  - Trident I (C–4) Missile System
    - Guidance and Control System
    - MK–5 Electronic Assemblies (EA)
    - MK–5 Intertial Measurement Unit Electronics (IMUE) and Monitor Component Assembly (MCA)
    - Backfit of Poseidon (C–3) SSBNs
  - Flares
    - MK–46 Flares, Infrared Decoy
  - Sonobuoys and Components
    - AN/SSQ–36
    - AN/SSQ–41B
    - AN/SSQ–53A
    - AN/SSQ–57A
    - AN/SSQ–62
  - Ship Gun Systems
    - MK–75 Gun Mounts
  - Submarine Systems
    - Type 18B/D Periscope System
    - TR 155 K 33 Transducers
  - Military Sealift Cargo
    - Ocean Transportation and Services

Air Force

- MAC Commercial Airlift
- GAU–8/A and 30mm Ammo

Defense Logistics Agency

- Textiles—Worsted

Army

- L.A.P., manufacturing and testing of projectiles (5.56 mm through 8 inch), mines, dispensers, rockets, pyrotechnic devices, grenades, demolition charges, small arms ammunition and components, fuzes and components containing mechanical timing devices)
- TOW Missile and Launcher
- 2.75 Rocket Items
  - LAP Motor
  - Fin & Nozzle Assembly
  - Stabilizer Rod
  - Felt Washer
  - Ring Charge Support
  - O Ring
  - Metal Spacer
  - Intervelometer
  - Igniter
  - Motor Tube
  - Seal Rings
  - Disc Charge Support
  - Spacer Charge Support
  - Lockwire
  - Launcher
  - Fin Blades
- Projectile Metal Parts for Cartridge 105mm (Beehive)
- Projectile M406, M107—155mm
- Projectile M509—8 inch
- Projectile M735
- Projectile M735, Metal Parts and Cores
- Projectile M718, M141
- 155mm Cannister, XM625, XM626:
  - Projectile Metal Parts for Cartridge 90mm
- 255mm Projectile, AT M718/M741 (RAAM):
  - Component,
  - Electronic Assemblies
- Cartridge Case M118, M14B4
- Fuze:
  - M1 Delay
  - MK–1
  - MK–30
  - MK–38 Energizer
  - MK–40 Energizer
  - MK–54
  - MK–73–13
  - MK–339–1/Inert
  - MK–379
  - MK–393/403
  - MK–404
  - MK–407
  - FM–54B
  - M19
  - M42/46
  - M62A2
  - M91A2
  - M84A1
  - M114 S&A
  - M118 S&A
  - M201A1
  - M213
  - M19E1
  - M223
  - M228
  - M427/M423
  - M494/571
  - M505A3
  - M505
  - M509A2
  - M564
  - M565
  - M567 (Comp Pts/Rewk)
  - M577/M582
  - M578

M578 (Comp Pts)
M732:
Elec Head Final Assembly
Detonator
Power Supply
Sleeve
Elec Timer, W/IC
M904E3
Casing Burster Warhead, M156
Assy M258, M170
Body Assy and Base Plug, M404
Bomb, M117A1E1
Launcher Rocket 2AU 68A/A
Warhead Flechets WDU 4A/A
M18 Mine Program
Blasting Cap, Firing Device, Metal Parts, Test Sets
Laser Range Finder VVC–2 and M21 for Solid State Ballistic Computer for M60 Series Tank
Limited Light Sight
MX–9644 Image Intensifier Tube 25mm
MX–7845 Image Intensifier Tube (1st generation)
MX–8501 Image Intensifier Tube (1st generation)
BA–4386 Battery
AN/PVS–4 Night Vision Sights
AN/PVS–5 Night Vision Goggles
AN/PVS–5A Night Vision Goggles
AN/VVS–2 Viewer
AN/VSS–3 Searchlight
Common Module Program (Thermal Imaging System) Tactical Night Vision Systems—
AN/TAS–4
AN/TAS–5
AN/TAS–6
GLLD/TAS–4
Machine Gun M240
Machine Gun M240 Spare Parts
Electronic Time Fuze XM587E2/XM724
Power Supply PS127
Fuze Setter XM36E1
Tank Thermal Sights AN/VSG–2
Night Vision Goggles AN/PVS–5A
Image Intensifier Assembly MX–9916–UV
Battery, Dry BA–4386
Maintenance of idle portions of 21 GOCO facilities
Consolidated Facilities Scranton AAP
Hydraulic Turbine (Civil Works)

225.7406 Specific reciprocal memoranda of understanding with NATO participating countries.

Specific reciprocal memoranda of understanding with NATO participating countries are included in Appendix T, Subpart 2.

Subpart 225.75—Purchases From Defense Cooperation Country Sources

225.7500 Scope of subpart.

This subpart implements the defense cooperation agreements made by the United States pursuant to other than Foreign Military Sales agreements.

225.7501 Policy.

In order to increase their respective defense capabilities through more efficient cooperation in the research and development, production, and acquisition of defense equipment, the United States and the Governments of Israel and Egypt have entered into a defense cooperation agreement. The purpose of this agreement is to promote the most cost-effective and rational use of defense appropriations of the United States and the defense cooperation country. Accordingly, it is Department of Defense policy to achieve the best possible coordination of the materiel programs between such countries and the United States and to ensure that sources in defense cooperation countries are provided the opportunity to compete on a fair and equal basis with U.S. sources for selected research and development, production and service contracts subject to the restrictions of 225.7402(b). Accomplishment of this policy requires the exemption of certain Buy National laws and foreign acquisition restrictions with respect to selected defense equipment purchased from defense cooperation country sources. For the purposes of solicitation and evaluation of such selected defense equipment, offers of defense cooperation country end products shall be treated as if they were participating country end products, except as provided in 225.402(b).

225.7502 Procedures.

(a) *Solicitation procedures.* Defense cooperation country sources shall be solicited as if they were sources from participating countries. The procedures set forth at 225.7403(a)(1) shall apply.

(b) *Submission of offers.* Defense cooperation country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations. The Buy American Act and the Balance of Payments Program restrictions are waived only for items listed in appropriate annexes to the agreements with the defense cooperation country. However, the absence of an item from the defense equipment list is without prejudice to the authority of the Secretary to determine in any individual case that application of the restrictions to that item would be inconsistent with the public interest. Copies of these lists may be obtained from the Director for International Acquisition, ODASD(P).

(c) *Evaluation procedures.* Defense cooperation country offers shall be evaluated as if they were participating country offers. The procedures set forth at 225.7403(a)(3)(ii) shall apply.

(d) *Other procedures.* Contracting procedures, industrial security procedures and contract administration procedures for defense cooperation country sources shall be conducted as if they were sources from participating countries. The procedures and policies set forth at 225.7403(c), 225.7404, and 225.7405, and throughout this regulation shall apply.

225.7503 Specific memoranda of understanding with defense cooperation countries.

Specific memoranda of understanding with the Defense cooperation countries are included in Appendix T, Subpart 3.

Subpart 225.76—Use of U.S.-Owned Foreign Currency for Payments

225.7600 Scope of subpart.

This subpart implements the Government's policy that U.S.-owned foreign currency be used when feasible in payment of purchases in foreign countries.

(a) This subpart applies to acquisitions of supplies, services, or construction for use outside the United States.

(b) This subpart does not apply to acquisitions (1) funded from Special Foreign Currency Program Appropriations; or (2) made under Subpart 225.1.

225.7601 Definitions.

As used in this subpart, the following terms have the meanings set forth below:

"Excess Foreign Currency" means currency that has been determined by the Department of the Treasury to be in excess of foreseeable requirements of the U.S. Government. Countries in which the United States owns excess foreign currency are listed in 225.7607(a).

"Near-Excess Foreign Currency" means currency that has been determined by the Department of the Treasury to be above the immediate requirements of the U.S. Government. Countries in which the United States owns near-excess foreign currency are listed in 225.7607(b).

"U.S. Dollar Content" means the U.S. dollar cost to an offeror for domestic source end products or services (including costs of transportation furnished by U.S. flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

"U.S.-Owned Foreign Currency" means currency of a foreign country which currency is:

(a) Owned by the United States;

(b) Determined excess or near-excess by the United States Department of the Treasury;

(c) Available in the country of issuance to pay obligations of the United States within that country; and

(d) Disbursed by the United States Treasury Disbursing Officer in the country concerned, either directly to the contractor or to the military disbursing officer, as appropriate.

225.7602 Procedures.

(a) Except as provided in (c) below, when supplies, services, or construction for use outside the United States are to be purchased, the solicitation shall contain the provision in 252.225–7020, Option to Award and Pay in United States Owned Foreign Currency, when it can reasonably be expected that (1) contracts will be performed in whole or in part in a country in which there is U.S.-owned foreign currency; or (2) a contractor (domestic or foreign) may be willing to accept U.S.-owned foreign currency in payment in whole or in part.

(b) Failure to state a price in U.S.-owned foreign currency, either in whole or in part, shall not in itself cause an offer to be considered nonresponsive to a solicitation.

(c) Requests for quotations for purchases described under small purchase procedures for delivery within a country in which there is U.S.-owned foreign currency shall be limited to be the local trade area of that country; and, to the extent feasible within the criteria in 225.7606, shall require quotations to be stated only in the U.S.-owned foreign currency of that country.

225.7603 Evaluating offers.

(a) *Conversion for evaluation purposes.* For purposes of evaluation, offers expressed in whole or in part in U.S.-owned foreign currency shall be converted to show their equivalency in U.S. dollars at the rate of exchange used by U.S. disbursing officers for such currency on the date set for receipt of offers.

(b) *Excess foreign currency offers.* Subject to (d) below and to the award limitations in 225.7604, reference for acceptance of offers in excess foreign currency or in combinations of excess foreign currency and U.S. dollars shall be in the following order, even though the offer preferred may not be the lowest in price:

(1) The lowest responsive offer in whole in an excess foreign currency. If equal low offers are received and one or more contain a U.S. dollar content which is not required to be paid in U.S. dollars, that offer which contains the greatest U.S. dollar content shall be preferred.

(2) When the only responsive offers in excess foreign currency also contain a U.S. dollar content for which payment in U.S. dollars is required and is limited to that content, that offer which results in the lowest expenditure of U.S. dollars.

(3) When the only responsive offers in excess foreign currency also require payment in part in U.S. dollars which are not limited to the U.S. dollar content, that offer which results in the lowest expenditure of U.S. dollars. If equal low offers are received and one or more contain a U.S. dollar content and others contain no U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

(4) When responsive offers in combinations described in (2) and (3) above are received, the lowest offer evaluated under (2) above.

(5) When responsive offers are received in U.S. dollars only, the lowest such offer. If equal low offers are received and one or more contain a U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

(c) *Near-excess foreign currency offers.* The lowest responsive offer in whole or in part in a near-excess foreign currency which does not exceed the lowest responsive offer in U.S. dollars shall be preferred over the U.S. dollar offer. Offers in excess foreign currency shall always be preferred over offers in near-excess foreign currency.

(d) *Consideration of combination offers.* When responsive offers received include some which are priced only in U.S. dollars and others in combinations of U.S. dollars and excess or near-excess foreign currency, a combination offer shall not be considered for award if the U.S. dollar amount of that offer exceeds the dollar amount of the lowest responsive offer in U.S. dollars only.

(e) *Evaluation table.* The following table illustrates the evaluation of offers received in whole in excess foreign currency, in combinations of excess foreign currency and U.S. dollars, and in U.S. dollars only.

Evaluation Table

Offers received are priced in U.S. dollars and "X" Country's rupees. Applicable exchange rate assumed for this table is 3 rupees equal 1 dollar.

Offers	In excess currency only	In combination excess currency—U.S. dollars	In U.S. dollars only	In U.S. dollars as converted (see 25.7603(a).)	U.S. dollars content	Preference	
						For award	See footnote
1	36OR			$120 ($20 + $80)	0	1	3
2		60R + $80		$100 ($6 + $95)	0	6	4
3		18R + $95		$101 ($20 + $90)	0	None	4
4		60R + $90		$110	0	7	4
5			$94	$94	0	9	5
6	45OR			$150 ($20 + $90)	$50	2	3
7		60R + $90		$110	$90	4	4
8			$94	$94	$50	8	5
9	45OR			$150 ($20 + $80)	0	3	3
10		60R + $80		$100	$50	5	4

Notes to Evaluation Table:

1. All offers are assumed to be responsive.
2. The lowest offer in U.S. dollars only is $94. Therefore, $141 ($94.00 plus $47) is the maximum amount for which the contracting officer has authority to award without referral under 225.7604(b).
3. Offers 1, 6, and 9 are entirely in excess foreign currency and are given first consideration. Offer 1, being the lowest, is preferred for award. In the absence of Offer 1, Offer 6 would be preferred because it contains a U.S. dollar content of $50. In the absence of Offers 1 and 6, Offer 9 would be preferred. In accepting Offer 1, 6, or 9, the DoD Appropriation would be charged $94 (see 225.7604(a)). Before Offer 6 or 9 could be accepted, they would require referral under 225.7604(b).
4. Offers 2, 3, 4, 7, and 10 are combination offers and would be given consideration in the absence of Offers 1, 6, and 9, or in the absence of Offer 1 and in case Offers 6 and 9 were not approved by higher authority after referral under 225.7604(b). Offer 7 would be preferred over Offers 2, 3, 4, and 10 because it contains a U.S. dollar content and the part to be paid in U.S. dollars is limited to that content. In the absence of Offer 7, Offer 10 would be preferred over Offers 2, 3, and 4 because it contains a U.S. dollar content of $50, and, although the part to be paid in U.S. dollars is more than that content, it would result in the least expenditure of U.S. dollars. In the absence of Offers 7 and 10, Offer 2 would be preferred over Offers 3 and 4 because it would result in the least expenditure of United States dollars. In the absence of Offers 2, 7, and 10, Offer 4 would be preferred. Offer 3 could not be considered for award because the U.S. dollar amount ($95) exceeds the lowest offer in U.S. dollars ($94) (see 225.7603(d)).
5. Offers 5 and 8 are entirely in U.S. dollars and would be given consideration in the absence of all other offers or in the absence of all other offers except 6 and 9 and in case those offers were not approved by higher authority after referral under 225.7604(b). Offer 8 would be preferred to Offer 5 because it contains a U.S. dollar content of $50.

225.7604 Awards.

(a) *Basis.* Award shall be made in accordance with (b) and (c) below. When unreasonable overpricing in relation to the U.S. dollar cost or the normal local foreign currency cost to non-DoD users of the same or similar items exists, the proposed acquisition shall be referred to higher authority.

(b) *Awards by the contracting officer.* The contracting officer shall have authority to award contracts as follows:

(1) To the offeror submitting the lowest responsive offer in whole or in part in excess foreign currency when

that offer does not exceed the lowest responsive offer in U.S. dollars by more than 50% and the lowest responsive offer in U.S. dollars does not exceed $50,000; (Note: The cost to the DoD Appropriation shall be the lowest responsive offer in U.S. dollars. The additional cost will be assumed by the Department of the Treasury.)

(2) To the offeror submitting the lowest responsive offer in whole or in part in near-excess foreign currency, when that offer does not exceed the lowest responsive offer in U.S. dollars;

(3) To the offeror submitting the lowest responsive offer entirely in U.S. dollars; Provided, That payment in U.S. dollars is authorized under 225.7606.

(c) *Awards requiring approval by higher authority.*

(1) The contracting officer shall refer the proposed acquisition to the appropriate official listed in (3) below when:

(i) The lowest responsive offer in excess foreign currency exceeds the lowest responsive U.S. dollar offer by more than 50%, regardless of the U.S. dollar cost of the contract;

(ii) The lowest responsive U.S. dollar offer exceeds $50,000; or

(iii) The lowest responsive offer in near-excess foreign currency exceeds the lowest responsive offer in U.S. dollars.

(2) The contracting officer shall refer the case expeditiously describing, as a minimum, the acquisition involved; the number of offers received in each currency category; the lowest responsive offer in U.S. dollars; the date or dates the offers will expire; and recommending the offer, if any, that should be accepted.

(3) The Secretaries of the Military Departments, the Assistant Secretary of Defense (Acquisition and Logistics), the Directors of Defense Agencies, and the Assistant Secretary of Defense (Comptroller), or their designees, shall determine whether a proposed acquisition described in (a) above shall be made payable in U.S.-owned foreign currency or in U.S. dollars.

225.7605 Determinations of nonfeasibility and contract certifications.

(a) At the time of award, the contracting officer shall determine whether payment in U.S.-owned foreign currency is feasible.

(b) When the contracting officer determines that it is not feasible under one of the criteria in 225.7606 to use U.S.-owned foreign currency for payment of a contract, he shall execute a Contract Certification in the following format.

Contract Certification

I hereby certify that it is not feasible to make payment under this contract in the country of _____ in the amount of $_____ from U.S.-owned foreign currency for the reason stated. (Cite the applicable criterion.)

(Signature) _____

(Typed Name and Title of Contracting Officer) _____

(c) When U.S.-owned foreign currency and U.S. dollars are combined for payment of a contract, the dollar amount shown in the Contract Certification shall be that amount which is to be paid in U.S. dollars.

(d) The original and one copy of each Contract Certification shall be furnished to the disbursing officer designated to make payments under the contract; and one signed copy shall be filed with the contract. Other distribution may be made in accordance with Departmental instructions.

225.7606 Criteria for nonfeasibility determinations.

The following criteria shall be used in determining that payment of contracts in whole or in part in U.S.-owned foreign currency is not feasible:

(a) The Department of the Treasury is not holding excess or near-excess foreign currency in the country concerned.

(b) The contract is to be awarded in a foreign country where there is U.S.-owned foreign currency but where a treaty, executive agreement, or law of the country concerned requires payments to be made in U.S. dollars.

(c) Responsive offers require payment in U.S. dollars in whole or in part.

(d) The only responsive offers received require payment entirely in U.S. dollars.

(e) The acquisition is for a compelling need and of such urgency that serious injury to the U.S. Government would likely be incurred if payment in excess or near-excess foreign currency were to be insisted upon.

(f) Offers in excess or near-excess foreign currency were unreasonably overpriced in relation to the U.S. dollar cost or the normal local foreign currency cost to non-Department of Defense users of the same or similar items or services and payment in United States dollars has been authorized by the proper authority under 225.7604(c)(3).

225.7607 Excess and near-excess foreign currency countries.

(a) The Department of the Treasury holds excess foreign currency in the following countries.

Country	Currency
Burma	Kyat.
Guinea	Franc.
India	Rupee.
Pakistan	Rupee.
Poland	Zloty.

(b) The Department of the Treasury holds near-excess foreign currency in the following countries.

Country	Currency
Taiwan	Taiwan Dollar.
Yugoslavia	Dinar.

(c) Changes in the currency position of the countries in which excess and near-excess foreign currency is held are disseminated periodically by the Departments to their disbursing officers.

225.7608 Contracts with domestic concerns.

The clause in 252.225-7021, Acquisition and Use of Excess and Near-Excess Currency, shall be included in any contract with a domestic concern when the contracting officer anticipates the contract will be performed in any U.S.-owned foreign currency country.

Subpart 225.77—Procurements Involving Work To Be Performed in Foreign Countries by United States Contractors

225.7700 Scope of subpart.

This subpart provides policy and procedure regarding procurements involving work to be performed in foreign countries by United States contractors.

225.7701 Policy.

When a contract which requires work to be performed in a foreign country by personnel of the United States or third country national contractor is contemplated by a purchasing activity not within the command jurisdiction of the unified or specified command involved, coordination shall be effected with the appropriate senior component commander in the country involved. In the event there is no such component command in the country, or the procurement does not pertain to a component command, this action shall be effected through either the unified commander, the unified command representative, or the designated commanding officer of the unified command for that country. Such coordination shall be effected as early as possible, preferably prior to the issuance of the solicitation, but in any event prior to award of a contract. When such coordination is initiated

prior to, or at the time of solicitation, the notification should include a copy of the solicitation, and as much of the information listed in (b) as is then available.

225.7702 Procedures.

(a) The contracting officer shall request the following information from the overseas Commander:

(1) The applicability of any international agreements to the requirement being procured;

(2) Security requirements applicable to the area concerned;

(3) Standards of conduct required to be observed by the prospective contractor and his employees, and any action that may be taken against them in the event required standards are not maintained; and

(4) Requirements pertaining to the use of foreign currencies, including applicability of United States holdings of excess foreign currencies.

(b) The contracting officer shall furnish the overseas Commander the following information prior to any contract performance:

(1) Any contractor logistical support desired in support of US or FMS requirements;

(2) Contract performance period and estimated contract value;

(3) Number and nationality of contractor employees and date of planned arrival of contractor personnel;

(4) Contract security requirements; and

(5) Other pertinent information to effect complete coordination and cooperation.

(c) Approvals and documentation of the contract file shall be as indicated in 225.870.

(d) In accordance with 229.402–70, the contracting officer shall, at the time of negotiation of a contract that is to be performed in a country or area listed in 229.101–10(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.

PART 227—PATENTS, DATA, AND COPYRIGHTS

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

Subpart 227.3—Patent Rights Under Government Contracts

227.304–1 General.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR 27.304–1(d)(ii)) may be submitted on DD Form 882.

227.304–4 Subcontracts.

The contracting officer shall insert the clause at 252.227–7034, Patents-Subcontracts, in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights-Retention by the Contractor (Short Form).

Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

227.400 Scope of subpart.

(a) This subpart sets forth the Department of Defense policies, procedures, implementing instructions, solicitation provisions, and contract clauses relating to rights in technical data, other data, computer software, and copyrights as well as to requirements for the acquisition of technical data and computer software. This subpart also sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, coyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

(b) Specific information concerning requirements for the acquisition of computer software is found in DoD Directive 5000.19–L, Volume II, "Acquisition Management Systems and Data Requirements Control List".

(c) This subpart does not encompass rights in computer software acquired under GSA authorized ADP Schedule Pricelist contracts. Such rights are governed by the terms of the GSA contracts.

227.401 Definitions.

"Commercial computer software", as used in this subpart, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this subpart, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer data base", as used in this subpart, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer program", as used in this subpart, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

"Computer software", as used in this subpart, means computer programs and computer data bases.

"Computer software documentation", as used in this subpart, means technical data, including computer listings and printouts, in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer.

"Data", as used in this subpart, means recorded information, regardless of form or characteristic.

"License rights", as used in this subpart (SBIR program contracts only), means rights to use, duplicate, or disclose technical data or computer software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. License rights do not grant to the Government the right to have or permit others to use technical data or computer software for commercial purposes.

"Limited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for reproduction of the computer software, or (c) used by a

party other than the Government, except for:

(1) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(2) Release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (1) above.

"Limited rights", as used in this subpart (SBIR program contracts only), means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government.

"Restricted rights", as used in this subpart, means rights that apply only to computer software, and include, as a minimum, the right to—

(a) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(b) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(c) Copy computer programs for safekeeping (archives) or backup purposes; and

(d) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a)–(d) above that are listed or described in a contract or described in a license or agreement made a part of a contract.

"Technical data", as used in this subpart, 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 acquire, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type 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 computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Technical data", as used in this subpart (SBIR program contracts only), means recorded information, regardless of form or characteristic, of a scientific or technical nature. 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 computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Unlimited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

227.402 Copyrights.

(a) In general, the copyright law gives an owner of copyright the exclusive rights to—

(1) Reproduce the copyrighted work in copies or phonorecords;

(2) Prepare derivative works;

(3) Distribute copies or phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) In view of the exclusive rights in subparagraphs (1)–(5) above, any technical data, other data, or computer software that is protected under the copyright law is not in the public domain, even though it may have been published, because acts inconsistent with these rights may not be exercised without a license from the copyright owner.

(c) Department of Defense policy affords the contractor ownership of copyright in any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work" in which case ownership and control of the work is retained by the Government and the contractor is precluded by the terms of the contract from asserting any rights or claim to copyright in the work. Department of Defense policy also requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any work of authorship (other than a "special work") first prepared, produced, originated, developed, or generated and, in addition, requires that the contractor grant to the Government and authorize the Government to grant to others the same license in any work of authorship acquired by the Government under the contract (not first prepared) in which the copyright is owned by the contractor.

(d) Under the clause at 252.227–7013, Rights in Technical Data and Computer Software, the contractor grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, under any copyright owned by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. Under the clause at 252.227–7020, Rights in Data—Special Works, any work first produced in the performance of the contract becomes the sole property of the Government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. Under this clause, the contractor similarly grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under the contract.

(e) Under both of these clauses at 252.227–7013 and 252.227–7020, unless written approval of the contracting officer is obtained, the contractor also agrees not to include in any work prepared, produced, originated, developed, generated, or acquired under the contract, any work of authorship in which copyright is not owned by the contractor without acquiring for the Government and those acting by or on

behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyrighted work.

227.403 Acquisition of rights in technical data.

227.403-1 Background.

(a) *Government's interest in technical data.* The Government has extensive needs for many kinds of technical data. Its needs may well exceed those of private commercial customers. For defense purposes, millions of separate equipment and supply items, ranging from standard to unique types, must be acquired, operated, and maintained, often at points remote from the source of supply. Functions requiring varied kinds of technical data include training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging, and logistics operations. Technical data resulting from research and development contracts must be obtained, organized and disseminated to many different users. Finally, the Government must make technical data widely available in the form of contract specifications in order to obtain competition among its suppliers, and thus further economy in Government acquisition.

(b) *Contractor's interest in technical data.* Commercial organizations have a valid economic interest in technical data pertaining to items, components, or processes which they have developed at their own expense. Such technical data is often closely held because its disclosure to competitors could jeopardize the competitive advantage it was developed to provide. Public disclosure of such technical data can cause serious economic hardship to the originating company.

(c) *The balancing of interests.*

(1) It is apparent that there is no necessary correlation between the Government's need for technical data and its contractors' economic interest therein. However, in balancing the Government's requirements for technical data against the contractor's interest in protecting its technical data, it should be recognized that there may be a considerable identity of interest. This is particularly true in the case of innovative contractors who can best be encouraged to develop at private expense items of military usefulness where their rights in such items are scrupulously protected.

(2) It is equally important that the Government foster successful contractual relationships and encourage a ready flow of data essential to Government needs by confining its acquisitions of technical data to cases of actual need. Certainly the Government must not be barred from bargaining and contracting to obtain such technical data as it needs, even though that technical data may normally not be disclosed in commercial practice. Moreover, when the Government pays for research and development work which produces new knowledge, products, or processes, it has an obligation to foster technological progress through wide dissemination of the new and useful information derived from such work and where practicable to provide competitive opportunities for supplying the new products and utilizing the new processes.

(3) At the same time, acquiring, maintaining, storing, retrieving, and distributing technical data in the vast quantities generated by modern technology is costly and burdensome for the Government. For this reason alone, it would be necessary to control closely the extent and nature of technical data acquisition. Such control is also necessary to ensure Government respect for its contractors' economic interest in technical data relating to their privately developed items. The policies and procedures of this subsection are framed in the light of these considerations.

227.403-2 Policy.

(a) *General.*

(1) It is the policy of the Department of Defense to acquire only such technical data rights as are essential to meet Government needs.

(2) In deciding whether to acquire technical data for future acquisitions so that all such acquisitions can be made on a competitive basis to the maximum practicable extent, the provisions of this section shall govern.

(b) *Unlimited rights technical data.* Technical data in the following categories shall be acquired with unlimited rights:

(1) Technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in a Government contract or subcontract;

(2) Technical data necessary to enable others to manufacture end-items, components and modifications, or to enable them to perform processes, when the end-items, components, modifications or processes have been, or are being, developed under Government contracts or subcontracts in which experimental, developmental or research work was specified as an element of contract performance, except technical data pertaining to items, components or processes developed at private expense;

(3) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data;

(4) Technical data pertaining to end-items, components or processes, prepared or required to be delivered under any Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(5) Manuals or instructional materials prepared or required to be delivered under a Government contract or subcontract for installation, operation, maintenance or training purposes; and

(6) Technical data which is in the public domain or has been or is normally released or disclosed by the contractor or subcontractor without restriction on further disclosure. "In the public domain" means available to the public without copyright or other restriction of any kind.

(c) *Limited rights technical data.*

(1) Except as provided in paragraph (b) above, unpublished technical data pertaining to items, components or processes developed at private expense will be acquired with limited rights; *Provided*, that the data is identified as limited rights data in accordance with subparagraph (b)(2) of the clause at 252.227-7013, Rights in Technical Data and Computer Software. Unpublished, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure.

(2) It should be clearly understood that the above statement of policy is a recital of rights to be acquired in technical data. Neither the foregoing statement of technical data rights policy, nor its implementing subparagraphs (b)(1) and (2) of the clause at 252.227-7013, Rights in Technical Data and Computer Software, establishes technical data requirements for a particular contract. It should also be noted that technical data pertaining to items, components or processes developed at private expense may be called for, required, or otherwise furnished under subparagraphs (b)(1), (3), (4), (5), and (6) above and, as such, it will be acquired with unlimited rights. Contract clauses and the schedule establish the form and type of technical

data to be furnished; the categories into which such technical data fall, determine the rights to be obtained by the Government to use or publish such technical data.

(d) *Predetermination of Rights in Technical Data.*

(1)(i) When the Government needs technical data with unlimited rights, any data which the offeror intends to deliver with limited rights pursuant to paragraph (c) above should be identified prior to contract award, if feasible, and an agreement with respect thereto shall be incorporated in the contract. This procedure is called predetermination of rights in technical data.

(ii) The procedure may be initiated by the contracting officer or an offeror during the negotiation of a negotiated contract. In order to be productive, the procedure should apply only to that technical data for which rights may practicably be identified. Although the agreement may also cover technical data to be delivered with unlimited rights, in no case shall the procedure be used to require the contractor to purnish, with unlimited rights, technical data which it is entitled to furnish with limited rights under the policy in paragraph (c) above. The contracting officer shall consult counsel as fully as possible in determining whether to use the procedure and in connection with the various steps of the procedure.

(2) Any agreements reached shall be incorporated in the Schedule of the contract directly or by reference and shall describe specifically the technical data which may be furnished with limited rights pursuant to paragraph (c) above. The contracting officer may, however, review the technical data asserted to be limited rights data to determine whether to invoke the procedures of paragraph (f) below to negotiate to purchase unlimited rights in any of the technical data, or adopt some alternative such as to—

(i) Delete or modify the requirement for the technical data in which the Government would need unlimited rights if it were ordered; or

(ii) Modify the specifications so as not to require or permit the use of the item, component or process covered by the limited rights data; or

(iii) Include a contractual option to acquire unlimited rights.

(3) When the predetermination of rights in technical data procedure is to be used, include the provision at 252.227–7014, Predetermination of Rights in Technical Data, in the Request for Proposals.

(4) If completion of predetermination proves impracticable before award or if contractual requirements relating to design or technical data items are changed during the course of a contract, an appropriate provision shall be included in the contract, requiring the contractor to complete the identification of limited rights with respect to that technical data listed in the solicitation for which predetermination was proposed, or to identify limited rights technical data relating to the changed requirements.

(e) *Subcontracts.* It is the policy of the Department of Defense that prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the technical data of their subcontractors for themselves. Accordingly, a subcontractor who would have the right pursuant to paragraph (c) above to furnish technical data with limited rights, may furnish such limited rights data directly to the Government rather than through the prime contractor.

(f) *Specific acquisition of unlimited rights in technical data.*

(1) Notwithstanding paragraph (c) above or any other provision of this subsection the Government may acquire unlimited rights in any limited rights technical data by means of negotiation with an individual contractor or subcontractor, or as a part of a competition among several contractors or subcontractors. Such individual negotiation or competition may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. Such unlimited rights in technical data shall be stated in the contract schedule as a separate item and shall be separately priced. Unlimited rights in technical data shall not be acquired under this paragraph unless it is determined after a finding upon a documented record that—

(i) There is a clear need for repurchase of the item, component, or process to which the technical data pertains;

(ii) There is no suitable item, component or process of alternate design or availability;

(iii) The item or component can be manufactured or the process performed through the use of such technical data by other competent manufacturers, without the need for additional technical data which cannot be purchased reasonably or is not readily obtained by other economic means; and

(iv) Anticipated net savings in repurchases will exceed the acquisition cost of the technical data and rights therein.

(2) The analysis and findings referred to in subparagraph (b)(1) above shall specifically identify each item, component or process and the particular technical data therefor which is to be purchased.

(3) When all technical data is to be acquired under any contract with unlimited rights in accordance with the findings of paragraph (f)(1) above, the clause at 252.227–7015, Rights in Technical Data-Specific Acquisition, shall be used.

(4)(i) In addition to the acquisition of unlimited rights in technical data as authorized in paragraph (f)(1) above, there will be situations when it is in the best interest of the Government to acquire from subcontractors repair parts or components by direct sale to the Government.

(ii) The clause at 252.227–7017, Rights in Technical Data—Major System and Subsystem Contractor, may be used in contracts for major systems or major subsystems involving estimated program expenditures in excess of $50 million of RDT&E funds or in excess of $200 million of production funds. When this clause is used, any compensation the contractor requires for the right the subcontractor will have to use his limited rights, technical data shall be included in the price of the prime contract. Also, the Government shall have the right to purchase such items direct from manufacturing subcontractors without the payment, either directly of any fee or royalty to the prime contractor, or as part of the purchase price, for use of the prime contractor's technical data.

(iii) For the purpose of applying the foregoing policy, the following definitions shall be utilized: A major system is a composite of equipment, skills, and techniques capable of performing and/or supporting an operational role which required or will require research, development, test and evaluation investment or design, development, test and evaluation investment estimated in excess of $50 million or total production investment estimated in excess of $200 million. A major subsystem is a major functional part of a major system (as defined above) which is essential to operational completeness. Examples are: airframe, propulsion, armament, guidance, and communication. A major system or major subsystem contractor includes an associate contractor defined as a prime contractor to the Government for developing and/or producing subsystems, equipment, or components meeting specifications prepared by a contractor performing one or more of the functions of systems engineering for a major system (as defined above).

(g) *Notice of certain limited rights.*

(1) Whether or not the procedure of paragraph (d) above for predetermination of rights in technical data is used, if continuing information is desired under a contract about a contractor's intention to use in the performance of the contract any item, component, or process for which technical data would be subject to limited rights in accordance with the policy of paragraph (c) above, the contractor may be required to advise the contracting officer of this fact promptly (see subparagraph 227.412(a)(2) and Alternate I to the clause at 252.227–7013, Rights in Technical Data and Computer Software). If possible, the schedule should indicate the specific areas pertaining to which limited rights data is of concern and the notice requirement should be restricted to those areas of concern.

(2) No such advice shall be required as to items, components, or processes for which notice was previously given pursuant to the predetermination procedure in the same contract, or with respect to standard commercial items which are manufactured by more than one source of supply. No contracting officer approval under this clause is necessary for the contractor to use any item, component, or process, identified pursuant to this requirement, in the performance of the contract.

(3) If the contracting officer agrees that under the policy stated in paragraph (c) above such technical data would be subject to limited rights, the contracting officer may then determine whether to invoke the procedure of paragraph (f) above, to negotiate for the purchase of unlimited rights in such data or to adopt other suitable alternatives. The contract shall be amended to reflect any changes required by these procedures.

227.403–3 Procedures.

(a) *Deviations.* Extension of the six-month period of subparagraph (d)(2) below shall be processed under the authority of FAR section 1.403. Other deviations to section 227.403 and from the clauses prescribed for use herein shall be processed in accordance with the procedures in FAR section 1.404.

(b) *Establishing the Government's rights to use technical data.* All technical data specified in a contract or subcontract for delivery thereunder shall be acquired subject to the rights established in the appropriate Rights in Technical Data clauses. Except as provided in FAR section 48.105 and in FAR Subpart 36.6 no other clauses, directives, standards, specifications or other implementation shall be included, directly or by reference, to enlarge or diminish such rights. The Government's acceptance of technical data subject to limited rights does not impair any rights in such data to which the Government is otherwise entitled or impair the Government's right to use similar or identical data acquired from other sources.

(c) *Marking of technical data.*

(1) Technical data delivered to the Government pursuant to any contract requirement shall be marked with the number of the prime contract, except as provided, in subparagraph 227.404–2(c)(2), and the name of the contractor and any subcontractor who generated the technical data. Each piece of technical data submitted with limited rights shall also be marked with—

(i) The authorized restrictive legend,

(ii) An indication (for example, by circling, underscoring, or a note) of that portion of the piece of technical data to which the legend is applicable, and

(iii) An explanation of the indication used to identify limited rights data.

The Government shall include such identifying markings on all reproductions thereof, unless the Government cancels such markings pursuant to subparagraphs (c)(2), (d)(3), or (d)(4) below.

(2) The contractor has the responsibility to assure that no restrictive markings are placed on technical data except in accordance with the "Rights in Technical Data and Computer Software" clause at 252.227–7013. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402, are not considered "restrictive markings". When the clause at 252.227–7013, "Rights in Technical Data and Computer Software", is required by 227.412(a), the clause at 252.227–7018, "Restrictive Markings on Technical Data", shall also be included in the contract. The contractor's procedures required by this clause shall be reviewed periodically by the Contract Administration Office. In addition to the rights afforded to the Government by the clause at 252.227–7018, "Restrictive Markings on Technical Data", the following actions are available to insure proper marking of technical data:

(i) The procedures in paragraph (d), "Removal of Unauthorized Markings", of the clause at 252.227–7013, may be invoked if the contractor fails to follow procedures required by the clause at 252.227–7013, Rights In Technical Data and Computer Software, or fails to correct deficiencies within a specified time.

(ii) Failure to follow proper marking procedures may also be deemed to render technical data nonconforming and subject to FAR section 46.102 and to withholding of payments under the "Technical Data—Withholding of Payments" clause.

(iii) When a pre-award survey is requested by the purchasing office, the quality assurance review shall include as an item of special inquiry an examination of the prospective contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause.

(iv) The contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause shall be reviewed when holding post-award conferences pursuant to FAR Part 42.

(d) *Unmarked or improperly marked technical data.*

(1) The Government shall have the right to require the contractor to furnish clear and convincing evidence of the propriety of any restrictive markings used by the contractor on data furnished to the Government under contract.

(2) Technical data received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, within six months after delivery of such data the contractor may request permission to place restrictive markings on such data at its own expense and the Government may so permit if the contractor—

(i) Demonstrates that the omission of the restrictive marking was inadvertent,

(ii) Establishes pursuant to subparagraph (d)(1) above that the use of the markings is authorized, and

(iii) Relieves the Government of any liability with respect to such technical data (see paragraph 227.403–3(a)).

(3) If technical data which the contractor is not authorized by the contract to furnish with limited rights is received with restrictive markings, the technical data shall be used with limited rights pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to substantiate by clear and convincing evidence that the markings were authorized, the cognizant Government personnel shall cancel or ignore such markings, notify the contractor accordingly in writing, and thereafter may use such technical data with unlimited rights.

(4) If technical data which the contractor is authorized by the contract to furnish with limited rights is received with restrictive markings not in the form prescribed by the contract, the technical data shall be used with limited rights,

and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to so correct the markings within 60 days after notice, Government personnel may correct or cancel the markings, so notify, the contractor in writing, and thereafter use the technical data accordingly.

(e) *Technical data furnished on a restricted basis in support of a proposal.* When the contracting officer contemplates awarding a contract on a solicited or unsolicited proposal which was offered on a restricted basis (see FAR 5.413 and FAR 15.509), the contracting officer shall ascertain whether to acquire rights to use all or part of the technical data furnished with the proposal. If such rights are desired, the contracting officer shall negotiate with the offeror in accordance with the policies set forth in this section 227.403. If the offeror agrees to furnish the technical data under the contract, the appropriate clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be inserted in the contract, and the contract shall identify the technical data to be covered by the clause as provided by section 227.410.

(f) *Delivery of technical data to foreign governments.* As provided in the definition of limited rights in section 227.401, limited rights include the right of the Government to deliver the technical data to foreign governments as the national interest of the United States may require, subject to the same limitations which the Government accepts for itself. When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice thereof to the contractor or subcontractor who generated the technical data and whose name appears thereon.

227.404 Acquisition of rights in computer software.

227.404–1 Policy.

(a) The Government shall have unlimited rights in:

(1) Computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) Computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government (ii) information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(4) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, *provided* however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in section 227.401.

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see section 227.7011.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in section 227.401, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in subdivision (b)(3)(i) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

227.404–2 Procedures.

(a) *Deviations.* All requests for deviations from this section 227.404 shall be submitted to the DAR Council in accordance with the procedures in FAR 1.404.

(b) *General.* (1) Except as provided at 252.227–7031, Data Requirements, any computer program or computer data base to be acquired under a contract shall be listed on the Contract Data Requirements List (DD Form 1423). Also, if a contract requires the conversion of data to machinereadable form, the editing or revision of existing programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(2) The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause at 252.227–7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227–7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation.

(3) Contracts under which computer software developed at private expense is acquired or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being acquired. The recital of restrictions may be complete within itself or it may

reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights are provided in the Rights in Technical Data and Computer Software clause at 252.227–7013, and need not be included in the recital.

(4) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(5) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

(c) *Computer software subject to restricted rights.*

(1) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in paragraph 227.404–1(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(2) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (b)(3)(B) of the Rights in Technical Data and Computer Software clause at 252.227–7013", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 227.403–3(d).

(3) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in humanreadable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(4) Except as provided in paragraph (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(5) All markings, (notice, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(6) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

(d) *Unmarked or improperly marked computer software.*

(1) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(2) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at its own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(3) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

227.405 Contracts for acquisition of special works.

(a) The clause at 252.227–7020, Rights in Data—Special Works, shall be used in all contracts for special works, including technical data and computer software, where ownership and control by the Government is desired, for example, in contracts—(1) primarily for the production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like; (2) for histories of the respective Departments for services or units thereof; (3) for works pertaining to recruiting, morale, training, or career guidance; (4) for surveys of Government establishments; (5) for works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and (6) primarily for production of technical reports, studies, or similar documents.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and

the like which are consistent with the purpose for which the works are acquired.

227.406 Contracts for acquisition of existing works.

(a) *Off-the-shelf acquisition of books and similar items.* Notwithstanding the instructions of any other paragraphs in this part, no contract clause contained in this part need be included in contracts for the separate, sole acquisition of data, other than motion pictures, in the exact form in which such material exists prior to the initiation of a request for acquisition (such as the off-the-shelf acquisitions of existing products) unless the right to reproduce such technical data is an objective of the contract.

(b) *Acquisition of existing audiovisual works.*

(1) The clause at 252.227–7021, Rights in Data—Existing Works, shall be used in contracts exclusively for the acquisition of existing motion pictures, television recordings, or other audiovisual works. The contract may set forth limitations consistent with the purposes for which the material covered by the contract is being acquired. Examples of these limitations are—(i) means of exhibition or transmission; (ii) time; (iii) type of audience; and (iv) geographical location. Paragraph (c) of the clause should be modified to make the indemnity coextensive with the rights acquired under paragraph (b) of the clause as limited by the contract.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or addition of subject matter, the clause at 252.227–7020, Rights in Data—Special Works, appropriately modified, shall be used.

227.407 Contracts limiting government's right of publication for sale to the general public.

The paragraph of Alternate II may be added to the clause at 252.227–7013, Rights in Technical Data and Computer Software, for use in contracts for research when the contracting officer determines, in consultation with counsel, as appropriate, that public dissemination of a work, or certain designated parts of a work, specified to be delivered under the contract is in the best interest of the Government and would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government. This paragraph shall not be used otherwise.

227.408 Architect-engineer and construction contracts.

227.408–1 General.

This section sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.408–2 Acquisition and use of plans, specifications, and drawings.

(a) *Architectural designs and data clauses for architect-engineer or construction contracts.*

(1) *Plans and specifications and as-built drawings.*

(i) Except as provided in (ii) below, insert the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts calling for architect-engineer services or in contracts for construction involving architect-engineer services.

(ii) 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 clause at 252.227–7023, Drawings and Other Data to Become Property of Government, shall be used in solicitation and contracts. If the contract is for architect-engineer services, the clause at 252.227–7022 shall be deleted and the clause at 252.227–7023 substituted therefor. If the contract is for construction involving architect-engineer services, only the clause at 252.227–7023 shall be included.

(2) *Shop drawings for construction.* In acquiring shop drawings for construction, the Government shall obtain the unlimited right to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in solicitations and contracts calling for delivery of such drawings, insert the clause at 252.227–7033, Rights in Shop Drawings.

227.408–3 Contracts for construction supplies and research and development work.

The solicitation provisions and contract clauses in Subpart 227.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitation and contracts for the acquisition of other than construction or architect-engineer services are applicable when the acquisition is limited to either (a) construction supplies or materials as such, as distinguished from construction as defined in FAR 36.102; (b) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (c) both. The right of the Government and others to use, duplicate, or disclose such technical data, other data, or computer software will be determined by the terminology of the applicable clauses in the contracts or the terminology of agreements recited-in or made part of the contracts.

227.408–4 Mixed contracts.

When solicitations and resulting contracts call for (a) supplies or materials, (b) experimental, developmental or research work, or (c) both, in addition to either construction or architect-engineer work, the solicitation provisions and contract clauses in Subpart 227.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitations and contracts for the acquisition of other than construction or architect-engineer services shall be included in such solicitations and resultant contracts in addition to the appropriate solicitation provisions and contract clauses prescribed for use in solicitations and contracts for construction or architect-engineer services. In such cases, the solicitations and resulting contracts shall clearly indicate which of the solicitation provisions and contract clauses apply only to the supplies or materials being acquired, or to the experimental, developmental, or research work, or to both, and which of the solicitation provisions and contract clauses apply only to the construction or architect-engineer work.

227.408–5 Approval of restricted designs.

(a) 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 be sole source, and the reasons therefor, 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.

(b) 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 specification 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 acquisitions. For this purpose, the clause at 252.227-7024, Notice and Approval of Restricted Designs, may be inserted in architect-engineer contracts.

227.409 Contracts awarded under small business innovation research program (SBIR Program).

(a) Pub. L. 97-219, "Small Business Innovation Development Act of 1982", requires certain agencies to establish a Small Business Innovation Research Program (SBIR Program). The public law also includes terminology providing for "retention of rights in data generated in the performance of the contract by the small business concern". The Small Business Administration (SBA) issued Policy Directive No. 65-01 on 19 November 1982 to provide policy direction for the conduct of the Small Business Innovation Research Programs within the federal agencies. The policy directive was issued pursuant to the authority contained in the public law.

(b) In the policy directive, the SBA in essence recommended that, except for program evaluation, agencies should protect technical data and computer software generated under an SBIR Program contract (funding agreement) for a period of two years from the completion of the contract under which the technical data and computer software were generated, unless the agencies obtained permission to disclose such data and software from the contractor. The SBA also recommended that, effective at the conclusion of the two-year period, the Government shall have a royalty-free license in the technical data and computer software for Government use. The SBA further recommended that the contractor, with prior written permission of the contracting officer, be afforded ownership of copyright in technical data and computer software generated under an SBIR Program contract and that the contractor be allowed to publish (subject to national security considerations, if any) such data and software. The policy directive considered it appropriate that the Government should receive a royalty-free license under any copyright and that each publication should contain an appropriate acknowledgement and disclaimer statement.

(c) The clause at 252.227-7025, Rights in Technical Data and Computer Software (SBIR Program), incorporates the coverage recommended by the SBA policy directive and shall be included in all contracts awarded under the SBIR Program in which technical data or computer software is required to be prepared, originated, developed, generated, or delivered. The clause differs basically from the clause at 252.227-7013, Rights in Technical Data and Computer Software, in that it incorporates a new category of rights defined as license rights. This new category permits certain technical data and computer software generated under an SBIR Program contract to be delivered with a license rights legend thereon. The clause thus permits technical data to be acquired under a contract with license rights, unlimited rights, or limited rights; and computer software to be acquired with license rights, unlimited rights or restricted rights. The clause is limited to use solely in contracts awarded under the SBIR Program.

227.410 Acquisition of technical data and computer software.

227.410-1 General.

(a) *Policy.*

(1) Technical data and computer software is expensive to prepare in the required form and to maintain and update. Every effort, therefore, should be made to avoid placing a requirement upon a contractor to prepare and deliver technical data or software unless the need is positively determined. By delaying the delivery of technical data or software until needed for a specific purpose, storage requirements within DoD of technical data and computer software items are reduced, the handling of technical data and software superseded by updated versions is greatly decreased and the purchase of technical data or software which may become obsolete by pending hardware changes is minimized.

(2) Economy in the purchase of technical data and software and the probability of greater currency may be achieved by deferring the delivery, and in some cases deferring the ordering, of technical data or software until an operational need is determined, or until stability of design or production is reached during contract performance. The application of the deferred delivery and deferred ordering principles, as explained further, should be made only after a careful evaluation on a case-by-case basis of the anticipated operational uses of technical data or computer software and any other relevant considerations. When it is expected that technical data or computer software may be required, but the precise need at time of contracting has not been determined, deferred ordering will be used to avoid the cost of preparation but allow the ordering of the technical data or software at some point downstream in contract performance should the need arise. When the need but not the time of delivery can be determined, deferred delivery will be used. When deferred delivery is used, it is expected that the contractor will price the technical data and software at the time of contracting and incur the cost of preparation prior to the call for delivery. Therefore, it is important that deferred ordering rather than deferred delivery be used where the need for technical data or software is doubtful. Whether the technique of deferred delivery or deferred ordering is used, the receipt of technical data or software by the Government should be scheduled to be in phase with a specific and planned use of the technical data or software.

(b) Deferred delivery refers to the practice of timing the delivery of technical data or computer software specified in a contract to a firm, operational need. This technique should be used only when a technical data or software requirement can be determined at the time of contracting and therefore is specified on the DD Form 1423, but the time or place of delivery is not firm. The dates for the delivery of data and software should be scheduled to coincide with the needs of the Government. The contractor, however, must be notified sufficiently in advance of a delivery date to enable the contractor to provide the technical data or software in specified form on time. Thus, in any contract the Government may defer the delivery of all or any portion of the technical data or computer software specified in the contract until actual need can be economically determined. The Government may require the contractor to deliver any such data or software, or portions thereof, at any time during the

performance of the contract or within two years from either acceptance of all items (other than data and software) under the contract or termination of the contract, whichever is later. However, the contractor's obligation to deliver technical data pertaining to any item obtained from a subcontractor shall cease two years after the date on which it accepts the item. The Government's rights in deferred delivery data and software are as prescribed in the contract under which the data or software is to be delivered. When the delivery of technical data or computer software is to be deferred, the clause at 252.227–7026, "Deferred Delivery of Technical Data or Computer Software", shall be included in the contract.

(c) Deferred ordering refers to delaying the ordering of technical data or computer software generated in the performance of the contract until such time as a need can be established and the requirements can be specifically identified for delivery under the contract. In many instances it is difficult to determine during solicitation and negotiation stages exactly what data or software is needed. The information available at these stages may suggest the need for some data or software but further information may be needed to identify the specific data or software items. In such situations, and also when it is desired to delay the ordering of technical data or computer software until such time as the production design becomes firm, the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, is appropriate. The requirement for technical data or computer software under these circumstances is not listed on the DD Form 1423 until the specific need is determined. Whenever the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, is used, the clause at 252.227–7013, Rights in Technical Data and Computer Software, shall also be included. When data or software items are ordered, the delivery dates shall be negotiated and the contractor shall be compensated for converting the data or software into the prescribed form, for reproduction and delivery to the Government. Compensation to the contractor shall not include the cost of generating such data or software since it was generated in the performance of work for which the Government has already agreed to pay the contractor.

227.410–2 Requirement for technical data certification.

The provision at 252.227–7028, Requirement for Technical Data Certification, shall be included in a solicitation that may result in a negotiated contract when information is needed to establish whether an offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in the offer (see 215.406 and FAR 15.406–5(a)). This solicitation provision requires the offeror to submit with the offer a certification as to whether the same or substantially the same technical data that is included in the offer has been delivered or is obligated to be delivered to the Government under any contract or subcontract. If so, the offeror will be required to identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

227.410–3 Identification of technical data.

(a) The contractor is required to include on technical data delivered under a contract the contractor's name, the contract number and the name of any subcontractor who generated any part of such data. If technical data were marked, for example, in the manner permitted by paragraph (b)(2) of the clause at 252.227–7013, Rights in Technical Data and Computer Software, such marked data would comply with the requirements of the clause identified in (b) below and need not be further identified pursuant to this clause. The marking requirement provides the basis for identifying the rights of the contractor and the Government in technical data.

(b) To insure that technical data is fully identified as to its source, the clause at 252.227–7029, Identification of Technical Data, shall be made a part of any contract under which technical data is to be delivered.

227.410–4 Technical data—withholding of payment.

(a) Timely delivery of technical data is particularly important to the operation and maintenance of equipment as well as competitive procurement of follow-on quantities of contract items and of items broken out from an assembly or equipment. The clause at 252.227–7030, Technical Data—Withholding of Payment, is designed to assure timely delivery of technical data. The clause permits a withholding not exceeding 10 percent of the total contract price or amount, but the contracting officer may specify a lesser amount in the contract if circumstances warrant. A case-by-case determination as to the amount to be withheld shall be made by the contracting officer after considering the estimated value of the technical data to the Government. No amount shall be withheld when the failure to make timely delivery arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) Withholding action under paragraph (b) of the clause should be taken only when the contractor has failed to make timely deliveries of acceptable technical data on other contracts or if the contracting officer has information which would cause the contracting officer to anticipate late delivery of technical data or delivery of deficient technical data. The amount of withholding should be based on the estimated value of the technical data to the Government.

227.410–5 Warranties of technical data.

The factors contained in section 246.703, Criteria for Use, shall be considered in deciding whether to provide for warranties of technical data delivered under contracts calling for technical data. The basic technical data warranty clause is set forth at 252.246–7001, Warranty of Data. There are two alternates to the basic clause. The basic clause and the appropriate alternate should be selected in accordance with section 246.770.

227.410–6 Data requirements.

(a) The clause at 252.227–7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) Any contract, of which the aggregate amount involved does not exceed $25,000 and in any blanket purchase agreement and purchase order utilizing the DD Form 1155 (however, the DD Form 1423 shall be used with orders issued under a basic ordering agreement);

(2) Any contract awarded to a contractor outside the United States, except those under Subpart 225.71, Canadian Purchases;

(3) Any research or exploratory development contract when reports are the only deliverable item(s) under the contract;

(4) Any service type contract, when the contracting officer determines that the use of the DD Form 1423 (Contract Data Requirements List) is impractical for use with respect to records prepared by a contractor in performing operation and maintenance under the contract;

(5) Any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) Any contract for commercial items when the only deliverable data is such an item, or would be packaged or

furnished with such items in accordance with customary trade practices; or

(7) Any contract for items containing material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life and property, when the only deliverable data is the Materials Safety Data Sheet (MSDS) submitted in compliance with Federal Standard 313A and the clause at FAR 52.223-3, Hazardous Material Identification and Material Safety Data, and when such clause is included in the contract.

(b) The clause at 252.227-7031, Data Requirements, states that the contractor is required to deliver only the data items listed on the DD Form 1423 and the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 made a part of the contract.

(c) Other than the data items falling within the exceptions set forth in paragraph (a) above, and the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 made a part of the contract, the requirement for delivery of any data items under the contract can be established only by listing the data items on the DD Form 1423 (see section 253.270). The clause at 252.227-7031, Data Requirements, shall be inserted in all contracts in which the DD Form 1423 is used. The DD Form 1423 need not be used to list data or software requirements in any of the contracts falling within the exceptions set forth in paragraph (a) above.

227.411 Contracts with foreign sources to be performed outside the United States.

Normally, the clause at 252.227-7032, Rights in Technical Data and Computer Software (Foreign), is used in solicitations and contracts with foreign sources, except that the clause shall not be used in contracts for special works (see section 227.405), contracts for existing works (see section 227.406), or contracts for Canadian purchases (see Subpart 225.71, Canadian Purchases). This clause should be inserted when the Government is to acquire unlimited rights in all technical data, including reports, drawings and blueprints, and all computer software, specified to be delivered to the Government. The clause at 252.227-7013, Rights in Technical Data and Computer Software, shall be inserted when the same rights are to be obtained as would be obtained if contracting with United States firms. Notwithstanding paragraphs 227.403-3(a) and 227.404-2(a), the clause may be modified to meet the requirements necessary for and peculiar to the foreign acquisition; *Provided*, it agrees with the policies and principles of subsections 227.403-2 and 227-404-1.

227.412 Solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the basic data clause at 252.227-7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered or computer software may be originated, developed, or delivered, *provided* that such clause shall not be used in solicitations and contracts—

(i) When all technical data to be delivered is to be acquired with unlimited rights pursuant to the policy at 227.403-2(f) in which case the clause at 252.227-7015, Rights in Technical Data—Specific Acquisition, shall be used;

(ii) When existing works are to be acquired in accordance with section 227.406;

(iii) When special works are to be acquired in accordance with section 227.405;

(iv) When the work will be performed by foreign sources outside the United States, its territories, possessions, or Puerto Rico, in which case the clause at 252.227-7032, Rights in Technical Data and Computer Software (Foreign) applies;

(v) When performance will be limited solely to architect-engineer services or construction, in which case either the clause at 252.227-7022, Architect-Engineer Work—Unlimited Rights, or the clause at 252.227-7023, Architect-Engineer Work—Sole Property Rights, applies; and

(vi) When the contract is awarded under the DoD Small Business Innovation Research Program (SBIR Program), in which case the clause at 252.227-7025, Rights in Technical Data and Computer Software (SBIR Program), applies.

(2) The contracting officer shall use the clause with its Alternate I in accordance with the policy at 227.403-2(g).

(3) The contracting officer shall use the clause with its Alternate II under the circumstances specified at 227.407.

(b) The contracting officer shall insert the provision at 252.227-7014, Predetermination of Rights in Technical Data, in solicitations when the procedure of 227.403-2(d) is to be used.

(c) The contracting officer shall insert the clause at 252.227-7015, Rights in Technical Data—Specific Acquisition, in solicitations and contracts when all technical data is to be acquired with unlimited rights in accordance with 227.403-2(f) (1),(2), and (3). The clause shall also be included in subcontracts when the Government has determined to acquire all technical data with unlimited rights from a subcontractor in accordance with the authority and findings of subparagraph 227.403-2(f) (1), (2), and (3). The clause shall not be used under any other circumstances.

(d) The contracting officer, in order to prevent any misinterpretation of the scope of the clause at 252.227-7013, Rights in Technical Data and Computer Software, in the contract, may insert the clause at 252.227-7016, Contract Schedule Items Requiring Experimental, Developmental, or Research Work, in solicitations and contracts when the solicitations and contracts, in whole or in part, call for experimental, developmental, or research work as an element of performance.

(e) The contracting officer may insert the clause at 252.227-7017, Rights in Technical Data—Major System and Subsystem Contracts, in solicitations and contracts for major systems or major subsystems under the circumstances specified at 227.403-2(f)(4) (i), (ii), and (iii).

(f) The contracting officer shall insert the clause at 252.227-7018, Restrictive Markings on Technical Data, in all solicitations and contracts in accordance with 227.403-3(c)(2).

(g) The contracting officer shall insert the provision at 252.227-7019, Identification of Restricted Rights Computer Software, in solicitations and contracts in accordance with 227.404-2(b)(2).

(h) The contracting officer shall insert the clause at 252.227-7020, Rights in Data—Special Works, in solicitations and contracts as required by 227.405.

(i) The contracting officer shall insert the clause at 252.227-7021, Rights in Data—Existing Works, in solicitations and contracts as required by 227.406.

(j) The contracting officer shall insert the clause at 252.227-7022, Government Rights (Unlimited) in solicitations and contracts in accordance with 227.408-2(a)(1)(i).

(k) The contracting officer shall insert the clause at 252.227-7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts in accordance with 227.408-2(a)(1)(ii).

(l) The contracting officer shall insert the clause at 252.227-7024, Notice and Approval of Restricted Designs, in solicitations and contracts in accordance with 227.408-5.

(m) The contracting officer shall insert the clause at 252.227-7025, Rights in Technical Data and Computer Software (SBIR Program), in solicitations and contracts in accordance with 227 409.

(n) The contracting officer shall insert the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, in solicitations and contracts in accordance with 227.410–1(b).

(o) The contracting officer shall insert the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, in solicitations and contracts in accordance with 227.410–1(c).

(p) The contracting officer shall insert the provision at 252.227–7028, Requirement for Technical Data Certification, in solicitations in accordance with 227.410–2.

(q) The contracting officer shall insert the clause at 252.227–7029, Identification of Technical Data, in all solicitations and contracts in accordance with 227.410–3.

(r) The contracting officer shall insert the clause at 252.227–7030, Technical Data—Withholding of Payment, in solicitations and contracts in accordance with 227.410–4.

(s) The contracting officer shall insert the clause at 252.227–7031, Data Requirements, in solicitations and contracts, in accordance with 227.410–6.

(t) The contracting officer shall insert the clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), in solicitations and contracts in accordance with 227.411.

(u) The contracting officer shall insert the clause at 252.227–7033, Rights in Shop Drawings, in solicitation and contracts in accordance with 227.408–2(a)(2).

Subpart 227.6—Foreign License and Technical Assistance Agreements

227.670 Scope.

This subpart prescribes policy with respect to Foreign License and Technical Assistance Agreements.

227.671 General.

In furtherance of the Military Assistance Program or for other national defense purposes, the Government may undertake to develop or encourage the development of foreign additional sources of supply. The development of such sources may be accomplished by an agreement, often called a foreign licensing agreement or technical assistance agreement, wherein a domestic concern, referred to in this subpart as a "primary source," agrees to furnish to a foreign concern or government, herein referred to as a "second source;" foreign patent rights; technical assistance in the form of data, know-how, trained personnel of the primary source, instruction and guidance of the personnel of the second source, jigs, dies, fixtures, or other manufacturing aids, or such other assistance, information, rights, or licenses as are needed to enable the second source to produce particular supplies or perform particular services. Agreements calling for one or more of the foregoing may be entered into between the primary source and the Government, a foreign government, or a foreign concern. The consideration for providing such foreign license and technical assistance may be in the form of a lump sum payment, payments for each item manufactured by the second source, an agreement to exchange data and patent rights on improvements made to the article or service, capital stock transactions, or any combination of these. The primary source's bases for computing such consideration may include actual costs; charges for the use of patents, data, or know-how reflecting the primary source's investment in developing and engineering and production techniques; and the primary source's "price" for setting up a second source. Such agreements often refer to the compensation to be paid as a royalty or license fee whether or not patent rights are involved.

227.672 Policy.

It is Government policy not to pay in connection with its contracts, and not to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which it holds a royalty-free license or charges for data which it has a right to use and disclose to others, or which is in the public domain, or which the Government has acquired without restriction upon its use and disclosure to others. This policy shall be applied by the Departments in negotiating contract prices for foreign license technical assistance contracts (227.675) or supply contracts with second sources (227.674); and in commenting on such agreements when they are referred to the Department of Defense by the Department of State pursuant to section 414 of the Mutual Security Act of 1954 as amended (22 U.S.C. 1934) and the International Traffic in Arms Regulations (see 227.675).

227.673 Foreign license and technical assistance agreements between the government and domestic concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services shall, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract shall provide, in connection with any separate agreement between the primary source and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that—

(1) The primary source and his subcontractors shall not make, on account of any purchases by the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, any charge to the second source for royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or data which the Government has the right to possess, use, and disclose to others; or any technical assistance provided to the second source for which the Government has paid under a contract between the Government and the primary source; and

(2) The separate agreement between the primary and second source shall include a statement referring to the contract between the Government and the primary source, and shall conform to the requirements of the International Traffic in Arms Regulations (see 227.675–1).

(b) The following factors, among others, shall be considered in negotiating the price to be paid the primary source under contracts within (a) above:

(1) The actual cost of providing data, personnel, manufacturing aids, samples, spare parts, and the like;

(2) The extent to which the Government has contributed to the development of the supplies or services, and to the methods of manufacture or performance, through past contracts for research and development or for manufacture of the supplies or performance of the services; and

(3) The Government's patent rights and rights in data relating to the supplies or services and to the methods of manufacture or of performance.

227.674 Supply contracts between the government and a foreign government or concern.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source, the contracting officer:

(a) Shall obtain from the second source a detailed statement (see FAR 27.204–1(a)(2)) of royalties, license fees, and other compensation paid or to be

paid to a primary source (or any of his subcontractors) for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Shall not accept or allow charges which in effect are—

(1) For royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or

(2) For data which the Government has a right to possess, use, and disclose to others; or

(3) For any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.675-1 International traffic in arms regulations.

Pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the Department of State controls the exportation of data relating to articles designated in the United States Munitions List as arms, ammunition, or munitions of war. (The Munitions List and pertinent procedures are set forth in the International Traffic in Arms Regulations, 22 CFR, et seq.) Before authorizing such exportation, the Department of State generally requests comments from the Department of Defense. On request of the Office of the Assistant Secretary of Defense (International Security Affairs), each Department shall submit comments thereon as the basis for a Department of Defense reply to the Department of State.

227.675-2 Review of agreements.

(a) In reviewing foreign license and technical assistance agreements between primary and second sources, the Department concerned shall, insofar as its interests are involved, indicate whether the agreement meets the requirements of sections 124.07—124.10 of the International Traffic in Arms Regulations or in what respects it is deficient. Paragraphs (b) through (g) below provide general guidance.

(b) When it is reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement, or that Military Assistance Program funds will be provided for the procurement of the supplies or services, the following guidance applies.

(1) If the agreement specifies a reduction in charges thereunder, with respect to purchases by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in recognition of the Government's rights in patents and data, the Department concerned shall evaluate the amount of the reduction to determine whether it is fair and reasonable in the circumstances, before indicating its approval.

(2) If the agreement does not specify any reduction in charges or otherwise fails to give recognition to the Government's rights in the patents or data involved, approval shall be conditioned upon amendment of the agreement to reflect a reduction, evaluated by the Department concerned as acceptable to the Government, in any charge thereunder with respect to purchases made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in accordance with section 124.10 of the International Traffic in Arms Regulations.

(3) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent of the Government's rights, the Department concerned shall evaluate the acceptability of the provision before indicating its approval.

(4) If time or circumstances do not permit the evaluation called for in (1), (2), or (3) above, the guidance in (c) below shall be followed.

(c) When it is not reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement nor that Military Assistance Program funds will be provided for the purchase of the supplies or services, then the following guidance applies.

(1) If the agreement provides for charges to the second source for data or patent rights, it may suffice to fulfill the requirements of Section 124.10, insofar as the Department of Defense is concerned if:

(i) The agreement requires the second source to advise the primary source when he has knowledge of any purchase made or to be made from him by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government;

(ii) The primary source separately agrees with the Government that upon such advice to him from the second source or from the Government or otherwise as to any such a purchase or prospective purchase, he will negotiate with the Department concerned an appropriate reduction in his charges to the second source in recognition of any Government rights in patents or data; and

(iii) The agreement between the primary and second sources further provides that in the event of any such purchase and resulting reduction in charges, the second source shall pass on this reduction to the Government by giving the Government a corresponding reduction in the purchase price of the article or service.

(2) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned shall:

(i) Evaluate the acceptability of the provision before indicating its approval; or

(ii) Explicitly condition its approval on the right to evaluate the acceptability of the provision at a later time.

(d) When there is a technical assistance agreement between the primary source and the Government related to the agreement between the primary and second sources that is under review, the latter agreement shall reflect the arrangements contemplated with respect thereto by the Government's technical assistance agreement with the primary source.

(e) Every agreement shall provide that any license rights transferred under the agreement are subject to existing rights of the Government.

(f) In connection with every agreement referred to in (b) above, a request shall be made to the primary source (1) to identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of his subcontractors, (2) to identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights, and (3) to segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance. Reviewing personnel shall verify this information or, where the primary source does not furnish it, obtain such information from Governmental sources so far as practicable.

(g) The Department concerned shall make it clear that its approval of any agreement does not necessarily recognize the propriety of the charges or the amounts thereof, or constitute approval of any of the business arrangements in the agreement, unless the Department expressly intends by its approval to commit itself to the fairness

and reasonableness of a particular charge or charges. In any event, a disclaimer should be made to charges or business terms not affecting any purchase made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government.

Subpart 227.70—Infringement Claims, Licenses, and Assignments

227.7000 Scope.

This subpart precribes policy, procedures, and instructions for use of clauses with respect to processing licenses, assignments, and infringement claims.

227.7001 Policy.

Whenever a claim of infringement of privately owned rights in patented inventions or copyrighted works is asserted against any Department or Agency of the Department of Defense, all necessary steps shall be taken to investigate, and to settle administratively, deny, or otherwise dispose of such claim prior to suit against the United States. This Subpart 227.7 does not apply to licenses or assignments acquired by the Department of Defense under the Patent Rights clauses.

227.7002 Statutes pertaining to administrative claims of infringement.

Statutes pertaining to administrative claims of infringement in the Department of Defense include the following: the Foreign Assistance Act of 1961, 22 U.S.C. 2356 (formerly the Mutual Security Acts of 1951 and 1954); the Invention Secrecy Act, 35 U.S.C. 181–188; 10 U.S.C. 2386; 28 U.S.C. 1498; and 35 U.S.C. 286.

227.7003 Claims for copyright infringement.

The procedures set forth herein will be followed, where applicable, in copyright infringement claims.

227.7004 Requirements for filing an administrative claim for patent infringement.

(a) A patent infringement claim for compensation, asserted against the United States under any of the applicable statutes cited in 227.7002, must be actually communicated to and received by a Department, agency, organization, office, or field establishment within the Department of Defense. Claims must be in writing and should include the following:

(1) An allegation of infringement;

(2) A request for compensation, either expressed or implied;

(3) A citation of the patent or patents alleged to be infringed;

(4) A sufficient designation of the alleged infringing item or process to permit identification, giving the military or commercial designation, if known, to the claimant;

(5) A designation of at least one claim of each patent alleged to be infringed; or

(6) As an alternative to (4) and (5) above, a certification that the claimant has made a bona fide attempt to determine the item or process which is alleged to infringe, but was unable to do so, giving reasons, and stating a reasonable basis for his belief that his patent or patents are being infringed.

(b) In addition to the information listed in (a) above, the following material and information is generally necessary in the course of processing a claim of patent infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit the most expeditious processing and settlement of the claim.

(1) A copy of the asserted patent(s) and identification of all claims of the patent alleged to be infringed.

(2) Identification of all procurements known to claimant which involve the alleged infringing item or process, including the identity of the vendor or contractor and the Government procuring activity.

(3) A detailed identification of the accused article or process, particularly where the article or process relates to a component or subcomponent of the item procured, an element by element comparison of the representative claims with the accused article or process. If available, this identification should include documentation and drawings to illustrate the accused article or process in suitable detail to enable verification of the infringement comparison.

(4) Names and addresses of all past and present licenses under the patent(s), and copies of all license agreements and releases involving the patent(s).

(5) A brief description of all litigation in which the patent(s) has been or is now involved, and the present status thereof.

(6) A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the ultimate disposition of each.

(7) A description of Government employment or military service, if any, by the inventor and/or patent owner.

(8) A list of all Government contracts under which the inventor, patent owner, or anyone in privity with him performed work relating to the patented subject matter.

(9) Evidence of title to the patent(s) alleged to be infringed or other right to make the claim.

(10) A copy of the Patent Office file of each patent if available to claimant.

(11) Pertinent prior art known to claimant, not contained in the Patent Office file, particularly publications and foreign art. In addition in the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused articles or processes, or to a specific procurement, it may materially expedite determination of the claim.

(c) Any Department receiving an allegation of patent infringement which meets the requirements of this paragraph shall acknowledge the same and supply the other Departments* which may have an interest therein with a copy of such communication and the acknowledgement thereof.

*For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Navy, The Patent Counsel for Navy, Office of Naval Research; for the Department of the Air Force, Chief, Patents Division, Office of The Judge Advocate General; for the Defense Logistics Agency, The Office of Counsel; for the National Security Agency, the General Counsel; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

(d) If a communication alleging patent infringement is received which does not meet the requirements set forth above, the sender shall be advised in writing—

(i) That his claim for infringement has not been satisfactorily presented, and

(ii) Of the elements considered necessary to establish a claim.

(e) A communication making a proffer of a license in which no infringement is alleged shall not be considered as a claim for infringement.

227.7005 Indirect notice of patent infringement claims.

(a) A communication by a patent owner to a Department of Defense contractor alleging that the contractor has committed acts of infringement in performance of a Government contract shall not be considered a claim within the meaning of 227.7004 until it meets the requirements specified therein.

(b) Any Department receiving an allegation of patent infringement which meets the requirements of 227.7004 shall acknowledge the same and supply the other Departments* which may have an interest therein with a copy of such communication and the acknowledgement thereof.

* For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Navy, The Patent Counsel for Navy, Office of Naval Research; for the Department of the Air Force, Chief, Patents Division, Office of the Judge Advocate General; for the Defense Logistics Agency, The Office of Counsel; for the National Security Agency, the General Counsel; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

(c) If a communication covering an infringement claim or notice which does not meet the requirements of 227.7004(a) is received from a contractor, the patent owner shall be advised in writing as covered by the instructions of 227.7004(d).

227.7006 Investigation and administrative disposition of claims.

An investigation and administrative determination (denial or settlement) of each claim shall be made in accordance with instructions and procedures established by each Department, subject to the following:

(i) When the procurement responsibility for the alleged infringing item or process is assigned to a single Department or only one Department is the purchaser of the alleged infringing item or process, and the funds of that Department only are to be charged in the settlement of the claim, that Department shall have the sole responsibility for the investigation and administrative determination of the claim and for the execution of any agreement in settlement of the claim. Where, however, funds of another Department are to be charged, in whole or in part, the approval of such Department shall be obtained as required by 208.7002. Any agreement in settlement of the claim, approved pursuant to 208.7002 shall be executed by each of the Departments concerned.

(ii) When two or more Departments are the respective purchasers of alleged infringing items or processes and the funds of those Departments are to be charged in the settlement of the claim, the investigation and administrative determination shall be the responsibility of the Department having the predominant financial interest in the claim or of the Department or Departments as jointly agreed upon by the Departments concerned. The Department responsible for negotiation shall, throughout the negotiation, coordinate with the other Departments concerned and keep them advised of the status of the negotiation. Any agreement in the settlement of the claim shall be executed by each Department concerned.

227.7007 Notification and disclosure to claimants.

When a claim is denied, the Department responsible for the administrative determination of the claim shall so notify the claimant or his authorized representative and provide the claimant a reasonable rationale of the basis for denying the claim. Disclosure of information or the rationale referred to above shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.

227.7008 Settlement of indemnified claims.

Settlement of claims involving payment for past infringement shall not be made without the consent of, and equitable contribution by, each indemnifying contractor involved, unless such settlement is determined to be in the best interests of the Government and is coordinated with the Department of Justice with a view to preserving any rights of the Government against the contractors involved. If consent of and equitable contribution by the contractors are obtained, the settlement need not be coordinated with the Department of Justice.

227.7009 Patent releases, license agreements, and assignments.

This section contains clauses for use in patent release and settlement agreements, license agreements, and assignments, executed by the Government, under which the Government acquires rights. Minor modifications of language (e.g., pluralization of "Secretary" or "Contracting Officer") in multidepartmental agreements may be made if necessary.

227.7009-1 Required clauses.

(a) Officials Not To Benefit. Insert the clause at FAR 52.203-1.

(b) Covenant Against Contingent Fees. Insert the clause at FAR 52.203-5.

(c) Gratuities. Insert the clause at FAR 52.203-3.

(d) Assignment of Claims. Insert the clause at FAR 52.232-23.

(e) Disputes. Pursuant to FAR 33.014, insert the clause at FAR 52.233-1.

(f) Non-Estoppel. Insert the clause at 252.227-7000.

227.7009-2 Clauses to be used when applicable.

(a) Release of Past Infringement. The clause at 252.227-7001 is an example which may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel. (See footnotes at end of clause.)

(b) Readjustment of Payments. The clause at 252.227-7002 shall be inserted in contracts providing for payment of a running royalty.

(c) Termination. The clause at 252.227-7003 is an example for use in contracts providing for the payment of a running royalty. This clause may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel.*

*For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Air Force, Chief, Patents Division, Office of the Judge Advocate General; for the Defense Logistics Agency, The Patent Counsel; for the Department of the Navy, the Patent Counsel for the Navy, Office of Naval Research; for the Defense Communications Agency, The Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

227.7009-3 Additional clauses—contracts except running royalty contracts.

The following clauses are examples for use in patent release and settlement agreements, and license agreements not providing for payment by the Government of a running royalty.

(a) License Grant. Insert the clause at 252.227-7004.

(b) License Term. Insert one of the clauses at 252.227-7005 Alternate I or Alternate II, as appropriate.

227.7009-4 Additional clauses—contracts providing for payment of a running royalty.

The clauses set forth below are examples which may be used in patent release and settlement agreements, and license agreements, when it is desired to cover the subject matter thereof and the contract provides for payment of a running royalty.

(a) License Grant—Running Royalty. No Department shall be obligated to pay royalties unless the contract is signed on behalf of such Department. Accordingly, the License Grant clause at 252.227-7006 should be limited to the practice of the invention by or for the signatory Department or Departments.

(b) License Term—Running Royalty. The clause at 252.227-7007 is a sample form for expressing the license term.

(c) Computation of Royalties. The clause at 252.227-7008 providing for the computation of royalties, may be of varying scope depending upon the nature of the royalty bearing article, the volume of procurement, and the type of

contract pursuant to which the procurement is to be accomplished.

(d) Reporting and Payment of Royalties.

(1) The contract should contain a provision specifying the office designated within the specific Department involved to make any necessary reports to the contractor of the extent of use of the licensed subject matter by the entire Department, and such office shall be charged with the responsibility of obtaining from all procuring offices of that Department the information necessary to make the required reports and corresponding vouchers necessary to make the required payments. The clause at 252.227–7009 is a sample for expressing reporting and payment of royalties requirements.

(2) Where more than one Department or Government Agency is licensed and there is a ceiling on the royalties payable in any reporting period, the licensing Departments or Agencies shall coordinate with respect to the pro rata share of royalties to be paid by each.

(e) License to other government agencies. When it is intended that a license on the same terms and conditions be available to other departments and agencies of the Government, the clause at 252.227–7010 is an example which may be used.

227.7010 Assignments.

(a) The clause at 252.227–7011 is an example which may be used in contracts of assignment of patent rights to the Government.

(b) To facilitate proof of contracts of assignments, the acknowledgement of the contractor should be executed before a notary public or other officer authorized to administer oaths (35 U.S.C. 261).

227.7011 Procurement of rights in inventions, patents, and copyrights.

Even though no infringement has occurred or been alleged, it is the policy of the Department of Defense to procure rights under patents, patent applications, and copyrights whenever it is in the Government's interest to do so and the desired rights can be obtained at a fair price. The required and suggested clauses at 252.227–7004 and 252.227–7010 shall be required and suggested clauses, respectively, for license agreements and assignments made under this paragraph. The instructions at 227.7009–3 and 227.7010 concerning the applicability and use of those clauses shall be followed insofar as they are pertinent.

227.7012 Contract format.

The format at 252.227–7012 appropriately modified where necessary, may be used for contracts of release, license, or assignment.

227.7013 Recordation.

Executive Order No. 9424 of 18 February 1944 requires all executive Departments and agencies of the Government to forward through appropriate channels to the Commissioner of Patents and Trademarks, for recording, all Government interests in patents or applications for patents.

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 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 Command, and by all Heads of Contracting Activities not subordinate to that command; (ii) for the Navy, by the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (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 Assistant Secretary of Defense (Acquisition and Logistics) 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 52.228–1, 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 Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (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 Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (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 workers' 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 1.12 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 workers' 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 Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management—CM, 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 further premium payment under such policies:

Special Casualty Insurance Rating Plan Assignment-Assumption of Premium Obligations

It is agreed that 100%* 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%* of the premiums under said policies.

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)

*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.

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 Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (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: DLA–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 (workers' 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 workers' 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 (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 to, 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)(iii) 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 Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management, 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 (DCRIC), 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 Assistant Secretary of the Navy (S&L) (CBM), 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 236.573–5.

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.

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 responsible 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., Philippines.
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)

_____

(Date)

_____

(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 Sections 4041(g)(1) and 4221(d)(3), Internal Revenue Code).

_____

(Date)

_____

(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 order, or as 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

esold or otherwise disposed of, the purchaser must report such fact to the manufacturer; or, in the case of special motor uel, 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 purchaser 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 contractors and subcontractors.

(a) (1) It is DoD policy that DoD contracts 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 purpose of avoiding state and local taxes. This policy was adopted to preclude the inclusion of contract clauses designed to avoid otherwise validly imposed 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 complied 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 reeognize 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 0), 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 CASBCMF 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.

230.7003 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 net 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 costs 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 Objective." 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 allocation 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.* This 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 payment invoices. The amount that qualifies as cost incurred for purposes 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 factors 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 15.902, he will complete a DD Form 1861 "Contract Facilities Capital and Cost of Money" after evaluating the contractor's cost proposal and determining this pre-negotiation 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 is not 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).

231.105 Construction and architect-engineer contracts.

(d)(2)(i)(A) When the contracting officer cannot determine actual cost data for both ownership and operating costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records, costs shall be determined in accordance with the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, unless another schedule is specified in the contract. Costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see FAR 31.109(c)). For example, a schedule must be adjusted for Government contract costing purposes if it is based on replacement cost, includes unallowable interest costs, or uses improper cost-of-money rates or computations.

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 (A) above.

231.205-18 Independent research and development and bid and proposal costs.

(c)(1)(vii) 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.

231.205-38 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 Assistant Secretary of Defense (Acquisition and Logistics) has the responsibility for insuring uniform administration of financing. Only policy issues or important procedural problems shall be referred to the Office of the Assistant Secretary of Defense (Acquisition and Logistics). 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 Assistant Secretary of Defense (Acquisition and Logistics) 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 Assistant Secretary of Defense (Acquisition and Logistics) in assuring proper and uniform application of policies, procedures and forms. The Committee may recommend to the Secretary of Defense through the Assistant Secretary of Defense (Acquisition and Logistics) 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 Assistant Secretary of Defense (Acquisition and Logistics) 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 most 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 Guaranteed 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

232.404 Exclusions.

(a)(9) In accordance with 10 U.S.C. 503, FAR Subpart 32.4 does not apply to advance payments for advertising for military recruitment in high school and college publications not to exceed $500 under any single contract.

232.409 Contracting officer action.

232.409-1 Recommendation for approval.

The departmental contract financing office (see 232.108) 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 office 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 periodically 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 institution 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 32.401 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 contracts, 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 FAR 52.232-12.

(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 the pool contracts 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 $_____ or 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 Assistant Secretary of Defense (Acquisition and Logistics). 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 process 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 payment amounts that are determined by using uniform, standard progress payment rates (i.e., 90% or 95%) are insensitive to these other factors influencing investment and, as a consequence, result in investments by contractors in work in 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 life 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 (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 or 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 (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 Assistant Secretary of Defense (Acquisition and Logistics) 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 (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 maintained 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 accompanied 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 for 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 Assistant Secretary of Defense (Acquisition and Logistics) 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 uncollectability; 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 Assistant Secretary of Defense (Acquisition and Logistics). 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 Assistant Secretary of Defense (Acquisition and Logistics) 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 of 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

232.803 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 is deemed to exist (see 50 U.S.C. 1651(a) (4) and (5)). Nevertheless, when Departments determine it is in the Government's interest, they may exclude the no set-off commitment (Alt. I) in accordance with Departmental procedures.

(e) The assignee shall forward to the administrative contracting officer, disbursing officer, and surety, if any, the notice and instrument of assignment in the number of copies indicated below:

(1) To the administrative contracting officer—a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The administrative contracting officer shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

(i) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(ii) Forward two copies of the notice to the disbursing officer designated in the contract to make payment;

(iii) Return a copy of the notice to the assignee; and

(iv) Advise the procuring contracting officer that the assignment has been made.

(2) To the surety or sureties, if any—a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee who shall forward two copies to the disbursing officer designated in the contract.

(3) To the disbursing officer designated in the contract to make payment—a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice.

232.806 Contract clauses.

(a)(2) When the clause at FAR 52.232-23 is used, the contracting officer shall also insert Alternate I, unless excluded under FAR 32.803(d).

PART 233—PROTESTS, DISPUTES, AND APPEALS

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

Subpart 233.2—Disputes and Appeals

233.210 Contracting officer's authority.

Contracting officer authority under FAR 33.210 is limited by 243.70.

233.213 Obligation to continue performance.

(a) The acquisition 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.

233.214 Contract clause.

The contracting officer may use Alternate I under the conditions set forth in 233.213(a) above.

233.270 Claims for interest penalties under the Prompt Payment Act.

(a) The Prompt Payment Act (Pub. L. 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 Pub. L. 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, Pub. L. 95-485, requires the certification of contract claims, requests for equitable adjustment to contract terms, requests for relief under Pub. L. 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 Adjustment 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, Pub. L. 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).)

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.

234.005 General requirements.

234.005–70 Special considerations.

Selected major systems programs will require compliance with several management/contract requirements depending on dollar thresholds and stage of development such as: Design-to-cost/life cycle cost goals, at the contract level in accordance with DoDD 4245.3, Design-to-Cost; system production plans in accordance with DoDD 4245.6, Defense Production Management; test and demonstration requirements in accordance with DoDI 5000.3, Test and Evaluation; cost/schedule control system criteria (C/SCSC) in accordance with DoDI 7000.2, Performance Measurement for Selected Acquisitions; and standardization requirements in the engineering design in accordance with DoDI 4120.3, Defense Standardization and Specification Program. The contracting officer shall include applicable provisions/clauses in solicitations and contracts consistent with the requirements of the specific acquisition.

234.005–71 Contract clauses for major systems acquisitions.

When compliance with C/SCSC is required, the solicitation and resulting contract shall include the provision at 252.234–7000, Notice of Cost/Schedule Control Systems, and the clause at 252.234–7001, Cost/Schedule Control Systems.

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, not 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 written research and development proposal submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of needs.)

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 sealed bidding (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, the source shall be so advised and provided a copy of the solicitation in accordance with FAR 5.102 if still requested. 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 in accordance with FAR 5.102, 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 (1), (2) and (3) below, solicitations may be limited to a single source in accordance with Part 206:

(1) As a result of thorough evaluation, only one source is found fully qualified to perform the proposed work. (See 206.302–1(b)(1).)

(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. (See 206.302–1(b)(3).)

(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. (See 206.302–1(b)(7) or 206.302–3(b)(2).)

(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 FAR Part 6 and Subpart 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 offeror's cost controls, as demonstrated by offeror's history of cost management in the performance of other contracts or by offeror's establishment of a 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 253). 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 Defense Acquisition 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. 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 or 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 in consonance with the underlying objective of the Government in granting the special use allowance.

(4) *Negotiation and administration of contracts providing for special use allowances.* The negotiation and administration of contracts providing for special use allowances are subject to the conditions set forth in (i) through (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 that which justified the special use allowance shall be subject to prior consent of the cognizant approval authority specified in (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 (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 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 defined 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

235.7000 Scope of subpart.

This subpart prescribes procedures for contracting for research on a cost-reimbursement basis with educational institutions or nonprofit organizations within the United States whose primary purpose is the conduct of scientific research, when the basis for award is an unsolicited proposal.

235.7001 Definitions.

(a) Educational institution means an institution of higher learning providing facilities for teaching and research and authorized to grant academic degrees.

(b) Nonprofit organization—organizations of the type described in section 501 (c)(3) and (d) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific organization qualified under a state nonprofit organization statute.

(c) Research includes all effort described as research in 235.001 including that part of exploratory development applicable to applied research.

235.7002 Applicability.

(a) The procedures contained in this subpart may be used for contracting:

(1) Whenever the principal purpose is the acquisition of research from an educational institution or a nonprofit organization; or

(2) When the work is to be accomplished on a cost-reimbursement basis;

(3) When the basis for award is an unsolicited proposal; and

(4) When the contract requires the delivery of designs, drawings or reports as end items.

(b) When the circumstances in (a) above are present, the Short Form Research Contract (SFRC) may be used. The SFRC shall not be used for any purpose other than as described herein.

235.7003 Content of unsolicited proposals.

Unsolicited proposals submitted for award in accordance with these procedures shall contain all the information in FAR 15.505. A contract may be awarded on the basis of the unsolicited proposal exactly as submitted or as subsequently amended by the offeror, if the proposal contains the information listed in (a) through (h) below:

(a) In addition to the information identified in FAR 15.505(b), a statement of work in accordance with 235.005 and FAR 35.005 and a breakdown of the time, identifying man-days, man-months or man-years to be devoted to the contract by the principal investigator and any associates (see FAR 35.015(a)). A separate work statement which can

be incorporated by reference in the SFRC is preferred.

(b) In addition to information identified in FAR 15.505(c), the following executed representations and certifications on DD Form 2222–1:

(1) Organizational Conflicts of Interest—FAR 15.505(c)(6);

(2) Contingent Fee Representation and Agreement—FAR 52.203–4;

(3) Certification of Nonsegregated Facilities—FAR 52.222–21;

(4) Previous Contracts and Compliance Reports—FAR 52.222–22;

(5) Affirmative Action Compliance—FAR 52.222–25;

(6) Clean Air and Water Certification (if proposal exceeds $100,000) in FAR 52.223–1;

(7) Insurance—Immunity From Tort Liability—FAR 52.228–7.

Offerors may elect to submit the representations and certifications on a one-time basis to each contracting office. Such representations and certifications would be valid for all SFRC contract awards. *Provided*, for each proposal submitted, the offeror references the submission and confirms in writing its validity for the research proposal.

(c) A statement that the Government may award a contract in accordance with the procedures of this Subpart 235.70 as applicable.

(d) Identification of property, as defined in 252.235–7005 showing, when possible, the description or title and estimated or known cost of each item. For facilities only (FAR 45.301), the offeror must include a statement as to why it is necessary to acquire these items with contract funds and express in writing the offeror's unwillingness or financial inability to acquire the items with the offeror's own resources. When special test equipment or components are proposed, individual items of less than $1,000 may be grouped by category (FAR 45.307–2). The description or title of all property for which contract funds are requested should be in sufficient detail to enable the contracting officer to:

(1) Determine whether or not the Government will furnish such property, pursuant to 235.014, FAR 35.014 and FAR 45.302–1; and

(2) For property which may be contractor-acquired (versus Government-furnished)—

(i) Accept it as advance notification required by FAR 52.244–2; and

(ii) Authorize acquisition at the time of award.

(e) A Contract Pricing Proposal Cover Sheet (SF 1411) or acceptable substitute. Information for subcontracts listed in FAR 52.244–2, subparagraph (b), shall be as prescribed by that subparagraph.

(f) If the proposal includes data that the offeror does not want disclosed for any purpose other than evaluation, the offeror shall mark the title page and each restricted sheet as prescribed by FAR 15.509. If the offeror grants permission to the Government to have non-government evaluators review the offeror's proposal, the offeror should either make this statement in the offer or check block A on page 2 of the DD Form 2222–2.

(g) The offeror's proposal shall include the following statement:

> This proposal incorporates by reference, and makes a part thereof, all applicable clauses in DFARS 252.235–7005 in effect on the date of this proposal or such other date as may be mutually agreed upon.

(h) The parties may also incorporate, by mutual consent, any other FAR or DFARS clauses which are determined to be applicable because of the nature of the particular acquisition.

235.7004 Contracting procedures.

(a) The contracting officer may award an SFRC resulting from an unsolicited proposal when the requirements of FAR 15.505 and 235.7003 are satisfied, and noncompetitive award is appropriate under 215.507 and FAR 15.507.

(b) Contracts resulting from unsolicited proposals may be effected by using the procedures in either (c) or (d) below, as appropriate.

(c) When the unsolicited proposal, either as submitted initially, or as amended in writing by the offeror, is satisfactory to the Government, the proposal should be accepted by the contracting officer and a contract formed by incorporating the entire proposal by reference, or by incorporating the statement of work by reference and executing the SFRC.

(d) When acceptance of the entire proposal is not considered advantageous to the Government, the contracting officer should use such parts of the unsolicited proposal as are considered appropriate, either by actual attachment or incorporation by reference, to develop a contract for execution by both parties. In this event, the SFRC shall be executed by the contractor prior to signature by the government.

(e) Modifications shall be effected by use of the DD Form 2222.

(f) The offeror may offer options to the Government or the parties may agree to options to conduct research effort beyond the initial research program proposed. The initial dollar amount and period of performance specified at the time of award shall not include the cost and period of the options. The cost and period of such options shall be separately identified. The option may be exercised by the government by unilateral modification of the contract.

(g) The policy and background regarding vesting of title in property to organizations defined in 235.7001 are set forth in 235.014 and FAR 35.014. Title to property which is not vested in the contractor or for which the determination regarding vesting of title is deferred shall be identified in the DD Form 2222.

(h) By submission of the offeror's proposal pursuant to this Subpart 235.70, the offeror must agree to be bound by all terms and conditions of the resulting contract.

235.7005 Advance payments.

SFRCs awarded to institutions and organizations authorized to receive advance payments in accordance with Subpart 232.4 and FAR Subpart 32.4, shall be clearly marked to read "ADVANCE PAYMENT POOL CONTRACT PURSUANT TO ATTACHED PAYMENT PROVISION".

235.7006 Methods of funding.

SFRCs may be fully or incrementally funded in accordance with departmental procedures. If incrementally funded, the SFRC shall specify the total estimated cost for the full period of the research program, both funded or unfunded, and the amount of funds currently obligated. For the purpose of establishing the period covered by the incremental funds available, the funds available will be prorated by dividing the number of months into the dollars available. If this method is not acceptable, the offeror shall specify an alternate method of establishing the time period.

235.7007 Proposal format.

Contractors are encouraged to use DD Form 2222–2 in the submission of research proposals for SFRC awards. Use of this format will promote consistency in award procedures among DoD funding agencies and expedite the award of the SFRC.

235.7008 SFRC clauses.

(a) The clauses in 252.235–7005 are applicable to all SFRC awards of $10,000 or more as of the date of the offeror's proposal, unless such date is modified by mutual agreement. Such modification may be included in the offeror's proposal or may be specifically identified in the contract document. Inclusion of the change in the contract document will necessitate execution of the contract by the signature of both contracting parties.

(b) Uniform contract clauses to be used in Short Form Research Contracts (SFRCs) with educational institutions and other nonprofit organizations are set forth in 252.235–7005.

(c) For purposes of this subpart, "contract action" is defined as the amount of the initial contract or the amount of a modification for new procurement to the contract. It does not include the amount of any unexercised options.

(d) Clauses specified in 252.235–7005 are considered part of the General Provisions of an SFRC unless inapplicable in accordance with the conditions set forth at the clause citation.

(e) SFRC awards of less than $10,000 shall identify the clauses in 252.235–7005 which are not applicable when the contract amount is under $10,000.

235.7009 Price negotiation memorandum.

The price negotiation memorandum (FAR/DFARS 15.808) shall include information necessary for appropriate contract administration. Included, for example, will be a statement as to whether FAR clause 52.215–30 or 52.215–31 is applicable (Facilities Capital Cost of Money clauses).

Subpart 235.71—Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology

235.7100 Scope.

This subpart sets forth policy and procedures established in DoD Directive 2140.2 for the recovery of nonrecurring 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 of 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 construction may be acquired by means of sealed bidding provided that the Head of a Contracting Activity, or designee, determines that the use of sealed bidding, 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 for its war-time 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 acquisition is by sealed bidding (except two-step sealed bidding) 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.

236.206 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 contrac 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.

Approval by the head of the Agency (on a non-delegable basis) is required to expedite the completion date of a contract funded by a Military Construction Appropriations Act, if additional costs are involved. The approval authority must (1) certify that the additional expenditures are necessary to protect the National interest and (2) establish a reasonable completion date for the project. The contracting officer may approve an expedited completion date if no additional costs are involved.

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 (A&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 sources determined to be qualified to perform a specific construction contract.

(b) The Head of a Contracting Activity (HCA) may authorize the prequalification when the HCA 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 Sealed Bidding 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 solicitation 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 solicitation 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 the low bidder: *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

236.402 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 (A&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 on 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 (A&L), setting forth the reasons therefor, 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.

Sections 236.571 through 236.574 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.

236.572 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, insert the clause at 252.236-7009(b), Mobilization and Demobilization, Payment Item No. _____.

(c) The percentage of the lump sum price, for mobilization and demobilization in paragraph (a) of the clause at 252.236-7009(b), 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 contemplated under the particular contract, but in no event should mobilization exceed 80% 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 contracted for 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 needed information. The listings should be revised to require only the minimum information 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 paragraph 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 paragraph will be deleted when the construction 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 contracts 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.

236.580 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

236.600 Scope of subpart.

Architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set-aside for small business. Those under $85,000 shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of FAR Subpart 19.505 shall apply.

236.601 Policy.

(S-70) For contract actions with an estimated total fee of $300,000 or over and which require notification to Congress in accordance with 10 U.S.C. 2807, no funds shall be obligated until 21 days after Congress has been notified. During the notification waiting period, synopsis of the proposed contract action and administrative actions leading to the procurement of the architect-engineer services may be started.

236.602 Selection of firms 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 experience, 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 5.205(c).

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 $25,000, 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 $500,000, 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 $500,000 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 respective designee;

(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, DC 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 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 Negotiations.

(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 of 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%) limitation.

(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 (2) above will be divided by the total construction cost obtained by (1) above. The resulting percentage may not exceed the six percent (6%) statutory limitation.

Subpart 236.7—Standard Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

(c) Optional Forms 347 and 348 are not authorized for use in the Department of Defense (see 213.505-2(S-70)).

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 workers' compensation laws and other labor laws to citizens of the United States, citizens of the host country and citizens of other countries;

(e) The provision 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.

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 by the appropriation or other statute authorizing 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 on a sole source basis under the authority of 10 U.S.C. 2304(c)(1), as implemented by FAR 6.302–1.

(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 operating 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, a contract under this authority shall not cross fiscal years—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 (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)(l).

(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 withholding 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 treatment.* 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 cognizant 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 the 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 consultant shall not exceed the highest rate fixed by the Classification Act pay schedules 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 extended 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.

(S–71) *Acquisition of personal direct health care services.*

(a) *Scope.* This subsection sets forth policy and procedures for the acquisition by contract, pursuant to 10 U.S.C. 1091, of the personal direct health care services from individuals or firms. (Nothing in this subsection precludes the acquisition by contract of nonpersonal health care services or applies to such services.)

(b) *Definition of direct health care services.* Direct health care services are those services provided by health care providers who participate in clinical patient care and services. Some examples of direct health care providers for the purpose of this subsection are nurses, radiology technicians, dental hygienists, and medical technologists. Not included are the services of personnel whose duties are predominantly administrative or clerical and personnel who provide maintenance or security services.

(c) *Policy.* It is the policy of the Department of Defense that when in-house sources are insufficient to support the medical mission of the Military Departments or DoD Components, contracting officers may contract for personal direct health care services under the authority of 10 U.S.C. 1091 (see DoDI 6025.5).

(d) *Limitations on contracting for personal direct health care services.* Obtaining personal direct health care services under contract is subject to the following limitations:

(1) Preference shall not be given to former government employees.

(2) Compensation of contract health care providers is negotiable depending upon the skills of the prospective contractor. Compensation shall be within the limits established in the table below.

(3) Each prospective personal direct health care services contract shall be approved (see Departmental implementation of DoDI 6025.5 for approval requirements). The requiring activity shall provide the contracting officer a copy of the approval to enter into a personal direct health care services contract. A copy of the approval shall be retained in the contract file.

TABLE OF MAXIMUM AUTHORIZED COMPENSATION RATES

Occupation/specialty group	Compensation rate not to exceed*	
	Pay grade	Years of service
I. Physicians and dentists	0–6	Over 26.
II. Other individuals, including nurse practitioners, nurse anesthetists, and nurse midwives, but excluding paraprofessionals.	0–5	Over 20 but less than 22.
III. All registered nurses, except those included in Group II	0–4	Over 16 but less than 18.
IV. Paraprofessionals	0–3	Over 6 but less than 8.

* Compensation rate includes basic pay and basic allowance for subsistence and basic allowance for quarters (including VHA); it does not include special and incentive pays, hazardous duty pay, flight pay, professional pay, continuation pay, or any discretionary pay.

(e) *Malpractice liability insurance.* Personal services contractors shall not be required to furnish malpractice liability insurance.

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 requirement 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 activity, 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 as 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 awarded or not; 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 52.228–1 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.

(c) *Field Service Representatives (FSR)* 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 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 37.104, 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, Installations 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 acquiring 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. Such acquisitions shall be made using the sealed bid method when the criteria of FAR 6.103(a) are met.

(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.* 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 Surgery, Department of the Navy (MED 3134), 23rd 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.* Se

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 oversize 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 a 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 oversize 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 sealed bid 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		
	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 (18 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 4.71 for Line Item Numbering Procedures.

(b) Bulk weight (unsorted).

Item No.	Item	Estimated quantity for 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 arrticles.				
	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 for 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 basis, 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, payment of Government funds for tuition or other expenses in connection with training in any legal profession.

237.7301 Educational service agreement.

(a) An educational service agreement is one which calls for educational services to be provided under the following conditions:

(1) 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

(2) Enrollment is at the contractor'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.

(b) 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.

237.7302 [Reserved]

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. Advance payments are authorized by 31 U.S.C. 529i.

7. Submit invoices to: ——— (Name and Address of Activity)

8. 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 properly 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. Contractor shall submit invoices within ——— days after the start of the term it covers and shall include:

(i) Agreement 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 facilites 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 side 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) Communication services shall be acquired from the communication common carriers 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 acquisition 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 using full and open competition unless otherwise authorized under FAR Subpart 6.3; and every effort should be made to exclude from the service contract any provisions which would require the Government to lease 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 United 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 assistant 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 Information Systems 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 or 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 stated 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. Thus 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 one-time 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) [Reserved]

(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) [Reserved]

(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. 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 shall cite 10 U.S.C. 2304(a)(1) and 10 U.S.C. 2360 as authority for award.

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

See Part 270.

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 (2) and (3) below, reimbursement for services shall be required from non-DoD organizations covered by this part at 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 (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(S-71).

(2) Performance without charge of contract administration services by the Department of National Defence Production (Canada) for the U.S. 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 242.101(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.

(2) 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 (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 work site 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 industrial 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) & (iii) For those contractors with which the TriService Contracting Officer negotiates advance agreements pursuant to FAR 42.10, he shall have full authority for determinations related to CAS 420.

(a)(39) For contracts containing ammunition and explosive requirements, see 223.70.

(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 post acceptance surveillance to ensure continuing operation of contractors' accepted systems. (See 234.005–70.)

(S–72) Monitor the contractor's costs as prescribed under Subpart 42.70.

(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).)

(S–74) In connection with the provisions of paragraph (b) of the clause at FAR 52.225–10, Duty-Free Entry, and paragraph (c) of the clause at 252.225–7008, Duty-Free Entry—Qualifying Country End Products and Supplies, negotiate and issue appropriate contract modifications reducing contract prices.

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) 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 or his designee.

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.

(b)(5)(i) The Contracting Officer shall:

(A) Not resolve any questioned costs until he has obtained—

(*1*) Adequate documentation with respect to such costs; and

(*2*) The opinion of the defense contract auditor on the allowability of such costs;

(B) Ensure that the defense contract auditor, to the maximum extent practicable, is present at any negotiation or meeting with the contractor regarding a determination of final indirect cost rates of the contractor;

(C) Ensure that all categories of costs designated in the report of the defense contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are considered allowable will be reflected in the negotiation memorandum; and

(D) Notify the contractor which individual costs were considered unallowable and the respective amounts of the disallowance.

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 CACO (if assigned), the cognizant ACO, and the cognizant auditor. Upon specific request, a copy will be furnished to other Departments or Government agencies.

242.770 Certification of indirect costs.

(a) *Policy.* (1) No proposal to establish billing rates or final indirect cost rates shall be accepted unless such costs have been certified by the contractor using the Certificate of Indirect Costs set forth in paragraph (d) below. The certificate must be signed on behalf of the firm by an individual of the contractor's organization at a level no lower than vice president or chief financial officer of the business segment of the contractor that submits the proposal.

(2) No billing rate or final indirect cost rate shall be agreed to by the contracting officer or auditor based on a proposal from the contractor that has not been certified. Where it is necessary to establish billing or final indirect cost rates in order to comply with the terms of a contract and the contractor has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Government shall unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that has been furnished to the contracting officer or auditor and for which it can be demonstrated that all unallowable costs have been excluded. When billing or final indirect cost rates are unilaterally established by the Government because of failure of the contractor to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

(b) It shall be the responsibility of the cognizant contracting officer or auditor to review billing rates periodically for indirect costs and all circumstances affecting the level of indirect cost rates. Generally, billing rates shall not be in effect for longer than one year. Final indirect cost rates shall be established promptly after the end of the applicable year.

(c) *Waiver.* (1) The Secretary of Defense or the Secretary of the military department concerned may, in an exceptional case, waive the requirement for certification under paragraph (a) in the case of any contract if the Secretary—

(i) Determines in such case that it would be in the interest of the United States to waive such certification; and

(ii) States in writing the reasons for that determination and makes such determination available to the public.

(2) Examples of situations where it may be appropriate to waive the requirement for certification of indirect costs include, but are not limited to contracts with:

(i) Foreign governments or international governmental organizations, such as subsidiary bodies of NATO;

(ii) State and local governments that are subject to OMB Circular A–87;

(iii) Educational institutions subject to OMB Circular A–21; or

(iv) nonprofit organizations subject to OMB Circular A–122.

(d) *Certificate.* The certificate required by this section shall be in the following form:

Certificate of Indirect Costs

This is to certify that to the best of my knowledge and belief:

1. I have reviewed the indirect cost proposal submitted herewith;

2. All costs included in this proposal (identify, date) to establish billing or final indirect costs rates for (identify period covered by rate) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Department of Defense applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the Department of Defense, such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and good will; and

4. All costs, included in this proposal are properly allocable to Defense contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: _____

Signature: _____

Name of Corporate Official: _____

Title: _____

Date of Execution: _____

242.770–1 Clause.

The contracting officer shall insert the clause at 252.242–7003, "Certification of Indirect Costs" in all solicitations and contracts which provide for (a) interim reimbursement of indirect costs, (b) establishment of final indirect costs rates, or (c) contract financing that includes interim payment of indirect cost (e.g., progress payments based on cost and payments based on percentage or state of physical completion such as shipbuilding).

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 voucher 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 242.1—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 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 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 deliver 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 conjunction 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 delinquency 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 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 concurs, no further report by 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 nonconcurrence, 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 Materiel Command, Attn: DRCGC–P, 5001 Eisenhower Avenue Alexandria, VA 22333
Department of the Navy: Office of the Assistant Secretary of the Navy (S&L), Contracts and Business Management (CM–N), 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, Rm 4C160, 5010 Duke Street, Alexandria, VA 22304–6100
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 (AR 55–355, NAVSUPINST 4600.70, 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 commercial bill of lading (CBL) includes the use of any commercial form or procedure.

(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 commercial 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 Management 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 procedures 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 demurrage. 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 consignee 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 contractor 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 the 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% 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 fluctuations. 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 aystem 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 organizations 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) *Exit 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 exit 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 exit conference with the contractor. Both CAO and DCAA will be represented at the exit 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 a voluntary refund shall not be requested, unless the overcharged 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 than by an adjustment in the contract price, the check shall be made payable to the office designated for 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 the contractor's 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 contracting officer is authorized to take the actions prescribed in paragraphs (c) and (d) of the clause at FAR 52.243–7, except when the contracting officer expressly delegates in writing any or all of such actions to the Administrative Contracting Officer (ACO).

(2) In exceptional cases, the contracting officer may designate a "specifically authorized representative" to issue directions and interpretations as provided in the clause contained in FAR 52.243–7 when the contracting officer 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 contracting officer. 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 contracting officer and ACO. No notice of designation, however, shall be issued retroactively to confirm directions earlier communicated by a representative of the Government. The contracting officer shall promptly countermand any directions of "specifically authorized representative" which exceed the representative's designated authority. A sample of such a designation is:

I, John Doe, Contracting Officer, pursuant to (a) of the Notification of Changes clause in Contract N000000–83–C–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 a 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 249.604.

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 the contractor's 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 252.243–7000 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 contracting officer, 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 contracting officer 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 contracting officer 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 contracting officer the contractor's proposal, together with an analysis thereof. Except at the specific request of the contracting officer, 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 contracting officer.

(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 contracting officer 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 243.202-70(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 (*b*) above, shall indicate the same effective date as the letter determination previously issued. Item 14 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.

Subpart 243.70—Adjustments to Prices Under Shipbuilding Contracts

243.7001 Adjustments to prices under shipbuilding contracts.

10 U.S.C. 2405 provides that no adjustment in any price under a shipbuilding contract entered into after December 7, 1983 may be made for an amount set forth in a claim, request for equitable adjustment, or demand for payment under a contract (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events occurring more than 18 months before the submission of the claim, request or demand.

243.7002 Submission requirements.

A claim, request, or demand under this subpart shall be considered to have been submitted only when the contractor has provided the certification required by section 6(c)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)(1)) and the supporting data for the claim, request, or demand.

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 (244.304), 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 Pub. L. 87–653 "Truth in Negotiations Act," compliance with Pub. L. 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 exit 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 its 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 Contractors

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, DC 20402]

FSC	Title	Army	Navy	Air Force	DLA	Marine Corps
3424, 4430	Industrial Furnances & 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 & Metal-working 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	Machinery Center, 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	Mealworking 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 provided 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 the contractor's election, to extend the time during which the contractor 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 of Industrial Resources."

(b) All projects which will exceed the above limitations will be submitted to the DASD(A&L)(PS) 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 acquired if not available from DIPEC, and date of availability from contracting;

(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 Automation Resources Information Center (DARIC), 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, the contracting officer shall condition the 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 Rental of Government Property

245.401 Policy.

Government use includes use on contracts for foreign military sales. Use of contracts for foreign military sales shall be on a rental basis unless specific approval for rent-free use is granted.

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 contracting officer 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 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 contracting 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 acquisition in the United States under coproduction arrangements.

(f) Rental/asset use charges for use of U.S. production and research property on Foreign Military Sales (FMS) and commercial sales transactions to the Government of Canada are waived for all FMS agreements accepted and commercial contracts awarded on or before 30 April 1990. This waiver is based on an understanding wherein the Government of Canada has agreed to waive its rental/asset use charges.

245.407 Non-Government use of plant equipment.

(a) Non-Government use 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 DASD(A&L)(PS) 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 nor 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, DC 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 and rights 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. Office of Management and Budget No. 0704-0033 has been assigned to the report.

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 Comprehensive 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.

"Production scrap" means material generated as a scrap in the normal production process having only a remelting or reprocessing value, including textile clippings, metal clippings, chippings, borings, turnings, and similar types of scrap, including faulty castings and forgings.

"Serviceable or usable property" means property that has reasonable prospect of use or sale either in its existing form or after minor repairs or alterations; only property in Federal Condition Codes A1, A2, A4, A5, B1, B2, B4, B5, F7, or F8 (see 245.606-5).

245.603 Disposal methods.

245.603-70 Contractor performance of selected plant clearance duties and responsibilities.

(1) A DoD Component may, at its option and under the guidance in this section, provide instructions to its contract administration offices which would authorize selected contractors under its administrative cognizance to perform certain plant clearance functions under the surveillance of the contracting officer or a designated representative. Such authorizations should be considered by the DoD Component only when plant clearance personnel are stationed at the facility where the contractor's plant clearance function operates and when the DoD Component and the contractor agree that the volume of plant clearance actions warrants such an authorization.

(2) Such authorizations shall be made in writing and shall, as a minimum:

(i) Specify the plant clearance functions to be performed;

(ii) Apply to all Government contracts which contain a Government Property clause at one or more plants, as appropriate;

(iii) Specify that the authorization may be unilaterally cancelled in whole or in part by the Government through written notice by the contracting officer or a designated representative;

(iv) Provide for such direct Government participation in plant clearance cases as may be required by Government regulation or circumstances at hand. The authorization shall be approved at a level above the contract administration office as designated by the DoD Component having administrative cognizance over the contractor; and

(v) Designate the contractor authorized under (1) above to perform specified plant clearance functions as an "accredited contractor".

(3) In each case of such an authorization, the DoD Component will plan and conduct a program of surveillance which will insure effective and regular evaluations of contractor performance and prompt corrective actions when appropriate. The plant clearance case file maintained by the contractor shall be the official case file.

(4) When paragraphs (1) and (2) above are implemented, the following additional responsibilities shall be performed by the plant clearance officer:

(i) Evaluate the adequacy of contractor procedures for the performance of the tasks prescribed in (5) below. Insure that these procedures are complied with. Discrepant conditions must be promptly resolved in order for the contractor to remain accredited;

(ii) Advise the accredited contractor of the identity of redistribution screening activities and the number of copies of inventory schedules to be submitted to these activities for screening. This includes screening prescribed herein and prescribed by inventory control points and the plant clearance officer;

(iii) Review and act on the contractor's proposals to withdraw items of Government-furnished property from inventory schedules (see FAR 45.606-4);

(iv) Continuously evaluate physical, quantitative, and technical allocability of contractor inventory prior to its disposal by the accredited contractor. These evaluations shall be incorporated within the surveillance program required by (3) above. Greatest emphasis shall be placed on high dollar value property that constitutes a claim against the Government. In the event that assets are considered to be nonallocable, the contractor will be directed to delay disposition pending the contracting officer's resolution of the issue. Completion of SF 1423, Inventory Verification Survey is not required. However, the applicable questions on

the SF 1423 should be answered as part of the evaluation program;

(v) Establish, with contractor assistance, criteria under which certain disposal determinations by the contractor will be reviewed and approved or disapproved by the plant clearance officer. The criteria should be detailed in the accredited contractor's plant clearance procedures;

(vi) Complete the first endorsement section of DD Form 1640, Request for Plant Clearance, upon receipt of incoming referral cases for subcontractor inventory. Inventory schedules will be forwarded to the contractor for plant clearance. Upon case completion, obtain the case file from the contractor, prepare a DD Form 1640, and forward the file to the referring activity;

(vii) Work with the contractor, buyers, and screeners of contractor inventory to the extent required to assure that the Government shall realize maximum asset reutilization and disposal proceeds; and

(viii) Provide continuous training and assistance to the contractor as requested or as necessary.

(5) The accredited contractor will perform the following designated tasks which are identified within the referenced paragraphs as plant clearance officer functions. The accredited contractor shall:

(i) Assign the Automatic Release Date (ARD) and screening release date (SRD), initiate screening prescribed herein or as prescribed by the plant clearance officer, and effect resulting transfer and donation actions (see FAR 45.608, 45.609);

(ii) Withdraw items, except for Government-furnished property, from inventory schedules without plant clearance officer approval and notify the affected screening activities. Plant clearance officer approval will be obtained for withdrawal of Government-furnished property from inventory schedules (see FAR 45.606–4);

(iii) Assure acceptability of inventory schedules. DD Form 1637, Notice of Acceptance of Inventory, is not required but may be used for internal contractor case coordination (see FAR 45.606–3);

(iv) Suspend disposition of property when assets are determined to be nonallocable by the plant clearance officer (see FAR 45.606–3);

(v) Arrange for the physical inspection of property by prospective transferees as appropriate;

(vi) Determine the method of disposal under established priorities (see FAR 45.603) and document disposal decisions and actions (see FAR 45.609, 45.610, 45.611, 45.613). Use of the DD Form 1641, Disposal Determination Approval, is not required as long as equivalent documentation is maintained. The plant clearance officer shall be notified in writing in advance in each instance when the contractor is bidding on property to be sold under FAR 45.610. Sales under FAR 45.610–3 shall not be conducted by an accredited contractor;

(vii) Account for disposal of all contractor inventory and application of proceeds. SF 1424, Inventory Disposal Report, or a contractor form containing comparable data elements is required to be submitted to the plant clearance officer (see FAR 45.610–3, 45.615);

(viii) Maintain the donable property file (see FAR 45.609);

(ix) Release property to eligible donees (see FAR 45.609);

(x) Properly prepare, approve, sign, and maintain official plant clearance files and required forms including:

(A) Plant clearance case number (see 245.7102–4);

(B) DD Form 1635, Plant Clearance Case Register, or comparable contractor document (see 245.7101–8);

(C) SF 120, Reporting of Excess Personal Property (see FAR 45.608–2 and FAR 45.608–8);

(D) DD Form 1342, DoD Property Record, and transmittal letter (see 245.7102–3); and

(E) DD Form 1348–1, DoD Single Line Item Release/Receipt Document, for transfers (turn-ins) to the Defense Property Disposal Service or inventory control points; and

(xi) All completed case files and subcontractor inventory cases received for plant clearance shall be retained by the contractor in the official case file.

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 (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.

(S–73) (1) Contractor inventory possessing military offensive or defensive characteristics, not required within the Department of Defense, shall be demilitarized by the contractor in accordance with Defense Demilitarization Manual, DoD 4160.21–M–1. In unusual cases, the purchaser may be authorized by the contracting officer to perform the demilitarization in accordance with DoD 4160.21–M–1; *provided*, however, that in no case shall such authorization be granted to the purchaser if the inventory is dangerous to life or property.

(2) Contractor inventory classified by reason of military security, unless the classification is removed by proper authority, shall be disposed of in accordance with applicable security regulations or as otherwise directed by the contracting officer.

(3) Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards have been provided.

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 the 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 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, are 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 contracting Department when the requiring and contracting 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 not 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 (e) below. The plant clearance officer will forward 2 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 Services 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 (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 (1) 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 X, para. F, 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 (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 offficer.

(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 alternate 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 prices 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 not 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 (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 (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 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 (iv) below.

(iv) *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.

(v) *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. Award 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 officer 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 officer 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 contracting department or the plant clearance officer determines and documents in accordance with 245.613(d) and FAR Subpart 1.7, 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 interests 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 contracting 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 proposed purchaser 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)(8) 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 (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 (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 the plant clearance officer 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 acquisition 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 Contracting 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 [Reserved]

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 contracting 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.

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.

Cash Collection Voucher shall be used to remit proceeds of sale to the appropriate disbursing officer.

245.7101-3 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.

DoD Property Record shall be used to report idle industrial plant equipment to DIPEC for worldwide screening.

245.7101-5 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.

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.

Disposal Determination/Approval shall be used to support disposal determinations.

245.7101-8 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.

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 allocability.

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 acquisition 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.

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 word "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 "S4403A-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 contracting 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 its 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 its 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 the purchaser in accordance with the prices quoted in the purchaser's 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 the Contractor 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 the Purchaser under the Invitation is less than the total amount deposited with the Purchaser's 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 the Purchaser. Delivery shall be made at the designated location, and the Purchaser shall remove the property at the Purchaser's 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 upward 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 the Bidder 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 (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 officer:

(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 the Contractor's 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 from the original purchase price and refund the balance of the 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 and 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 the Purchaser's own expense

purchase and maintain during the term of the contract insurance as follows:

(i) Standard workers' 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 the Purchaser's 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 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 its bid: "The undersigned represents and warrants that it 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 drugs and chemicals. Bids will be rejected unless the Bidder submits the following certification with its bid: "The undersigned represents and warrants that it 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 the Purchaser's 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 include 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 its 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 Bidder ☐ 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 it's 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 contract 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 contracts 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 the contractor's inspection system: 52.246–2(b), 52.246–4(b), 52.246–5(b), 52.246–6(b), 52.246–7(a), 52.246–8(b), 52.246–10(b), and 52.246–12(b).

Subpart 246.4—Government Contract Quality Assurance

246.405 Subcontracts.

Selective evaluation of the contractor's control of 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 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.

(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. 242.101(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.

(S-73) *Quality Assurance Agreement with Australia.* (See also 225.7310(d) and Appendix T-101.1.)

(1) Requests for quality assurance services in Australia shall be directed to:

Department of Defence
P.O. Box E33
Queen Victoria Terrace
Parkes, ACT 2600
ATTN: QAERP (CP4-3-46)

(2) Requests for quality assurance services in the United States shall be directed to:

Department of Defense Central Control Point
DCASR, New York, 201 Varrick Street
New York, NY 10014

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 contracting 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 for 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 246.471-2 of the DoD FAR Supplement 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 with 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 lot 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 for the release for shipment of such supplies inspected at the contractor's or subcontractor's facilities, just as the contractor may be given the authority for 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 administration 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 contractor'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 246.473 of the DoD FAR Supplement 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 of 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 inspection and test are 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 (QAR) considers that the circumstances warrant the assessment of the additional costs occasioned the Government by the delay, reinspection or retest, the QAR shall forward the QAR's 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, the contracting officer shall notify the contractor, in writing, of the contracting officer's 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 data 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 Noncomplex 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.

"Defects," as used in this subpart, means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

246.702 General.

(d) Planning is an essential step in obtaining an effective warranty. To be effective, warranties should be implemented as an integral part of an overall design, development, test and production program.

(e) The acquisition cost of a warranty may be included as part of an item's price or may be set forth as a separate contract line item.

(f) Agencies shall establish procedures to track and accumulate data relative to warranty costs.

246.703 Criteria for use of warranties.

The use of warranties in the procurement of weapon systems is mandatory pursuant to 10 U.S.C. 2403; unless a waiver is authorized. Policy and procedures for obtaining such warranties or waivers are contained in 246.770. Acquisition of warranties in the procurement of supplies that do not meet the definition of a weapon system (e.g., spare, repair, or replenishment parts) is governed by FAR 46.7.

246.704 Authority for use of warranties.

In contracts for other than weapon systems, the Chief of the Purchasing Office must approve use of a warranty except for:

(a) Commercial supplies or services (see FAR 46.709);

(b) Technical data, unless the warranty provides for extended liability (see 246.708);

(c) Supplies and services in fixed price type contracts containing quality assurance provisions that reference MIL–I–45208 or MIL–Q–9858; and

(d) Supplies and services in construction contracts when the warranties contained in Federal, military or construction guide specifications applicable to a given construction project are used. Authority for use of warranties in the procurement of weapon systems is stated in 246.770.

246.705 Limitations.

(a) Except for contracts for the production of weapon system under 246.770, contracting officers shall not include warranties in cost-reimbursement contracts, except for those warranties contained in the clauses at FAR 52.246–3, Inspection of Supplies—Cost-Reimbursement; FAR 52.246–8, Inspection of Research and 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 shall be stamped or marked, it shall be done so in accordance with MIL Standard 129, "Marking for Shipments and Storage" and MIL Standard 130, "Identification Marking of U.S. Military Property."

246.708 Warranties of technical data.

A warranty of technical data should be obtained whenever practicable and cost effective. The contracting officer shall consider the factors contained in FAR 46.703 in deciding whether to provide for warranties of technical data and whether there should be an extended liability provision (see 246.770–10). Particular emphasis should be placed on whether the extended liability is justified by: (i) 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 (ii) the effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract Clauses.

(f) In accordance with 246.708, the contracting officer may insert a clause substantially the same as the clause at 252.246–7001, Warranty of Data, in solicitations and contracts when a fixed-price 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.

(1) If extended liability is desired and a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate I.

(2) If extended liability is desired and a firm fixed-price contract is contemplated, the contracting officer may use the clause with its Alternate II.

246.770 Use of warranties in weapon system procurements.

This section sets forth policy and procedures for obtaining, pursuant to 10 U.S.C. 2403, certain warranties from prime contractors when contracting for the production of a weapon system.

246.770–1 Definitions.

"At no additional cost to the United States," as used in this section, means at no increase in price for firm fixed price contracts or at no increase in target or ceiling price for fixed price incentive contracts (see also FAR 46.707) or at no increase in estimated cost or fee for cost-reimbursement contracts.

"Design and manufacturing requirements," as used in this section, means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the weapon system being produced.

"Essential performance requirements," as used in this section, means the operating capabilities and/or maintenance and reliability characteristics of a weapon system that are determined by the Secretary of Defense (or delegated authority) to be necessary for it to fulfill the military requirement for which the system is designed.

"Initial production quantity," as used in this section, means the number of units of a weapon system contracted for in the first program year of full-scale production.

"Mature full-scale production," as used in this section, means follow-on production of a weapon system after manufacture of the lesser of the initial production quantity or one-tenth of the eventual total production quantity.

"Prime contractor," as used in this section, means a party that enters into an agreement directly with the United States to furnish a system or a major subsystem.

"Weapon system," as used in this subpart, means a system or major subsystem used directly by the armed forces to carry out combat missions. By way of illustration, the term "weapon system" includes, but is not limited to the following, if intended for use in carrying out combat missions: Tracked and wheeled combat vehicles; self-propelled, towed and fixed guns, howitzers and mortars; helicopters; naval vessels; bomber, fighter, reconnaissance and electronic warfare aircraft; strategic and tactical missiles including launching systems; guided munitions; military surveillance, command, control, and communication systems; military cargo vehicles and aircraft; mines; torpedoes; fire control systems; propulsion systems; electronic warfare systems; and safety and survival systems. This term does not include related support equipment, such as ground-handling equipment, training devices and accessories thereto; or ammunition, unless an effective warranty for the weapon system would require inclusion of such items. This term does not include commercial items sold in substantial quantities to the general public as described at FAR 15.804–3(c).

246.770–2 Policy.

(a) Unless waived under 246.770–9, after 1 January 1985, the Military Departments and Defense Agencies may not enter into a contract for the production of a weapon system with a unit weapon system cost of more than $100,000 or for which the eventual total procurement cost is in excess of $10,000,000, unless:

(1) A prime contractor for the weapon system provides the United States with written warranties that—

(i) The weapon systems provided under the contract conform to the design and manufacturing requirements specifically delineated in the contract (or any modification to that contract),

(ii) The weapon systems provided under the contract are free from all defects in materials and workmanship at the time of acceptance or delivery as specified in the contract; and

(iii) The weapon systems, if manufactured in mature full-scale production, conform to the essential performance requirements as specifically delineated in the contract (or any modification to that contract);

(2) The contract terms provide that, in the event the weapon system fails to meet the terms of the above warranties, the contracting officer may—

(i) Require the contractor to promptly take such corrective action as necessary (e.g., repair, replace and/or redesign) at no additional cost to the United States,

(ii) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action, or

(iii) Equitably reduce the contract price.

(b) Contracting officers may require warranties that provide greater coverage and remedies than specified above, such as including an essential performance requirements warranty in other than a mature full-scale production contract.

246.770-3 Tailoring warranty terms and conditions.

As the objectives and circumstances vary considerably among weapon system acquisition programs, Contracting officers shall appropriately tailor the required warranties on a case-by-case basis, including remedies, exclusions, limitations and duration; provided such are consistent with the specific requirements of this section (see also FAR 46.706). The duration specified in any warranty should be clearly related to the contract requirements and allow sufficient time to demonstrate achievement of the requirements after acceptance. Contracting officers may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties. All subsystems and components will be procured in such a manner so as not to invalidate the weapon system warranty. Contracting officers are encouraged to structure broader and more comprehensive warranties where such are advantageous and in accordance with agency policy. Likewise, the Contracting officer may narrow the scope of a warranty where such is appropriate (e.g., where it would be inequitable to require a warranty of all essential performance requirements because a contractor had not designed the system). It is Department of Defense policy not to include in warranty clauses any terms that cover contractor liability for loss, damage or injury to third parties.

246.770-4 Establishing essential performance requirements.

The Secretary of Defense or heads of military departments, or delegees, shall designate which features of a weapon system are its essential performance requirements. Essential performance requirements may be subsequently modified, superseded or cancelled by the Secretary of Defense or heads of military departments (or delegees) when such is in the interests of the Government.

246.770-5 Warranties on government-furnished property.

A prime contractor shall not be required to provide the warranties specified in 246.770-2 on any property furnished to that contractor by the United States except for (a) defects in installation, (b) installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property, or (c) modifications made to the property by the prime contractor.

246.770-6 Exemption for alternate source contractor(s).

Agency heads may exempt alternate source contractor(s) from the essential performance warranty requirements of 246.770-2(a)(1)(iii) until that contractor manufactures the first 10% of the eventual total production quantity anticipated to be acquired from that contractor.

246.770-7 Applicability to FMS.

The warranty requirements of 246.770-2 are not mandatory for FMS production contracts. For all weapon systems procured for FMS requirements, the policy of the Department of Defense should be to obtain the same warranties on conformance to design and manufacturing requirements and against defects in materials and workmanship that are obtained for U.S. supplies. DoD will not normally obtain essential performance warranties for FMS purchasers. However, where the cost for the warranty of essential performance requirements cannot be practically separately identified, the foreign purchaser may be provided the same warranty that is obtained on the same equipment purchased for the U.S. If the FMS purchaser expressly requests a performance warranty in the Letter of Acceptance (LOA), the United States will exert its best efforts to obtain the same warranty obtained on U.S. equipment or, if specifically requested by the FMS purchaser, a unique warranty. It is anticipated that the costs for warranties for FMS purchasers may be different from the costs for such warranties for the United States due to such factors as overseas transportation and any tailoring to reflect the unique aspects of the FMS purchaser. Special care must be exercised to ensure that the FMS purchaser shall bear all of the acquisition and administration costs of any warranties obtained.

246.770-8 Cost-benefit analysis.

It is Department of Defense policy to only obtain warranties that are cost effective. If a specific warranty is considered not to be cost effective by the contracting officer, a waiver request shall be initiated under 246.770-9. In assessing the cost effectiveness of a proposed warranty, an analysis must be performed which considers both the quantitative and qualitative costs and benefits of the warranty. Costs include the warranty acquisition, administration, enforcement and user costs, weapon system life cycle costs with and without a warranty, and any costs resulting from limitations imposed by the warranty provisions. Costs incurred during development specifically for the purpose of reducing production warranty risks should also be considered. Similarly, the cost-benefit analysis must also consider logistical/operational benefits expected as a result of the warranty as well as the impact of the additional contractor motivation provided by the warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing similar warranties on similar systems. The analysis should be documented in the contract file.

246.770-9 Waiver and notification procedures.

One or more of the weapon system warranties required by 246.770-2 may be waived if such waiver is in the interests of national defense or if the warranty to be obtained would not be cost-effective. Waivers may be granted by the Secretary of Defense, by the Assistant

Secretary of Defense (Acquisition and Logistics) for Defense agencies without the power to redelegate, or by the Secretaries of the Army, Navy and Air Force with the power to redelegate to no lower than an Assistant Secretary of the Military Department. Class waivers may be granted where justified. Waivers may be granted provided the following notifications or reports are made to the Senate and House Committees on Armed Services and on Appropriations:

(a) *Major weapon systems.* With respect to a weapon system that is a major defense acquisition program for the purpose of 10 U.S.C. 139a, before granting a waiver, the waiving official shall notify the aforementioned Committees in writing of an intention to waive one or more of the required warranties. The notice of intent to waive shall include an explanation to the reasons for the waiver and shall ordinarily be given 30 days prior to granting such waiver.

(b) *Other weapon systems.* With respect to weapon systems that are not major defense acquisition programs for the purpose of 10 U.S.C. 139a, waiving officials shall submit an annual report not later than February 1 of each year that lists waivers granted on such programs during the preceding calendar year. This report shall also include an explanation of the reasons for granting each waiver.

(c) *Weapon systems not in mature full-scale production.* Although a waiver is not required, if a production contract for a major weapon system not yet in mature full-scale production will not include a warranty on essential performance requirements, the waiving officials shall nonetheless comply with the notice requirements for major weapon systems.

(d) *Processing waivers, notifications and reports.* Each Department shall issue procedures for processing waivers, notifications, and reports to Congress. At the minimum, these procedures shall specify:

(1) Requests for waiver shall include—

(i) A brief description of the weapon system and its stage of production, e.g., the number of units delivered and anticipated to be delivered and anticipated to be delivered during the life of the program; and

(ii) The specific warranty or warranties required by 246.770–2(a)(1) for which the waiver requested, the duration of the waiver if it is to go beyond the instant contract and rationale for the waiver.

(iii) A description of the warranties or other techniques to be employed to assure acceptable field performance of the weapon system.

(2) Notifications and reports shall include—

(i) A brief description of the weapon system and its stage of production, and

(ii) Rationale for not obtaining a warranty.

(3) A written record will be kept of each waiver granted and notification and report made, together with supporting documentation such as a cost-benefit analysis, for use in answering inquiries.

(4) A copy of each notification and report to Congress shall be submitted concurrently to the Assistant Secretary of Defense (Acquisition and Logistics). For class waivers this copy shall be submitted in advance of transmittal to Congress.

246.770–10 Special contract clauses.

(a) In accordance with 246.770, the contracting officer shall insert in solicitations and contracts pertaining to the production of weapon systems a clause that describes the contractor's warranties on the weapon system.

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 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 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) Military Traffic Management Command (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 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, DC 20315.

(ii) Navy: Navy Supply Systems Command, Code 05, Washington, DC 20390.

(iii) Air Force: Applicable Overseas Air Force Command.

(iv) Marine Corps: Director, Transportation Division, HQ, U.S. Marine Corps, COS, Washington, DC 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 [Reserved]

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.* Offerors 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 labor-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 workers 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 labor-hour and equipment rental rates.

Labor-hour rates shall be established for every category of labor expected to be necessary to perform services required under the contract. The development of labor-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 worker, workmen's compensation, social security taxes, insurance, general and administrative expenses, and profit. The evaluation of bids and proposals shall include an extension of the quoted labor-hour rates against the estimated labor-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 labor-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 sealed bid 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 252.243-1—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 sealed bidding. Such contracts

shall be on a calendar year basis except for noncontinuous requirements for shorter periods. Award of contracts should be made prior to November 1 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. The contracting officer 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, DC 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 contracts 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 21.4. 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 247.3—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 (i) through (iv) above and the applicable portion of (v) above, together with the notation "Non-MILSTRIP".

(2) In addition to the data requirements of (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 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 contracting officer concerning f.o.b. terms best suited for the acquisition, and other suggested transportation provisions for inclusion in the IFB/RFP, shall be

completed upon request of the contracting officer 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 contracting personnel to furnish basic information to the transportation office for development of transportation cost factors which shall be used by the contracting 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 purposes 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 Gilbraltar 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.

(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 of 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 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, DC 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 of property owned by the Government and in the possession of the contractor or any of its subcontractors, including any contract under which title to

property may pass to the Government prior to shipment.

PART 248—VALUE ENGINEERING

Subpart 248.2—Contract Clauses

248.201 Clauses for supply or service contracts.

(a) *General.* Supply or service contracts for spare parts and repair kits of $25,000 or more, for other than standard commercial parts, shall contain a VE incentive clause (see FAR 48.201(b)).

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 administration 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.

c. Statement as to diversion of commom 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 profits included therein.

c. Comment on any important adjustments made to costs 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

	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, exlain the general basis for and the major factors considered in arriving at this settlement.

(7) Comment on any unusual items 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 author, 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:
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.

	Number settlements	Total dollar amount
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 *

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.		$

* 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] Expand 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)(S-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)(S-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 Defence Production (Canada) and the United States Department of Defense (see Appendix T.201, Canadian Agreements); (2) policies in T.201 and Part 249; 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 Commercial 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 disadvantaged 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 cost.

(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 $25 million or total production investment 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

designee. The clause may be used in circumstances other than those in (1) and (2) above when approved by the Secretary of the Department concerned or 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 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

250.103 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, 50.303(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 (vi) 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) *Award procedure.* The procedure under which the contract was awarded, e.g., formal advertising, negotiation, or sealed bidding, should be indicated. The specific authority, if applicable, should be indicated; for 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 a 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 (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 (2) and (3) above may be prepared in a format substantially as follows:

☐ PRELIMINARY	RECORD OF REQUEST FOR ADJUSTMENT PUBLIC LAW 85–804	FINAL ☐
DATE OF REQUEST		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 250.201 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 Assistant Secretary of Defense, Acquisition and Logistics.

(3) *Approvals.* Authorities may be delegated and redelegated only with the written approval of the Secretary or 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 2 appearing to be cognizant of the contract or commitment involved;

(2) In the Navy: The Head of Contracting Activity listed in Part 2 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 Centers 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 decribed 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 boards.*

(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 indorsements, 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.

(Pub. L. 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 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 cost 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 reponsibility 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 contractor;

(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 subcontractors 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 lack 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 potential 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 liability 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 his 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 I 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 51.1 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) _____

* 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.

(e)(3)(ii) In addition to the procedure and form authorized by FAR 51.102(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 51.103(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 51.106(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 52.251-1.

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 228.001 for policy on contractor insurance and self-insurance, respectively, and FAR 31.205-19 for allowability of insurance costs.

(a)(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.

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 or 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).

(e) *Matrices.*

(2)(ii) In the event of an obvious conflict between the matrix location listing and FAR 14.201 or 15.406, the latter shall govern.

(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 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

252.200 Scope of subpart.

(S-70) 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 SUBCONTRACTS (AUG 1986)

(a) For each subcontract or modification thereof which exceeds $25,000, where the country of origin is outside the United States or its territories and possessions, the Contractor agrees to prepare and submit the Subcontract Report of Foreign Purchases on DD Form 2139 to Director for International Acquisition, OASD(A&L)(P), Department of Defense, The Pentagon, Washington, D.C. 20301-3060. As used herein, "country of origin" means the country where the actual producer of supplies or the actual provider of services is located. Copies of the form may be obtained from the Contracting Officer. Contractors who maintain information on foreign subcontracts on an automated data base may submit the information in a report format compatible with their automated system. In all cases, however, the report shall include all of the information required by the DD Form 2139. A sample of the form is shown at DoD FAR Supplement 253.303-70-DD-2139.

(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 for 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)

252.208-7003 Required sources for High Carbon Ferrochrome (HCF).

As prescribed at 208.7603(a), insert the following clause:

REQUIRED SOURCES FOR HIGH CARBON FERROCHROME (AUG 1984)

(a) For the purpose of this clause: "U.S. manufacture" means high carbon ferrochrome manufactured in the United States regardless of source of the chrome ore. HCF means ferrochromium alloy that contains three percent or more carbon and 50 percent or more chromium.

(b) The Contractor agrees that end items, components and processed materials thereof delivered under this contract shall contain HCF of U.S. manufacture, and/or it has met the requirements of paragraph (g) of this clause.

(c) The Contractor agrees to insert this clause, including this paragraph (c), in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no HCF.

(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 requirement for delivery in (b) above may be waived in whole or in part on a case-by-case basis by the Contracting Officer when such waiver is determined to be in the Government's interest and it meets the provisions of Subpart 208.76 of the DoD FAR Supplement.

(f) The provisions of this clause do not apply to the Contractor when he obtains an end item in support of DoD Memoranda of Understanding (MOU)/offset agreements with NATO Allies and nondomestic HCF is incorporated in the end item being furnished in support of the defense contract.

(g) The Contractor or subcontractor that uses HCF to produce end items, components or processed material is not required to keep its inventory of U.S. versus foreign produced HCF separate for storage or control purposes. However, contractor or subcontractor must be able to show (when requested by the Contracting Officer) that U.S. HCF in adequate quantities has been procured in support of the defense contract when required end items, components or processed material incorporate HCF in the manufacturing process.

(End of clause)

252.208-7004 Notice of intent to furnish precious metals as Government-Furnished Material.

As prescribed at 208.7703(a), insert the following provision.

NOTICE OF INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (OCT 1985)

(a) It is the Government's intent to furnish precious metal(s) required in the manufacture of contractually-deliverable items by the Offeror in performance of any contract resulting from this solicitation pursuant to the clause "Government-Furnished Property" herein (except that use of Government-furnished silver is mandatory only when the quantity required is one hundred (100) troy ounces or more), if such action is determined to be in the Government's best interest.

(b) To facilitate such determination the Offeror shall cite below the type (silver, gold, platinum, palladium, iridium, rhodium, and ruthenium) and quantity (in whole troy ounces) of precious metal(s) required in the performance of this contract (including precious metal required for any first article or production sample), and shall also cite in what contractually-deliverable item the precious metal(s) will be used, specifying National Stock Number and Nomenclature, if known.

Type of precious metal required [1]	Quantity (in whole troy ounces)	Contractually-deliverable item in which precious metals will be used (cite NSN and nomenclature)

[1] If platinum or palladium, specify whether sponge or granules are required.

(c) Offerors shall submit two prices for each contractually-deliverable item containing precious metal: one based on the Government's furnishing precious metals, and one based on the Contractor's furnishing precious metals; and award will be made, considering the Government-furnished material unit price, which is in the best interest of the Government.

(d) The Contractor agrees to insert this provision, including this paragraph (d), in solicitations for subcontracts and purchase orders issued in performance or any contract resulting from this solicitation unless the Contractor knows that the item being purchased contains no precious metals.

(End of provision)

252.208-7005 Required sources for forging and welded shipboard anchor chain items used for military application for combat and direct combat support items.

As prescribed at 208.7803, insert the following clause:

REQUIRED SOURCES FOR FORGING AND WELDED SHIPBOARD ANCHOR CHAIN ITEMS (AUG 1985)

(a) For the purpose of this clause:

"Domestic manufacture" means forging items manufactured in the United States or Canada.

"End item" means a final combination of end products, component parts, and/or materials which is ready for its intended use, per JCS Publication #1 (DoD Dictionary of Military and Associated Terms).

(b) The Contractor agrees that end items, components, and processed materials thereof delivered under this contract shall contain domestic forging and welded shipboard anchor chain (smaller then four inches in diameter) items of United States and Canadian manufacturers only as listed in section 208.7802-1 of the DoD FAR Supplement. This restriction does not include forgings for commercial vehicles (such as commercial cars and trucks) or to noncombat support military vehicles.

(c) A Canadian firm may bid on and supply any of the restricted items if: (1) It normally produces similar items or it is currently producing the item in support of DoD contracts (as prime or subcontractor); and (2) it agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Program (IPP), if it is not already a planned producer for the item.

(d) The Contractor agrees to insert this clause, including this paragraph (d), in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains none of the restricted forging or welded shipboard anchor chain items.

(e) 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.

(f) The requirement for delivery in (b) above may be waived in whole or in part on a case-by-case basis by the Contracting Officer when such a waiver is determined to be in the Government's interest and it meets the provisions of Subpart 208.78 of the DoD FAR Supplement.

(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. Bids 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 the bid that the bidder is offering an "equal" product, the 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 the bid, as well as other information reasonably available to the contracting activity. CAUTION TO BIDDERS. The contracting activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the contracting activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of the bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting 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 acquire by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, the bidder shall (i) include in the 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 specifications, 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)

252.210-7004 Bill of materials.

As prescribed at 210.011(S-72), insert the following clause:

BILL OF MATERIALS (APR 1955)

(a) With respect to the supplies to be delivered pursuant to the contract, for which a Bill of Materials is required, the Contractor shall furnish a Bill of Materials in the required number of copies on Department of Defense Forms 346 and 347 if applicable, or authorized reproductions thereof, in accordance with the instructions specified in the Schedule.

(b) The Contractor shall furnish to the Government, at such intervals as designated in the Schedule, revised pages of the Bill of Materials incorporating the effect of any changes, pursuant to the clause hereof entitled "Changes", in the quantity of any materjal or part, or any other information contained in the Bill of Materials, or a statement that no revision is necessary. A final revision, or statement that no revision is necessary, shall be furnished upon completion of performance of the contract.

(c) The Bill of Materials and all revisions or statements subsequent thereto shall be subject to inspection and acceptance by the Government.

(End of clause)

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)

* Delete inapplicable provision.

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.

* The time period may be modified to comply with the customary commercial practice for the particular type of container being rented.

(b) This rental charge will be computed separately for cylinders of differing 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 213.505–2(S–73)(1)(xlx), 214.407–3, and 215.407(S–70), 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 Aggregate pricing adjustment.

As prescribed at 215.804–8(S–70), insert the following clause:

AGGREGATE PRICING ADJUSTMENT (APR 1985)

In determining whether a pricing adjustment is expected to exceed $100,000, the term "pricing adjustment" shall mean "the aggregate increases and/or decreases in cost plus applicable profits."

(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 clause:

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 ten (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 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 or 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 thirty (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 ten (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 therefore 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 provided 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 15.804–3. 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 Contractor'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 (3) 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 is 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 the 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 (30) 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 Contractor'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 receipt 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 of 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 time 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(S-70)(1), 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.

(End of clause)

252.217-7001 Exercise of option to fulfill Foreign Military Sales commitments (Alt. 1).

As prescribed at 217.208(S-70)(2), insert the following clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS (ALT. 1) (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 cost or profit considerations attributable to Foreign Military Sales requirements in section 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)

252.217-7100 Definitions.

As prescribed at 217.7104(a), insert FAR clause 52.202-1 (APR 1984).

252.217-7101 Changes.

As prescribed at 217.7104(a), insert the following clause:

CHANGES (APR 1982)

The Contracting Officer may at any time, by written change order, and without notice to the sureties, make changes within the general scope of any job order issued under this agreement in (i) drawings, designs, plans and specifications, (ii) work itemized in any job order, (iii) place of performance of the work, and (iv) time of commencement or completion of the work, and may otherwise vary the requirements of the job order within the general scope thereof. If any such change causes an increase or decrease in the cost of, or the time required for, performance of the job order, whether changed or not changed by any such change order, an equitable adjustment shall be made in the price or in the date of completion, or both, and the job order shall be modified in writing accordingly. The price adjustment for the change order and the adjustment in the date of completion shall be agreed upon and reduced to writing at the time the change is ordered or as soon thereafter as practicable. A request for price adjustment, together with the Contractor's written estimate of the increased cost, must be asserted within ten (10) days from the date of receipt by the Contractor of the notification of change or within such further time as the Contracting Officer may allow on request made by the Contractor during such period; *provided, however*, that the Contracting Officer, if deciding that the facts justify such action, may receive and act upon any such request asserted at any later time prior to final payment under the job order, except that in such event no profit shall be allowed to the Contractor. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of Clause 252.217-7111 entitled DISPUTES hereof. However, nothing in this clause shall excuse the Contractor from proceeding with the job order as changed.

(End of clause)

252.217-7102 Extras.

As prescribed at 217.7104(a), insert FAR clause 52.232.11 (APR 1984).

252.217-7103 Job orders and compensation.

As prescribed at 217.7104(a), insert the following clause:

JOB ORDERS AND COMPENSATION (APR 1985)

(a) (1) When the Contracting Officer invites bids for the performance of work under this agreement and, upon receipt of a bid in accordance therewith from the Contractor, determines that such work should be awarded to the Contractor, the price for the work shall be set forth in a job order and such job order shall be signed and issued by the Contracting Officer. The issuance of such job order shall constitute an award of the work to the Contractor in response to his bid. Such job order shall be deemed to incorporate the terms and conditions of this agreement.

(2) When the Contracting Officer requests proposals or quotations for the performance of work under this agreement on a negotiated basis and, upon receipt of proposals or quotations in accordance therewith from the Contractor, determines that the work should be performed by the Contractor, the price for the work shall be set forth in a job order, and such job order shall be signed and issued by the Contracting Officer and signed and acknowledged by the Contractor. Such job order shall be deemed to incorporate the terms and conditions of this agreement.

(b) Whenever the Contracting Officer determines that a vessel, its cargo or stores would be endangered by delay or whenever the Contracting Officer determines that military necessity requires immediate performance of work on a vessel, the Contracting Officer may issue a written order, with which the Contractor hereby agrees to comply, to perform work on such vessel within his capabilities. As soon as practicable after the issuance of such written order, the Contracting Officer and the Contractor shall negotiate a price for the work and the Contracting Officer shall issue a job order covering such work. In connection with negotiation of a price for such work, the Contractor shall, upon request, furnish the Contracting Officer with a breakdown of costs incurred by the Contractor and an estimate of costs expected to be incurred in the performance of such work as required by the Contracting Officer. The Contractor shall keep records showing the cost of performing such work, and such records shall be available for inspection by the Government at reasonable times. Failure of the parties to agree upon the price of such work shall constitute a dispute within the meaning of Clause 252.217-7111 entitled "DISPUTES". In the meantime, the Contractor shall diligently proceed with the performance of the work.

(c) If the nature of any repairs is such that their extent and probable cost are not readily ascertainable, the Contracting Officer may issue a job order, on a negotiated or sealed bidding basis, for the work necessary to determine the nature and extent of repairs. Upon determining the nature and extent of repairs, the Contractor shall, if so requested by the Contracting Officer, negotiate prices at which the Contractor will perform such work as the Contracting Officer may determine necessary to accomplish the repairs, and the prices so agreed upon shall be set forth in a modification of the job order. Failure of the parties to so agree shall constitute a dispute within the meaning of Clause 252.217-7111. In the meantime, the Contractor shall diligently proceed with the performance of the work specified in the job order as determined necessary by the Contracting Officer.

(End of clause)

252.217-7104 Inspection and manner of doing work.

As prescribed at 217.7104(a), insert the following clause:

INSPECTION AND MANNER OF DOING WORK (APR 1982)

(a) Work shall be performed hereunder in accordance with the job order, and any drawings and specifications made a part thereof, as modified by any change order issued under Clause 252.217-7101 entitled "CHANGES" hereof.

(b) Unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work hereunder shall be in accordance with the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of the Contractor's submission of bid (or acceptance of the job order, if negotiated) and the best commercial marine practices, except when Navy specifications are specified in the job order, in which case Naval standards of material and workmanship shall be followed. The solicitation shall prescribe the Navy standard whenever applicable, and the decision of the Contracting Officer shall be final.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with the job order. In case any material or workmanship furnished by the Contractor is found prior to redelivery of the vessel to be defective, or not in accordance with the requirements of the job order, the Government, in addition to its rights under Clause 252.217-7130 entitled "GUARANTEES" hereof, shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Officer, the Government may, by contract or

otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost occasioned the Government thereby. As specified in the job order, the Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the job order. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the job order and for a period of ninety (90) days after completion of all work required by the job order.

(d) No welder shall be permitted to work in connection with repairs, completion, alterations, or additions to vessels unless the welder is, at the time, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder for this purpose shall be as specified in the job order. No welder shall be permitted to work on production applications of welding other than those for which the welder has qualified.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazines, fuel oil tanks or storerooms containing flammable materials. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in drydock or on a marine railway. Unless otherwise provided in the job order, the Contractor shall provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when the ship is in the Contractor's custody. All tanks under alteration or repair shall be cleaned, washed and steamed out or otherwise made safe by the Contractor if and to the extent necessary, and the Contracting Officer shall be furnished with a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank. The contents of any tanks shall be treated as Government property in accordance with Clause 252.217-7218 entitled "GOVERNMENT PROPERTY". Any disposition of said contents shall be at the direction and with the concurrence of the Contracting Officer.

(f) Except as otherwise provided in the job order, when the vessel is in the custody of the Contractor or in drydock or on a marine railway and the temperature becomes as low as thirty-five degrees (35°) Fahrenheit, the Contractor shall keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel drained to avoid damage from freezing, or if this is not practicable, the vessel shall be kept heated to prevent such damage. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means.

(g) The work shall, whenever practicable, be performed in such manner as not to interfere with the berthing and messing of civilian or military personnel attached to the vessel, and provisions shall be made so that personnel assigned shall have access to the vessel at all times, it being understood that such personnel will not interfere with the work or the Contractor's workers.

(h) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any job order, sketches, drawings, plans or specifications prepared or furnished by the Government, except when a job order requires that the work be performed by the Contractor prior to any opportunity to make the necessary inspection. The Contractor shall be responsible for the correctness of the shape, sizes, and dimensions of parts to be furnished hereunder except as above set forth and other than those furnished by the Government.

(i) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by his employees or the work, and at the completion of the work shall remove all rubbish from and about the site of the work and shall leave the work in its immediate vicinity "broom clean", unless more exactly specified in the job order.

(End of clause)

252.217-7105 Title.

As prescribed at 217.7104(a), insert the following clause:

TITLE (APR 1982)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this agreement shall have vested previously in the Government by virtue of other provisions of this agreement, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part thereof in accordance with the requirements of the job order, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the job order for the performance of the work; *Provided*, however, that the provision of this clause or other provisions of this agreement shall not be construed as relieving the Contractor from the full responsibility for all such Contractor-furnished materials and equipment or the restoration of any damaged work or as a waiver of the right of the Government to require the fulfillment of all the terms of this agreement, it being expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the job order, or with the approval of the Contracting Officer at any time during the performance of the job order, all such Contractor-furnished materials and equipment not incorporated in any vessel or part thereof, or not placed upon any vessel or part thereof, in accordance with the requirements of the job order, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of clause)

252.217-7106 Payments.

As prescribed at 217.7104(a), insert the following clause:

PAYMENTS (APR 1982)

(a) Progress payments (which are hereby defined as payments prior to completion of work in progress under any job order) shall be made as the work progresses upon the submission by the Contractor of invoices therefor in such form and with such copies as the Contracting Officer may prescribe. Such invoices may be submitted semi-monthly or more frequently if expenditures by the Contractor warrant. No progress payment will be required under this clause upon invoices aggregating less than $5,000. Such progress payments shall be made upon the basis of the value, computed on the price of the job order, of labor and materials incorporated in the work, materials suitably stored at the site of the work, and preparatory work already completed, all as estimated or approved by the Contracting Officer, less the aggregate of any previous payments. For the purpose of enabling the Contracting Officer to make such estimate or give such approval, the Contractor will furnish to the Contracting Officer, upon request, such reports concerning expenditures on the work to date as may be requested.

(b) In making such progress payments, there shall be retained five percent (5%) of the amount estimated or approved by the Contracting Officer pursuant to paragraph (a) above until final completion and acceptance of all work covered by the job order.

(c) If the Contracting Officer so directs, progress payments under paragraph (a) of this clause shall be based upon the price of the job order as adjusted from time to time as a result of change orders under Clause 252.217-7101 entitled CHANGES hereof. If the Contracting Officer has not directed that the increase or decrease in price as a result of any change order be taken into account for purposes of progress payments under paragraph (a) of this clause, (i) payments on account of such increases shall be made from time to time when the increase is determined pursuant to Clause 252.217-7101 entitled CHANGES; and (ii) reductions on account of such decreases shall be made for the purposes of subsequent progress payments as soon as the amounts thereof are determined pursuant to Clause 252.217-7101 entitled CHANGES hereof.

(d) Upon completion of the work under a job order and final inspection and acceptance thereof and upon submission of invoices therefor in such form and with such copies as the Contracting Officer may prescribe, the Contractor shall be paid for the price of the job order, as adjusted pursuant to Clause 252.217-7101 entitled CHANGES hereof, less the amount of all previous payments.

(e) All materials, equipment, and other property or work in process covered by progress payments made by the Government shall upon the making of such progress payments become the sole property of the Government, and shall be subject to the

provision of Clause 252.217–7105 entitled TITLE hereof.

(End of clause)

252.217–7107 Assignment of claims.

As prescribed at 217.7104(a), insert FAR clause 52.232–23 (APR 1984).

252.217–7108 Bonds.

As prescribed at 217.7104(a), insert the following clause:

BONDS (APR 1982)

(a) If the solicitation requires a bid bond to be furnished, the Contractor may furnish in lieu thereof an annual bid bond, or evidence thereof, or an annual performance and payment bond, or evidence thereof. If bonds are not required by the solicitation, the Government reserves the right at the discretion of the Contracting Officer to require a performance and payment bond, in form, amount, and with a surety acceptable to the Contracting Officer, and if said bond is in fact required, then the bid price shall be increased upon the award of a job order in an amount not to exceed the premium of a corporate surety bond; and the Contractor by submitting a bid warrants that the Contractor has not included in the price any contingency to cover the premium of said bond.

(b) If any surety upon any bond furnished in connection with a job order under this agreement becomes unacceptable to the Government, or if any such surety fails to furnish reports as to the financial condition of the surety from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this agreement.

(End of clause)

252.217–7109 Federal, State, local, and Foreign taxes.

As prescribed at 217.7104(a), insert FAR clause(s) 52.229–3, 52.229–4, 52.229–5, 52.229–6, and 52.229–7 (APR 1984) as applicable.

252.217–7110 Default.

As prescribed at 217.7104(a), insert the following clause:

DEFAULT (APR 1982)

(a) The Government may, subject to the provisions of paragraph (b) below, by written Notice of Default to the Contractor, terminate the whole or any part of a job order in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified in a job order or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this agreement or a job order issued hereunder, or so fails to make progress as to endanger performance of the job order in accordance with its terms.

(b) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if any failure to perform the job order arises from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform the job order within the time specified therein. As used in this clause, the word "subcontractor" means subcontractor at any tier.

(c) In the event the Government terminates the job order in whole or in part as provided in paragraph (a) of this clause, the Government may, upon such terms and in such manner as the Contracting Officer may deem appropriate, arrange for the completion of the work so terminated, at such plant or plants, including that of the Contractor, as may be designated by the Contracting Officer; *Provided*, that the Contractor shall continue the performance of the job order to the extent not terminated under the provisions of this clause. If the work is to be completed at the plant, the Government may use all tools, machinery, facilities and equipment of the Contractor determined by the Contracting Officer to be necessary for that purpose. If the cost to the Government of the work procured or completed (after adjusting such cost to exclude the effect of changes in the plans and specifications made subsequent to the date of termination) exceeds the price fixed for work under the job order (after adjusting such price on account of changes in the plans and specifications made prior to the date of termination), the Contractor, or the Contractor's surety, if any, shall be liable for such excess.

(d) If a job order is terminated in whole or in part as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and delivery to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of the job order as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the job order price for completed items of work delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government, and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of clause 252.217–7111 entitled DISPUTES hereof.

(e) If, after notice of termination of the job order under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to the clause 252.217–7120 hereof entitled TERMINATION FOR CONVENIENCE OF THE GOVERNMENT.

(f) If the Contractor fails to complete the performance of a job order within the time specified therein, or any extension thereof, the actual damage to the Government for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damage, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount, if any, set forth in the job order (prorated to the nearest hour for fractional days). Alternatively, the Government may terminate the job order in whole or in part as provided in paragraph (a) of this clause, and in that event the Contractor shall be liable, in addition to the excess costs provided in paragraph (c) above, for such liquidated damages accruing until such time as the Government may reasonably obtain completion of the work described in the job order. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in paragraph (b) above, and in such event, subject to the provisions of Clause 252.217–7111 entitled DISPUTES of this agreement, the Contracting Officer shall ascertain the facts and the extent of the delay and shall extend the time for performance when in the judgment of the Contracting Officer, the findings of fact justify an extension.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under this agreement.

(End of clause)

252.217–7111 Disputes.

As prescribed at 217.7104(a), insert FAR clause 52.233–1 (APR 1984).

252.217–7112 Performance.

As prescribed at 217.7104(a), insert the following clause:

PERFORMANCE (APR 1982)

(a) Upon the issuance of a job order, the Contractor shall promptly commence the work specified therein and in any plans and specifications made a part thereof, and shall

diligently prosecute the work to completion. The Contractor shall not commence work until the job order has been issued, except in the case of work ordered by the Contracting Officer as provided in paragraph (b) of clause 252.217-7103 entitled JOB ORDERS AND COMPENSATION hereof.

(b) The Government shall deliver the vessel described in the job order at such time and location as may be specified in the job order, and, upon completion of the work, the Government shall accept delivery of the vessel at such time and location as may be specified in the job order.

(c) The Contractor shall, without charge and without specific requirement thereof in a job order:

(i) Make available at the plant to personnel of the vessel while in drydock or on a marine railway, toilet and similar facilities acceptable to the Contracting Officer as adequate in number and sanitary standards. Supply and maintain, in such condition as the Contracting Officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel;

(ii) Test salvage, scrap, or other ship's material of the Government resulting from performance of the work as items of Government-furnished property in accordance with the provisions of clause 252.217-7218 entitled GOVERNMENT PROPERTY.

(iii) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(iv) Furnish suitable offices, office equipment and telephones at or near the site of the work as the Contracting Officer reasonably requires for the Contracting Officer and staff of the Contracting Officer.

(d) Except as otherwise provided in the job order, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities, and such other things and services as are necessary for accomplishing the work specified in the job order subject to the right reserved in the Government under clause 252.217-7218 entitled GOVERNMENT PROPERTY.

(e) Dock and sea trials of the vessel when required by the Government shall be specified in the job order. Unless otherwise expressly provided in the job order, during the conduct of such trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified by the job order which the Contractor requires for the Contractor's own benefit shall not be undertaken by the Contractor without prior notice to and approval of the Contracting Officer; any such dock trials shall be conducted at the expense of the Contractor, and any such sea trials shall be conducted at the risk and expense of the Contractor. The Contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials, to enable the representatives of the Government to determine whether the requirements of the job order, plans, and specifications have been met, and the Contractor shall be responsible for the care, installation and removal of instruments and apparatus furnished by the Government for such trials.

(End of clause)

252.217-7113 Access to vessel.

As prescribed at 217.7104(a), insert the following clause:

ACCESS TO VESSEL (MAY 1983)

(a) A reasonable number of officers, employees, and associates of the Government, or other prime Contractors with the Government, and their subcontractors, shall, as authorized by the Supervisor, have at all reasonable times, admission to the plant, and access to vessel(s) to perform and fulfill their respective obligations to the Government on a noninterference basis. The Contractor shall make reasonable arrangements with the Government or Contractors of the Government, as shall have been identified and authorized by the Supervisor, to be given admission to the Contractor's facilities and access to the vessel(s) and to office space, work areas, storage or shop areas, or other facilities and services, necessary for the performance of their respective responsibilities and reasonable to their performance. All such above personnel shall be required to comply with all Contractor rules and regulations governing personnel at its shipyard, including those relative to safety and security.

(b) The Contractor further agrees as authorized by the Supervisor, to afford to a reasonable number of officers, employees, and associates of offerors on other contemplated work, the same privileges of admission to the Contractor's plant and access to the vessel(s) on a noninterference basis subject to all Contractor rules and regulations governing personnel in its shipyard, including those relative to safety and security.

(c) The vessel, its equipment, movable stores, cargo, or other ship's material shall not be considered Government-Furnished Property.

(End of clause)

252.217-7114 Certain Communist areas.

As prescribed at 217.7104(b), insert FAR clause 52.225-11 (APR 1984).

252.217-7115 Contract Work Hours and Safety Standards Act—overtime compensation.

As prescribed at 217.7104(b), insert FAR clause 52.222-4 (APR 1984).

252.217-7116 Walsh-Healey Public Contracts Act.

As prescribed at 217.7104(b), insert FAR clause 52.222-20 (APR 1984).

252.217-7117 Equal opportunity clause.

As prescribed at 217.7104(a), insert FAR clause 52.222-26 (APR 1984).

252.217-7118 Officials not to benefit.

As prescribed at 217.7104(a), insert FAR clause 52.203-1 (APR 1984).

252.217-7119 Covenant against contingent fees.

As prescribed at 217.7104(a), insert FAR clause 52.203-5 (APR 1984).

252.217-7120 Termination for convenience of the government.

As prescribed at 217.7104(a), insert FAR clause(s) 52.249-1 or 52.249-2 (APR 1984), as applicable.

252.217-7121 Authorization and consent.

As prescribed at 217.7104(a) insert FAR clause 52.227-1 (APR 1984).

252.217-7122 Notice and assistance regarding patent and copyright infringement.

As prescribed at 217.7104(a), insert FAR clause 52.227-2 (APR 1984).

252.217-7123 Responsibility for inspection.

As prescribed at 217.7104(a), insert FAR clause 52.246-1 (APR 1984).

252.217-7124 Liability and insurance.

As prescribed at 217.7104(a) insert the following clause:

LIABILITY AND INSURANCE (AUG 1983)

(a) The Contractor shall exercise reasonable care and use the Contractor's best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall not, unless otherwise directed or approved in writing by the Department, carry or incur the expense of any insurance against any form of loss or damage to the vessels or to the materials or equipment therefor to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to the vessels and such materials and equipment. The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to procure or maintain insurance, if available, as required or approved by the Department; *Provided, further,* that under this clause the Government does not assume any risk with respect to, and will not pay for any costs of the Contractor for the inspection, repair, replacement, or renewal of any defects themselves in the vessel(s) or such materials and equipment due to (A) defective workmanship or defective materials or equipment performed by or furnished by the Contractor or its subcontractors; or (B) workmanship or materials or equipment performed by or furnished by the Contractor or its subcontractors which do(es) not conform to the requirements of the contract, whether or not any such defect is latent or whether or not any such nonconformance is

the result of negligence; *Provided, further,* that under this clause the Government does not assume the risk of and will not pay for the costs of any loss, damage, liability or expense caused by, resulting from, or incurred as a consequence of delay or disruption of any type whatsoever; or willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers and any of its managers, superintendents or other equivalent representatives who have supervision or direction of (i) all or substantially all of the Contractor's business or (ii) all or substantially all of the Contractor's operation at any one plant; *Provided, however,* that as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action; *Provided, further,* that nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a codefendant in any action against the Contractor brought to determine the Contractor's liability or for any other purpose. Notwithstanding the foregoing the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident the risk of which the Government otherwise would have assumed under the provisions of this paragraph.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, the vessel and its owners, against all suits, actions, claims, costs or demands (including, without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, the vessel or its owner may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, the vessel or its owner, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, the Contractor's or subcontractors' servants, agents or employees; *Provided,* that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within *ninety (90)* days after redelivery of the vessel; and with respect to any such suits, actions, claims, costs, or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this *agreement* and by law; *Provided,* however, that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at its own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Government, insuring the performance of its obligations under paragraph (c) of this clause. Further, the Contractor shall procure and maintain in force Workers' Compensation Insurance (or its equivalent) covering its employees engaged on the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged on the work. The Contractor shall provide such evidence of such insurance as may be, from time to time, required by the Government.

(e) No allowance shall be made the Contractor in the job order price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of such loss or damage shall be given by the Contractor to the Contracting Officer, which notice shall contain full particulars of such loss or damage. If claim is made or suit is brought thereafter against the Contractor as the result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by the Contractor or the Contractor's representatives. The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in so doing. The Contractor shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than shall be imperative for the protection of the vessel or vessels at the time of said occurrence of such event.

(g) In the event of loss of or damage to any of the vessels or any of the materials or equipment therefor which may result in a claim against the Government under the insurance provisions of this contract, the Contractor promptly shall notify the Contracting Officer of such loss or damages, and the Contracting Officer may, without prejudice to any other right of the Government, either:

(i) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect such replacement or repair. The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of such replacement or repair together with such supporting documentation as the Contracting Officer may reasonably require, and shall identify such request as being submitted under the "Insurance" Clause of the contract. If the Government determines that the risk of such loss or damages is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of such replacement or repair, plus a reasonable profit (if the work of replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause. Payments by the Government to the Contractor under this Insurance Clause are outside the scope of and shall not affect the pricing structure of the contract (firm fixed price or incentive type arrangement, as applicable), and are additional to the compensation otherwise payable to the Contractor under this contract; or

(ii) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired,

(A) Modify the contract appropriately consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage, or

(B) Terminate the repair of any part or all of the vessel(s) under the clause of this contract entitled "TERMINATION FOR CONVENIENCE OF THE GOVERNMENT".

(End of clause)

252.217-7125 Pricing of adjustments.

As prescribed at 217.7104(a), insert the clause at 252.243-7001 (APR 1984).

252.217-7126 Affirmative action for disabled veterans and veterans of the Vietnam era.

As prescribed at 217.7104(b), insert FAR clause 52.222-35 (APR 1984).

252.217-7127 Affirmative action for handicapped workers.

As prescribed at 217.7104(b), insert FAR clause 52.222-36 (APR 1984).

252.217-7128 Clean air and water.

As prescribed at 217.7104(a), insert FAR clause 52.223-2 (APR 1984).

252.217-7129 Invoices.

As prescribed at 217.7104(a), insert DoD FAR Supplement clause 252.232-7000 (OCT 1982).

252.217-7130 Guarantees.

As prescribed at 217.7104(a), insert the following clause:

GUARANTEES (APR 1982)

In case any work done or materials furnished by the Contractor under this agreement on or for any vessel or the equipment thereof, shall within ninety (90) days from the date of redelivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government in writing, be corrected and repaired by the Contractor or at the Contractor's expense to the satisfaction of the Contracting Officer *Provided* that for any guarantee secured by

the Contractor or any subcontractor covering work done on materials furnished which exceeds the 90 day period, the Government shall be entitled to rely upon said guarantee until the expiration and *Provided* further that with respect to any individual work item identified and listed as incomplete at the redelivery of the vessel the guarantee period shall run from the date of completion of such item. The Government shall, if and when practicable, afford the Contractor an opportunity to effect such corrections and repairs himself, but when, because of the condition or the location of the vessel or for any other reason, it is impracticable or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the Contracting Officer, such corrections and repairs shall be effected at the Contractor's expense at such other locations as the Government may determine. Where correction and repairs are to be effected by other than the Contractor, due to nonreturn of the vessel to him, the Contractor's liability may be discharged by an equitable deduction in the price of the job. The Contractor's liability shall only extend for an additional 90-day guarantee period on those defects or deficiencies which the Contractor corrected and in no event to those for which payment was made: *Provided*, however, that nothing in this clause shall be deemed to limit the responsibility of the Contractor under clause 252.217-7124 entitled "LIABILITY AND INSURANCE" hereof or relieve the Contractor of its liability under that clause. At the option of the Contracting Officer, defects and deficiencies may be left in their then condition, and an equitable deduction from the job order price, as agreed by the Contractor and the Contracting Officer, shall be made therefor. If the Contractor and the Contracting Officer fail to agree upon the equitable deduction from the job order price to be made, the dispute shall be determined as provided in Clause 252.217-7111 entitled "DISPUTES" hereof.

(End of clause)

252.217-7131 Discharge of liens.

As prescribed at 217.7104(a), insert the following clause:

DISCHARGE OF LIENS (APR 1982)

The Contractor shall immediately discharge or cause to be discharged any lien or right *in rem* of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under any job order hereunder with respect to the machinery, fittings, equipment or materials for any of the vessels. If any such lien or right *in rem* is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of clause)

252.217-7132 Department of Labor safety and health regulations for ship repairing.

As prescribed at 217.7104(a), insert the following clause:

DEPARTMENT OF LABOR SAFETY AND HEALTH REGULATIONS FOR SHIP REPAIRING (APR 1982)

Attention of the Contractor is directed to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678), and to the Safety and Health Regulations for Ship Repairing (29 CFR 1915), promulgated under Pub. L. 85-742, amending section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), and adopted by the Department of Labor as occupational safety or health standards under section 6(a) of the Occupational Safety and Health Act of 1970 (see 29 CFR 1910.13). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this agreement on the navigable waters of the United States including any drydock or marine railway. Nothing contained in this agreement or any job order hereunder shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

252.217-7200 Workers' compensation and war hazard insurance overseas.

As prescribed at 217.7104(b), insert FAR clause 52.228-4 (APR 1984), as applicable.

252.217-7201 Buy American Act and the balance of payments program.

As prescribed at 217.7104(b), insert the clause at 252.225-7001 (OCT 1980), as applicable.

252.217-7202 Notice to the Government of labor disputes.

As prescribed at 217.7104(b), insert FAR clause 52.222-1 (APR 1984), as applicable.

252.217-7203 Patent indemnity.

As prescribed at 217.7104(b), insert FAR clause 52.227-3 (APR 1984), as applicable.

252.217-7204 Filing of patent applications.

As prescribed at 217.7104(b), insert FAR clause 52.227-10 (APR 1984), as applicable.

252.217-7205 Contract schedule subline items not separately priced.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.204-7000 (APR 1984), as applicable.

252.217-7206 Reporting and refund of royalties.

As prescribed at 217.7104(b), insert FAR clauses 52.227-8 and 52.227-9 (APR 1984), as applicable.

252.217-7207 Rights in technical data and computer software.

As prescribed at 217.7104(b), insert clause 252.227-7013 (MAY 1981), as applicable.

252.217-7208 Military security requirements.

As prescribed at 217.7104(b) insert FAR clause 52.204-2 (APR 1984), as applicable.

252.217-7209 Utilization of small business and small disadvantaged business concerns.

As prescribed at 217.7104(b) insert FAR clause(s) 52.219-8, 52.219-9, and 52.219-10 (APR 1984), as applicable.

252.217-7210 Examination of records by Comptroller General.

As prescribed at 217.7104(b), insert FAR clause 52.215-1 (APR 1984), as applicable.

252.217-7211 Gratuities.

As prescribed at 217.7104(b), insert FAR clause 52.203-3 (APR 1984), as applicable.

252.217-7212 Convict labor.

As prescribed at 217.7104(b), insert FAR clause 52.222-3 (APR 1984), as applicable.

252.217-7213 Priorities and allocations.

As prescribed at 217.7104(b), insert FAR clause 52.212-8 (APR 1984), as applicable.

252.217-7214 Utilization of labor surplus area concerns.

As prescribed at 217.7104(b), insert FAR clause(s) 52.220-3 and 52.220-4 (APR 1984), as applicable.

252.217-7215 Limitation on withholding of payments.

As prescribed at 217.7104(b), insert FAR clause 52.232-9 (APR 1984), as applicable.

252.217-7216 Equal opportunity preaward clearance of subcontracts.

As prescribed at 217.7104(b), insert FAR clause 52.222-28 (APR 1984), as applicable.

252.217-7217 Subcontracts.

As prescribed at 217.7104(b), insert FAR clause 52.244-1 (APR 1984), as applicable.

252.217-7218 Government property.

As prescribed at 217.7104(b), insert FAR clause 52.245-2 (APR 1984), as applicable.

252.217-7219 Federal, state, local, and foreign taxes.

As prescribed at 217.7104(b), insert FAR clause 52.229-2 (APR 1984), as applicable.

252.217-7220 Quality program.

As prescribed at 217.7104(b), insert FAR clause 52.246-11 (APR 1984), as applicable.

252.217-7221 Price reduction for defective cost or pricing data.

As prescribed at 217.7104(b), insert FAR clause 52.214-27 or 52.215-22 (APR 1984), as applicable.

252.217-7222 Duty-free entry.

As prescribed at 217.7104(b), insert FAR clause 52.225-10 (APR 1984), as applicable.

252.217-7223 Duty-free entry of qualifying country supplies.

As prescribed at 217.7104(b), insert clause 52.225-7008 (JAN 1981), as applicable.

252.217-7224 Inspection system.

As prescribed at 217.7104(b), insert FAR clause 52.246-11 (APR 1984), as applicable.

252.217-7225 Advance payments.

As prescribed at 217.7104(b), insert FAR clause 52.232-12 (APR 1984), as applicable.

252.217-7226 Required sources for jewel bearings and related items.

As prescribed at 217.7104(b), insert FAR clause 52.208-1 (APR 1984), as applicable.

252.217-7227 Required sources for miniature and instrument ball bearings.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.208-7000 (JUL 1971), as applicable.

252.217-7228 Interest.

As prescribed at 217.7104(b), insert FAR clause 52.232-17 (APR 1984), as applicable.

252.217-7229 Competition in subcontracting.

As prescribed at 217.7104(b), insert FAR clause 52.244-5 (APR 1984), as applicable.

252.217-7230 Audit by Department of Defense.

As prescribed at 217.7104(b), insert FAR clause(s) 52.214-26 or 52.215-2 (APR 1984), as applicable.

252.217-7231 Subcontractor cost or pricing data.

As prescribed at 217.7104(b), insert FAR clause 52.215-25 (APR 1984), as applicable.

252.217-7232 Value engineering.

As prescribed at 217.7104(b), insert FAR clause 52.248-1 (APR 1984), as applicable.

252.217-7233 [Reserved]

252.217-7234 Required sources for precision components for mechanical time devices.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.208-7001 (AUG 1971), as applicable.

252.217-7235 New material.

As prescribed at 217.7104(b), insert FAR clause 52.210-5 (APR 1984), as applicable.

252.217-7236 Government surplus.

As prescribed at 217.7104(b), insert FAR clause 52.210-6 or 52.210-7 (APR 1984), as applicable.

252.217-7237 Utilization of women-owned business concerns.

As prescribed at 217.7104(b), insert FAR clause 52.219-13 (APR 1984), as applicable.

252.217-7238 Material inspection and receiving report.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 52.246-7000 (DEC 1969), as applicable.

252.217-7239 Protection of Government buildings, equipment, and vegetation.

As prescribed at 217.7104(b), insert FAR clause 52.237-2 (APR 1984), as applicable.

252.217-7240 Government delay of work.

As prescribed at 217.7104(b), insert FAR clause 52.212-15 (APR 1984), as applicable.

252.217-7241 Distribution of defense subcontracts placed overseas.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.204-7005 (JUN 1982), as applicable.

252.217-7242 Safety precautions for ammunition and explosives.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.223-7001 (JUL 1986) and 52.223-7002 (JUL 1986), as applicable.

252.217-7243 Cost accounting standards.

As prescribed at 217.7104(b), insert FAR clause(s) 52.230-3 and 52.230-4 (APR 1984), as applicable.

252.217-7244 Notification of changes.

As prescribed at 217.7104(b), insert FAR clause 52.243-7 (APR 1984), as applicable.

252.217-7245 Engineering change proposals (ECP's).

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.243-7000 (APR 1984), as applicable.

252.217-7246 Change order accounting.

As prescribed at 217.7104(b), insert FAR clause 52.243-6 (APR 1984), as applicable.

252.217-7247 Contracts conditioned upon the availability of funds.

As prescribed at 217.7104(b), insert FAR clause(s) 52.232-18 or 52.232-19 (APR 1984), as applicable.

252.217-7248 Preference for domestic specialty metals.

As prescribed at 217.7104(b), insert the clause at 252.225-7012 (OCT 1980), as applicable.

252.217-7249 Preference for United States-flag air carriers.

As prescribed at 217.7104(b), insert FAR clause 52.247-63 (APR 1984), as applicable.

252.217-7250 Exclusionary policies and practices of foreign governments.

As prescribed at 217.7104(b), insert the clause at 52.225-7019 (JAN 1977).

252.217-7251 Hazardous material identification and material safety data.

As prescribed at 217.7104(b), insert FAR clause 52.223-3 (APR 1984), as applicable.

252.217-7252 Certification of requests for adjustment or relief exceeding $100,000.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.233-7000 (FEB 1980), as applicable.

252.217-7253 Qualifying country sources as subcontractors.

As prescribed at 217.7104(b), insert clause 252.225-7002 (OCT 1980).

252.217-7254 Stop work orders.

As prescribed at 217.7104(b), insert FAR clause 52.212-13 (APR 1984), as applicable.

252.217-7255 Subcontractor cost or pricing data—modifications—sealed bidding.

As prescribed at 217.7104(b), insert FAR clause 52.214-28 (APR 1985).

252.217-7256 Subcontractor cost or pricing data.

As prescribed at 217.7104(b), insert FAR clause 52.215-24 (APR 1985).

252.217-7257 Notice of total small business set-aside.

As prescribed at 217.7104(b), insert FAR clause 52.219-6 (APR 1984).

252.217-7258 Preference for labor surplus area concerns.

As prescribed at 217.7104(b), insert FAR clause 52.220-1 (APR 1984).

252.217-7259 Bid guarantee.

As prescribed at 217.7104(b), insert FAR clause 52.228-1 (APR 1984).

252.217-7260 Production progress reports.

As prescribed at 217.7104(b), insert FAR clause 52.242-2 (APR 1984).

252.217-7261 Government-furnished property (short form).

As prescribed at 217.7104(b), insert FAR clause 52.245-4 (APR 1984).

252.217-7262 Clauses incorporated by reference.

As prescribed at 217.7104(b), insert FAR clause 52.252-2 (APR 1984).

252.217-7263 Aggregate pricing adjustment.

As prescribed at 217.7104(b), insert the clause at 252.215-7000 (APR 1985).

252.217-7264 Small business and small disadvantaged business subcontracting plan (master plans).

As prescribed at 217.7104(b), insert the clause at 252.219-7000 (APR 1984).

252.217-7265 Restrictive markings on technical data.

As prescribed at 217.7104(b), insert the clause at 252.227-7018 (MAR 1975).

252.217-7266 Identification of technical data.

As prescribed at 217.7104(b), insert the clause at 252.227-7029 (MAR 1975).

252.217-7267 Data requirements.

As prescribed at 217.7104(b), insert the clause at 252.227-7031 (APR 1972).

252.217-7268 Certain Communist areas.

As prescribed at 217.7104(b), insert FAR clause 52.225-11 (APR 1984).

252.217-7269 Plant protection.

As prescribed at 217.7104(b), insert the following clause, as applicable.

PLANT PROTECTION (AUG 1985)

(a) The Contractor shall provide for its plant and the work in process under this contract such safeguards, including personnel, devices and equipment, as would constitute reasonable protection under peacetime conditions (in the light of the size of the plant and the scope of its operations) under all hazards, including unauthorized entry, malicious mischief, theft, vandalism and fire.

(b) In addition to the foregoing precautions, the Contractor shall provide such additional safeguards as may be required or approved by the Contracting Officer for the protection of its plant and the work in process under this contract against espionage, sabotage, and enemy action. The cost to the Contractor of all safeguards so required or approved shall, to the extent allocable to this contract, be reimbursed to the Contractor in the same manner as if the Contractor had furnished such safeguards pursuant to a change order issued under the clause of this contract entitled "CHANGES". Such cost shall not include any allowance on account of overhead expense, except shop overhead charges incident to the construction or installation of such devices or equipment.

(c) Upon payment by the Government of the cost to the Contractor of any device or equipment required or approved under paragraph (b) of this clause, title thereto shall vest in the Government, and the Contractor shall comply with the instructions of the Department respecting the identification and disposition thereof. No part or item of any such devices or equipment shall be or become a fixture by reason of affixation to any realty not owned by the Government.

(End of clause)

252.217-7270 Identification of sources of supply.

As prescribed in 217.7204(b), insert the following clause:

IDENTIFICATION OF SOURCES OF SUPPLY (OCT 85)

The Contractor shall provide to the Contracting Officer with respect to each line item for supplies the following information: the corresponding national stock number (NSN) (if any), the item nomenclature, the name and address of the actual manufacturer, producer or each source of supply of the Contractor for the item and the identification number assigned by the actual manufacturer, producer or each source of supply. With respect to each line item for technical data, the Contractor shall identify, by appropriate line item number, the name and address of each source of the data. The list shall be provided at the time and in the quantities specified elsewhere in the contract.

(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.

252.217-7302 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 Disputes 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 Price," "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 (AUG 1985)

(a) The Government examination and testing of dairy products shall be in accordance with DLAM 8200.1, Appendix A—Procurement Quality Assurance for Fresh Dairy Products." The Contractor 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 DLAM 8200.1, Appendix 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 results 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 content 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 Solids 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 multiply 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 of 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 last 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 contract, 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 217.7301–5(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 reinstated 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 the Contracting Officer 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 EQUIPMEMT (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 217.7301–5(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 Government's cognizant 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 (APR 1985)

(a) *General.*

(1) Offers under this acquisition are solicited from small business concerns only and the acquisition 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 Government acquisition 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 acquisition 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 its 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 acquisition, 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 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 dissolved as to the unawarded portion. Such unawarded portion may be acquired by sealed bidding or negotiation, as appropriate, in accordance with existing regulations.

(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 offeror 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 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 acquired by sealed bidding 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 acquisition, 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 acquisition 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 (APR 1985)

(a) *General.*

(1) Offers under this acquisition are solicited from small business concerns only and the acquisition 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 Government acquisition 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 acquisition, 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 its 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 acquisition, 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 dissolved as to the unawarded portion. Such unawarded portion may be acquired by sealed bidding 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 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 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 acquired by sealed bidding 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 setaside 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 acquisition, 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 acquisition 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 1985)

In determining the price for the set-aside portion when the clause at FAR 52.219-7, 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 evaluation of the highest non-set-aside award price.

(b) *Award Price Involving Foreign End Products (see Part 25 of the FAR and Part 225 of the 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 acquired by sealed bidding 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 acquired by sealed bidding 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(70), insert the following clause:

ELIGIBILITY FOR PREFERENCE AS A LABOR SURPLUS CONCERN (APRIL 1985)

Each offeror desiring to be considered for award as a labor surplus area (LSA) concern on the set-aside portion of this acquisition, 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 (APR 1985)

(a) *General.* Part of this acquisition, 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 acquisition, a concern must submit a responsive offer on the nonset-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 nonset-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 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 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 on 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 acquired by sealed bidding 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 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 fifty percent (50%) of the contract price.

(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 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 its 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 acquisition, 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 acquisition 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) 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 1985)

(a) *General.* Part of this acquisition, 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 acquisition, 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 Award 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 the 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 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), 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 on 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-setaside 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 acquired by sealed bidding 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 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 fifty percent (50%) of the contract price.

(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 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 its 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 acquisition, 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 acquisition 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 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 workers' 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 Contractor 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 the Contractor in preparing the proposal upon which it received the original award of this contract. The Contracting Officer or authorized representative shall have 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)

252.222–7002 Restrictions on Employment of Personnel.

As prescribed in 222.7202, insert the following clause:

RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (JAN 1986)

(a) The Contractor shall employ, for the purposes of performing that portion of the contract work in the State of (*insert appropriate state*), individuals who are residents of the state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract.

(End of clause)

252.223–7000 Notice of radioactive materials.

As prescribed at 223.303(S–70), insert the following clause:

NOTICE OF RADIOACTIVE MATERIALS (APR 1974)

(a) The Contractor shall notify the Contracting Officer or designee, in writing (*) days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, and set forth in Title 10 CFR, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the radioactivity per gram is greater than 0.002 microcuries. Such notice shall specify the part or parts of the items which contain such radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (BOB No. 38–R027).

(b) All items, parts or subassemblies which contain radioactive materials in which the radioactivity per gram is greater than 0.002 microcuries and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL–STD–1458 in effect on the date of the contract.

(End of clause)

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that appropriate licenses

are obtained or safeguards are taken when licenses are not required.

252.223-7001 Safety precautions for ammunition and explosives.

As prescribed in 223.7002(a), insert the following clause in solicitations and contracts.

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (JUL 1986)

(a) The term "ammunition and explosives" means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in any of the following: bulk form, ammunitions, rockets, missiles, warheads, devices and components thereof, except for wholly inert items.

(b) The Contractor shall comply with the DoD Contractors' Safety Manual for Ammunition and Explosives (DoD Manual 4145.26-M) (the manual) in effect on the date of the solicitation for this contract, and any other additional requirements included in the schedule of the contract. The Contractor shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities and, in this respect, shall allow the Government access to Contractor facilities, personnel and safety program documentation.

(c) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contracting shall take immediate steps to correct the noncompliance. Within thirty (30) days (or such other period as the Contracting Officer may direct) from the date of notification, the Contractor shall inform the Contracting Officer of the results of the corrective actions taken. Costs incurred by the Contractor to correct noncompliances with the manual will not, unless otherwise specified within the contract, be reimbursable.

(d) If the Contractor has been notified of a noncompliance and fails or refuses to take corrective action within the time specified by the Contracting Officer, the Contractor may be directed to cease performance on all or part of this contract until the Contracting Officer determines that satisfactory corrective action has been taken. 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 the delivery or performance schedule unless it is later determined that the Contractor had in fact complied with the manual or schedule provisions. In such a case, an equitable adjustment will be made in accordance with the procedures provided for in the clause of this contract entitled "Changes".

(e) 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.

(f) Neither the requirements of this clause, nor any act or failure to act by the Government in surveillance of this contract, shall affect or relieve the Contractor of responsibility for the safety of the Contractor's personnel and property, for the safety of the Government's personnel and property, and for the safety of the general public in connection with the performance of this contract.

(g) The frequency or number of Government inspections and the degree of surveillance which the Government exercises with respect to the enforcement of the contract terms and conditions is a matter solely within the discretion of the Government, and does not relieve the Contractor of responsibility for performance of the contract. Nor shall any act or failure to act by the Government in surveillance or enforcement of this contract impose or add to any liability of the Government.

(h) The Contractor shall insert this clause, including this paragraph (h), with appropriate changes in the designation of the parties, in every subcontract hereunder which involves ammunition or explosives as defined in paragraph (a) above, except for: subcontracts for inert components containing no explosives, propellants, or pyrotechnics or subcontracts for flammable liquids, acids, powdered metals or other materials having fire or explosive characteristics unless the subcontractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition and explosive and item, or a weapon system. Such clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implemenation, and facilities as determined necessary. NOTE: All safety communiques from the Government Contracting Officer or authorized representative will be to the prime Contractor, although copies may be furnished to the subcontractor involved. Prime contractors shall change references to the "Government" to cite the name of the prime Contractor while assuring that the subcontractor(s) understand and agree to the Government's right to access to review compliance with contract safety requirements. In addition, the prime Contractor or higher level subcontractors shall include provisions to allow direction to cease performance of the subcontract as a result of a serious uncorrected or recurring safety deficiency potentially causing an imminent hazard to DoD personnel, property or contract performance.

(i) The Contractor shall notify the Contracting Officer, or authorized representative, prior to issuing any subcontract when it involves ammunition or explosives. In the event that the proposed subcontract represents a change in place of performance, the Contractor shall request approval for such change in accordance with the clause of this contract entitled "Change in Place of Performance—Ammunition and Explosives".

(j) Nothing contained herein shall relieve the Contractor from complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including the obtaining of licenses and permits) in connection with the performance of this contract.

(End of clause)

252.223-7002 Change in place of performance—ammunition and explosives.

As prescribed in 223.7002(c), insert the following clause in solicitations and contracts.

CHANGE IN PLACE OF PERFORMANCE—AMMUNITION AND EXPLOSIVES (JUL 1986)

(a) The Offeror must stipulate in the Place of Performance Clause included in this solicitation (FAR 52.214-14 or FAR 52.215.20) information pertinent to the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives Clause (DFARS 252.223-7001). Failure to furnish this information with the offer may result in rejection of the offer.

(b) No change in the place(s) of performance shall be permitted between the opening/closing date of the solicitation/Request for Quotation and the award except where time permits and then only upon receipt of the Contracting Officer's written approval.

(c) Any change in place(s) of performance cited in this offer and in any resulting contract is prohibited unless it is specifically approved in advance by the Contracting Officer.

(End of clause)

252.225-7000 Buy American—balance of payments program certificate.

As prescribed at 225.109(a)(S-70), insert the following provision:

BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (OCT 1980)

(a) The offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act and Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

EXCLUDED END PRODUCTS

Line item No.	Country of origin
(List as necessary)	

(b) Offers will be evaluated by giving certain preferences to domestic end products and foreign qualifying country end products over foreign nonqualifying country end products. In order to obtain such preferences in the evaluation of each excluded end product listed in (a) above, it is necessary that offerors identify and certify, below, those excluded end products identified above that are qualifying country end products or

they will be deemed nonqualifying country end products. Offerors must certify by inserting the applicable line item numbers in the appropriate brackets:

(i) The offeror certifies that the following supplies qualify as "participating country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program."

(Insert line item No.)

(ii) The offeror certifies that the following supplies qualify as "FMS/offset arrangement country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program," if the Government makes the necessary waivers.

(Insert line item No.)

(iii) The offeror certifies that the following supplies qualify as "defense cooperation country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program."

(Insert line item No.)

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part 225.

(End of Certificate)

252.225-7001 Buy American Act and the balance of payments program.

As prescribed at 225.109(d)(S-70), insert the following clause:

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (APR 1985)

(a) This clause implements the Buy American Act (41 U.S.C. section 10a-d) and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as qualifying country end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies directly incorporated into end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End products" means those articles, materials, and supplies to be acquired for public use under the contract. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(v) "Foreign end product" means an end product other than a domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) an FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (C) a defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country, or (B) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/Offset arrangement country, or an end product manufactured in an FMS/Offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/Offset arrangement country end product, see the procedures at DoD FAR Supplement 225.7310(c)(2)(i).

(ix) "Defense cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(b) The Contractor agrees that there will be delivered under this contract only domestic end products *unless*, in its offer, it specified delivery of foreign end products in the clause entitled "Buy American Act and Balance of Payments Program Certificate." An offer certifying that a qualifying country end product will be supplied requires the Contractor to supply a qualifying country end product or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part 225.

(d) Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by: (i) Adding 50% of the offer, exclusive of duty; (ii) adding 6% of the offer, inclusive of duty, if a domestic offer is from a large business that is not a labor surplus area concern; or (iii) adding 12% of the offer, inclusive of duty, if the domestic offer is from a small business concern or any labor surplus area concern. Evaluation will be inclusive or exclusive of duty whichever results in the greater evaluated price. See DoD FAR Supplement 225.1 for procedures and exceptions.

(e) Generally, when the Balance of Payments Program applies, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by increasing the offer by 50%. See DoD FAR Supplement 225.3 for procedures and exceptions.

(End of clause)

252.225-7002 Qualifying country sources as subcontractors.

As prescribed at 225.109(d)(S-72), insert the following clause:

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (OCT 1980)

No qualifying country source (DoD FAR Supplement 225.001), subject to the restrictions set forth in DoD FAR Supplement Subpart 225.74, or U.S. source is to be precluded from competing for subcontracts.

(End of clause)

252.225-7003 Nondomestic construction materials.

As prescribed at 225.205(S-70), insert the following clause:

NONDOMESTIC CONSTRUCTION MATERIALS (OCT 1966)

The requirements of the clause of this contract entitled "Buy American Act" do not apply to the items set forth below.

(Insert list here)

(End of clause)

252.225-7004 Identification of expenditures in the United States.

(a) As prescribed at 225.305(c), insert the following clause:

IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (OCT 1966)

(a) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment which represents estimated expenditures in the United States. Identification shall consist of stating the full

amount of the payment requested, subdivided into the following categories:

1. United States end products—expenditures for material and equipment manufactured or produced in the United States, excluding transportation;

2. United States services—expenditures for services performed in the United States, including charges for overhead, other indirect costs, and profit;

3. Transportation on United States carriers—expenditures for transportation furnished by United States flag, ocean, surface, and air carriers; and

4. Expenditures not identified under 1, 2, and 3 above.

(b) If this contract is principally for supplies or if the Contractor is not an incorporated concern incorporated in the United States, or an unincorporated concern having its principal place of business in the United States, the amounts identified under (a)1, (a)2, and (a)3 above will be limited to payments made pursuant to the requirements either of the "United States Products and Services" clause, if any, or of any other specific provision of this contract that obligates the Contractor to procure certain materials, equipment, transportation, or services from United States sources.

(c) The identification of expenditures required under (a) above may be expressed either as dollar amounts or as percentages applicable to the total amount of the request for payment.

(d) The identification will be based on reasonable estimates by the Contractor. Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the United States Government any right to audit the Contractor's books or records.

(End of clause)

252.225-7005 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.

As prescribed at 225.407(a)(1), insert the following provision:

BUY AMERICAN—TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (MAY 1986)

(a) The Offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program"), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

EXCLUDED END PRODUCTS

Line item No.	Country of origin
(List as necessary)	

(b) Offers will be evaluated by giving certain preferences to domestic end products, qualifying country end products, designated country end products and Caribbean Basin country end products over other end products. In order to obtain such preferences in the evaluation of each excluded end product listed in (a) above, it is necessary that offerors identify and certify, below, those excluded end products identified above that are qualifying country end products, designated country end products, or Caribbean Basin country end products. Products which are not identified and certified below will not be deemed qualifying country end products, designated country end products, or Caribbean country end products. Offerors must certify by inserting the applicable line item numbers in the appropriate brackets.

(i) The offeror certifies that the following supplies qualify as " participating country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program".

(Insert line item no.)

(ii) The offeror certifies that the following supplies qualify as "FMS/Offset arrangement country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program," if the Government makes the necessary waivers.

(Insert line item no.)

(iii) The offeror certifies that the following supplies qualify as "defense cooperation country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program."

(Insert line item no.)

(iv) The offeror certifies that the following supplies qualify as "designated country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program".

(Insert line item no.)

(v) The Offeror certifies that the following supplies qualify as "Caribbean Basin country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and the Balance of Payments Program."

(Insert line item no.)

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part 225.

(End of Certificate)

252.225-7006 Buy American Act, Trade Agreements Act, and The Balance of Payments Program.

As prescribed at 225.407(a)(2), insert the following clause:

BUY AMERICAN ACT, TRADE AGREEMENTS ACT, AND THE BALANCE OF PAYMENTS PROGRAM (MAY 1986)

(a) This clause implements the Buy American Act (41 U.S.C. section 10a–d), the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.), and the Department of Defense Balance of Payments Program and the Caribbean Basin Initiative as provided for in Executive Order 12260, by providing a preference to domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as qualifying country end products, designated country end products or Caribbean Basin end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies incorporated directly into the end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End product" means those articles, materials, and supplies to be acquired for public use under the contract.

(iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in the United States if the cost of its qualifying country components, and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(v) "Foreign end product" means an end product other than a domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) an FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (C) a defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country, or (B) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/Offset arrangement country, or (B) an end product manufactured in an FMS/Offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/Offset arrangement country end product, see the procedures at DoD FAR Supplement 225.7310(c)(2)(i).

(ix) "Defense cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(x) "Designated country end product" means an article that (A) is wholly the growth, product, or manufacture of the designated country, or (B) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *Provided,* That the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(xi) "Caribbean Basin country end product" means (A) an article that *(1)* is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or *(2)* in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *Provided,* that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. (B) The term *excludes* products which are excluded from duty-free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act under 19 U.S.C. 2703(b). These exclusions presently consist of *(1)* textiles and apparel articles which are subject to textile agreements; *(2)* footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974; *(3)* tuna, prepared or preserved in any manner in airtight containers; *(4)* petroleum, or any product derived from petroleum, and *(5)* watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country to which TSUS column 2 rates of duty apply.

(b) The Contractor agrees that there will be delivered under this contract only domestic end products *unless,* in its offer, it specified delivery of foreign end products in the clause entitled Buy American Act, Trade Agreements Act, and Balance of Payments Program Certificate. An offer certifying that a qualifying country end product, a designated country end product, or a Caribbean Basin country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, or a Caribbean Basin country end product whichever is certified, or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause; however, Contractors may not supply an end product listed at DoD FAR Supplement 225.403(S–70) with a total value at or above dollars ($) (Contracting Officers shall insert the dollar threshold amount referenced in FAR 25.402(a) distributed through agency procedures in accordance with FAR 25.402(a)) from a country not listed at FAR 25.401, except as provided at DoD FAR Supplement 225.402(b).

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part 225.

(d) Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by: (i) Adding 50% of the offer, exclusive of duty; (ii) adding 6% of the offer, inclusive of duty, if a domestic offer is from a large business that is not a labor surplus area concern; or (iii) adding 12% of the offer, inclusive of duty, if the domestic offer is from a small business concern or any labor surplus area concern. Evaluation will be inclusive or exclusive of duty whichever results in the greater evaluated price. See DoD FAR Supplement 225.1 for procedures and exceptions.

(e) Generally, when the Balance of Payments Program applies, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by increasing the offer by 50%. See DoD FAR Supplement 225.3 for procedures and exceptions.

(f) Generally, when the Trade Agreements Act applies, offers of designated and Caribbean Basin country end products will be evaluated without the Buy American Act and Balance of Payments Program price adjustments discussed in paragraphs (d) and (e) above. See FAR and DoD FAR Supplement 225.4 for procedures and exceptions.

(End of clause)

252.225–7007 Supplies to be accorded duty-free entry.

As prescribed at 225.605, insert the following clause:

SUPPLIES TO BE ACCORDED DUTY-FREE ENTRY (DEC 1965)

In accordance with paragraph (a) of the clause entitled "Duty-Free Entry," the following supplies are hereby identified as supplies to be accorded duty-free entry:

(End of clause)

252.225–7008 Duty-free entry—qualifying country end products and supplies.

As prescribed at 225.605, insert the following clause:

DUTY-FREE ENTRY—QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (AUG 1984)

(a) The requirements of this clause apply to this contract and subcontracts, which term includes purchase orders, that involve supplies to be accorded duty-free entry, whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(b) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(1) All end items which constitute "qualifying country end products" (as defined in DoD FAR Supplement 225.001) to be delivered under this contract; and

(2) All supplies (including, without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, which are to be incorporated in the end items to be delivered under this contract; *Provided,* That such end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States prior to the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor hereunder, prior to the date of the subcontract.

(c) Unless the Contracting Officer otherwise agrees, duty-free entry certificates will not be furnished under fixed-price contracts which were based on supplying a domestic end item or component unless the Contractor agrees to negotiate an appropriate reduction in contract price if the Contractor, subsequent to award, decides to furnish a qualifying country end product or component.

(d) The Contractor warrants that all such qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of qualifying country end products as to which the shipping documents bear the notation specified in paragraph (f) below, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering foreign end products or

supplies for which duty-free entry certificates are to be issued in accordance with this clause, shall (1) consign the shipments to the appropriate (i) Military Department in care of the particular Contractor, including the Contractor's delivery address, or (ii) the appropriate military installation; and (2) bear the following information:

(i) prime contract number plus delivery order, if applicable;

(ii) number of the subcontract/purchase order for foreign supplies, if applicable;

(iii) identification of carrier;

(iv) the notation: "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify Commander, Defense Contract Administration Services Region (DCASR) New York, ATTN: Customs Function, 201 Varick Street, New York, New York 10014, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates." (Note: The above notation shall be used only for direct shipments to a U.S. military installation. In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, Defense Contract Administration Services Region (DCASR) New York, for execution of the duty-free entry certificates.)

(v) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) estimated value in U.S. dollars; and

(vii) Activity Address Number of the Contract Administration Office (CAO) actually administering the prime contract, e.g., for DCASMA Dayton, DLA8DP.

(g) Preparation of Customs Forms.

(1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCASR NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs Regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry.

(h) The Contractor agrees to prepare (if this contract is placed direct with a foreign supplier) or to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry and to consign the shipment as specified in (f) above, and to mark the exterior of all packages as follows:

(1) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE" and

(2) the Activity Address Number applicable to the contract administration office actually administering the prime contract.

(i) The Contractor agrees to ensure that the Contracting Officer administering the prime contract is notified in writing of any purchase under the contract of qualifying country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. Such notice shall be furnished to the CAO immediately upon the award to the qualifying country supplier. The notice shall identify:

(1) Prime contract number plus delivery order number if applicable;

(2) Total dollar value of the prime contract or delivery order;

(3) Expiration date of the prime contract or delivery order;

(4) Foreign supplier name;

(5) Number of the subcontract/purchase order for foreign supplies;

(6) Total dollar value of the subcontract for foreign supplies;

(7) Expiration date of the subcontract for foreign supplies;

(8) List of items purchased; and

(9) Certification by the purchaser of foreign supplies: I certify that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer;

(10) The qualifying country; and

(11) The scheduled delivery date(s).

(j) This clause shall not apply to purchases of qualifying country supplies in connection with this contract if (1) such qualifying country supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with its commercial business; and (2) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(k) The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies hereunder. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees to ensure that the name and address of the Contracting Officer administering the prime contract (name and address of the CAO cognizant of the prime contract), and its Activity Address Number (Appendix N of the DoD FAR Supplement), and the information required by (i) (1), (2) and (3) above is included in applicable subcontracts.

(End of clause)

252.225-7009 Preference for certain domestic commodities.

As prescribed at 225.7002(b), insert the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (OCT 1980)

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico; *Provided*, That (i) this clause shall have no effect to the extent that the Secretary has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) nothing herein shall preclude the delivery, under this contract, of foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; and (iii) this clause shall not apply to chemical warfare protective clothing produced in qualifying countries (see DoD FAR Supplement Part 225).

(End of clause)

252.225-7010 Domestic wool preference.

As prescribed at 225.7002(c)(3), insert the following clause:

DOMESTIC WOOL PREFERENCE (MAR 1958)

(a) It is Congressional policy that, in Department of Defense procurements, preference shall be given to wool grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico, to the extent that articles containing such wool can be procured as and when needed at United States market prices.

(b) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is not more than ten percent (10%) above the average of the prices (for usable grades and types) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on bids or proposals offering domestically produced articles of which the wool component is one hundred percent (100%) domestic wool: *Provided*, That such bids or proposals are considered reasonable and otherwise acceptable.

(c) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market

News" immediately preceding the date of bid opening or evaluation of proposals) is more than ten percent (10%) above the average of the prices (for usable grades and types) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (b) hereof, there will be added to each bid or proposal offering articles of which the wool component is one hundred percent (100%) foreign wool, an evaluation factor of $_____ per yard or per item, and there will be added to each bid or proposal offering articles of which the wool component is a blend of domestic and foreign wool that part of the evaluation factor which is in direct proportion to the percentage of foreign wool to be used, and award will be made to the low acceptable bidder.

(d) For the purposes of (b) and (c) above, the average market price of domestic wool of usable grades shall be the average market price of the representative types and grades set forth in DoD FAR Supplement 225.7002(c)(6) within that one of the categories therein set forth which includes wool which would meet the specifications, and the average of the prices which reflect the current incentive price established by the Secretary of Agriculture shall be the average of the prices set forth in 225.7002(c)(6) for that category.

(e) While bids or proposals offering articles using foreign wool may be considered and evaluated, as stated above, all stages of manufacturing of wool (whether foreign or domestic) must be performed in the United States, its possessions, or Puerto Rico, as required by the contract clause entitled "Preference for Certain Domestic Commodities." This requirement is satisfied as to wool noils, reprocessed or reused wool if the reprocessing (i.e., garnetting or combing) and ensuring manufacture is performed in the United States, its possessions, or Puerto Rico.

(f) The Secretary has determined that, to the extent that any foreign wool is used under an award made pursuant to paragraph (c) hereof, a satisfactory quality and sufficient quantity of domestic wool cannot be procured as and when needed at United States market prices.

(End of clause)

252.225-7011 Preference for domestic specialty metals (major programs).

As prescribed at 225.7002(d)(1), insert the following clause:

PREFERENCE FOR DOMESTIC SPECIALTY METALS (MAJOR PROGRAMS) (OCT 1980)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) incorporated in articles delivered under this contract will be melted in the United States, its possessions, or Puerto Rico; *Provided*, that this clause shall have no effect to the extent that (i) the Secretary or his designee has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) Steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

(c) The Contractor agrees to include this clause, including this paragraph (c), in every subcontract or purchase order issued hereunder, unless he knows that the item being purchased contains no specialty metals.

(End of clause)

252.225-7012 Preference for domestic specialty metals.

As prescribed at 225.7002(d)(2), insert the following clause:

PREFERENCE FOR DOMESTIC SPECIALTY METALS (OCT 1980)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) furnished by it or purchased by it for direct incorporation in any article delivered to the Government under this contract shall have been melted in the United States, its possessions, or Puerto Rico; *Provided*, That this clause shall have no effect to the extent that (i) the Secretary or his designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purpose of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

(End of clause)

252.225-7013 Preference for domestic hand or measuring tools.

As prescribed at 225.7003, insert the following clause:

PREFERENCE FOR DOMESTIC HAND OR MEASURING TOOLS (APR 1984)

The Contractor agrees that there will be delivered under this contract only such hand or measuring tools as have been produced in the United States or its possessions.

(End of clause)

252.225-7014 Duty-free entry—additional provisions.

As prescribed at 225.605, insert the following clause:

DUTY-FREE ENTRY—ADDITIONAL PROVISIONS (AUG 1984)

(a) The requirements of this clause supplement the clause of this contract entitled Duty-Free Entry, and both of these clauses apply to this contract and subcontracts, which term includes purchase orders, that involve supplies to be accorded duty-free entry whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontractor purchase order under a contract placed with a domestic concern.

(b) Notification for Supplies not Previously Identified. The Contractor shall send the notification required by paragraph (b)(1) of the Duty-Free Entry clause contained in this contract to the Contracting Officer administering this contract.

(c) Notification Applicable to All Foreign Supplies. In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, the Contractor shall furnish the following for all foreign supplies to be imported pursuant to paragraphs (a) or (b) of the Duty-Free Entry clause. This information must be furnished to the Contracting Officer administering the prime contract immediately upon award of any contract or subcontract involving supplies to be accorded duty-free entry.

(1) Prime contract number plus delivery order number, if applicable;

(2) Total dollar value of the prime contract or delivery order;

(3) Expiration date of the prime contract or delivery order;

(4) Foreign supplier name;

(5) Number of the subcontract/purchase order for foreign supplies;

(6) Total dollar value of the subcontract for foreign supplies;

(7) Expiration date of the subcontract for foreign supplies;

(8) List of items purchased; and,

(9) Certification by the purchaser of foreign supplies: I certify that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to

nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(d) Inclusion in Subcontracts. The Contractor agrees to incorporate the substance of this clause, including this paragraph, in any subcontract (including purchase orders) in accordance with paragraph (i) (eye) of the Duty-Free Entry clause of this contract. The Contractor agrees to ensure that the name and address of the Contracting Officer administering the prime contract (name and address of the CAO cognizant of the prime contract and its Activity Address Number (Appendix N of the DoD FAR Supplement)) and the information required by (c) (1), (2), and (3) above are included in applicable subcontracts.

(e) Shipping Documents. For the purpose of properly completing the shipping document instructions as required by paragraph (f) of the Duty-Free Entry clause, the Contractor shall insert Defense Contract Administration Services Region (DCASR) New York, ATTN: Customs Function, 201 Varick Street, New York, New York 10014, as the cognizant contract administration office (for paragraph (f) only) in those cases when the shipment is consigned directly to a military installation. In cases when the shipment will be consigned to other than a military installation, e.g. a domestic contractor's plant, the shipping document notation required by paragraph (f) of the clause shall be altered to insert the name and address of the Contractor, agent or broker who will prepare the customs documentation in accordance with applicable customs directives in anticipation of the execution of the Duty-Free Entry certificates. In either case, the shipping documents will contain the following items in addition to those required by paragraph (f) of the Duty-Free Entry clause:

(1) If applicable, delivery order number on the Government prime contract;

(2) Number of the subcontract/purchase order for foreign supplies, if applicable;

(3) Activity Address Number of the Contract Administration Office (CAO) actually administering the prime contract, e.g., for DCASMA Dayton, DLA8DP.

(f) Preparation of Customs Forms. Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCASR NY for execution of any required duty-free entry certificates. For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry in accordance with the provisions of the Duty-Free Entry clause contained in this contract. Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs Regulations.

(g) Exterior Markings. The Contractor shall ensure that all exterior containers are marked in accordance with paragraph (g) of the Duty-Free Entry clause, including the following additional data:

(1) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;"

(2) the Activity Address Number applicable to the contract administration office actually administering the prime contract.

(End of clause)

252.225-7015 United States products certificate (Military Assistance Program).

As prescribed at 225.7205(a), insert the following provision:

UNITED STATES PRODUCTS CERTIFICATE (MILITARY ASSISTANCE PROGRAM) (DEC 1962)

To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the bidder or offeror hereby certifies that each such item furnished will be a United States end product (as defined in the contract clause entitled "United States Products"); that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States; and that he is a domestic concern.

(End of provision)

252.225-7016 United States products (Military Assistance Program).

As prescribed at 225.7205(b), insert the following clause:

UNITED STATES PRODUCTS (MILITARY ASSISTANCE PROGRAM) (DEC 1962)

(a) To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the Contractor agrees that there will be delivered under this contract only United States end products.

(b) For the purpose of this clause:

(i) "components" means those articles, materials, and supplies, which are directly incorporated in end products.

(ii) "end products" means those articles, materials, and supplies, which are acquired under this contract for public use; and

(iii) a "United States end product" means—

(A) an unmanufactured end product which has been mined or produced in the United States; and

(B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(End of clause)

252.225-7017 Limitation of sales commissions and fees for foreign governments.

As prescribed at 225.7305(f), insert the following clause:

LIMITATION OF SALES COMMISSIONS AND FEES FOR FOREIGN GOVERNMENTS (OCT 1980)

Unless the sales commission and fee have been identified and payment thereof has been approved in writing by the Government of _____* before contract award, the following provisions, as appropriate, shall apply.

(a) For firm-fixed-price contracts or fixed-price contracts with economic price adjustment:

"The Contractor certifies that the contract price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for contractor sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of _____*."

(b) For all other types of contracts:

"Notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for contractor (or subcontractor) sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of _____* shall be considered as an unallowable item of cost under this contract."

* Name of foreign country.

(End of clause)

252.225-7018 Offset arrangement.

As prescribed at 225.7310(c)(4), insert the following clause:

OFFSET ARRANGEMENT (OCT 1980)

(a) The Contractor is responsible under the contract for arranging with representatives of the Government of _____*, under _____**, dated _____, for participation by sources in _____*, for a minimum of *(percentage or dollar value)* of the value of this prime contract. This offset requirement may be fulfilled either by subcontracts under this contract or through other business the Contractor may choose to place in _____*. (Commercial business will not be considered for duty-free entry.) All contractual arrangements to be entered into in accordance with this clause must be submitted to the Contracting Officer for determination as to whether such arrangements fulfill the offset requirement. Special conditions relating to the offset requirement are as follows:

_____

_____

(b) The Contractor will provide the following information to the Contracting Officer within 30 calendar days after the completion of each calendar quarter during the term of the contract:

(i) subcontract or other solicitations offered to _____* industry (items, dollar value, date of solicitation, and identification of sources);

(ii) subcontract or orders placed with _____* sources—

(A) item

(B) value

(C) contracting officer

(D) competitive or noncompetitive

(E) date of subcontract

(F) identification of subcontractor

(iii) status of deliveries under subcontracts placed with _____* sources.

(c) None of the provisions of this clause shall relieve the Contractor of the need to comply with the International Traffic in Arms Regulations, the Industrial Security Manual, or other laws and regulations governing foreign acquisition and disclosure of information to foreign nationals.

(d) The substance of this provision shall be placed in all subcontracts awarded to U.S. companies which appear to offer a significant opportunity for lower tier subcontracting with _____* sources under _____**.

* Insert name of foreign country.

** Insert offset agreement number or other description.

(End of clause)

252.225-7019 Exclusionary policies and practices of foreign governments.

As prescribed at 225.7312, insert the following clause:

EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENT (JAN 1977)

No person, partnership, corporation, or other entity performing functions pursuant to this contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based on race, religion, national origin, or sex.

(End of clause)

252.225-7020 Option to award and pay in foreign currency.

As prescribed at 225.7602(a), insert the following provision:

OPTION TO AWARD AND PAY IN FOREIGN CURRENCY (APR 1974)

(a) Offerors are required to state their price in United States dollars. Such price may also be stated wholly in the currency of the countries listed in the Schedule, or in a combination of United States dollars and the currency of any of the listed countries.

(b) Offerors shall state separately the United States dollar content, if any, in United States dollars. The term "United States dollar content" means the United States dollar cost to an offeror for United States end products or services (including costs of transportation furnished by United States flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

(c) The Contracting Officer reserves the right to award to that responsive offeror willing to accept payment in whole or in part in a currency of any of the listed countries and whose offer is considered the most advantageous to the United States Government, even though the total price of the accepted offer may be more than the price of an offer received in United States dollars.

(End of provision)

252.225-7021 Acquisition and use of excess and near-excess currency.

As prescribed at 225.7608, insert the following clause:

ACQUISITION AND USE OF EXCESS AND NEAR-EXCESS CURRENCY (DEC 1967)

The Contractor shall not expend United States dollars for the performance of this contract in any of the countries set forth in the Schedule of this contract for the purchase of currency of such countries or for the purchase of goods or services needed for performance under this contract. The Contractor shall purchase all such currencies from United States disbursing officers in such countries at the rates of exchange used by such officers at the times of purchase.

(End of clause)

252.227-7000 Non-Estoppel.

As prescribed at 227.7009–1, insert the following clause in patent releases, license agreements, and assignments:

NON-ESTOPPEL (OCT 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.

(End of clause)

252.227-7001 Release of past infringement.

As prescribed at 227.7009–2(a), insert the following clause in patent releases, license agreements, and assignments:

RELEASE OF PAST INFRINGEMENT (AUG 1984)

The Contractor hereby releases each and every claim and demand which he now has or may hereafter have against the Government for the manufacture or use by or for the Government prior to the effective date of this contract, of any inventions covered by (i) any of the patents and applications for patent identified in this contract, [and (ii) any other patent or application for patent owned or hereafter acquired by him, insofar as and only to the extent that such other patent or patent application covers the manufacture, use, or disposition of (description of subject matter)].*

(End of clause)

* Bracketed portions of the clause may be omitted when not appropriate or not encompassed by the release as negotiated.

252.227-7002 Readjustment of payments.

As prescribed at 227.7009–2(b), insert the following clause in patent releases, license agreements, and assignments:

READJUSTMENT OF PAYMENTS (OCT 1966)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as its arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope of validity of such claims; *Provided,* however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

(End of clause)

252.227-7003 Termination.

As prescribed at 227.7009–2(e), insert the following clause in patent releases, license agreements, and assignments:

TERMINATION (AUG 1984)

Notwithstanding any other provision of this contract, the Government shall have the right to terminate the within license, in whole or in part, by giving the Contractor not less than thirty (30) days notice in writing of the date such termination is to be effective; *Provided,* however, that such termination shall not affect the obligation of the Government to pay royalties which have accrued prior to the effective date of such termination.

(End of clause)

252.227-7004 License grant.

As prescribed at 227.7009–3(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT (AUG. 1984)

(a) The Contractor hereby grants to the Government an irrevocable, nonexclusive, nontransferable, and paid up license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division or continuation thereof, to practice by or cause to be practiced for the Government throughout the world, any and all of the inventions thereunder, in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____

Date _____

Application Serial No. _____
Filing Date _____

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7005 License term.

As prescribed at 227.7009-3(b), insert one of the following clauses in patent releases, license agreements, and assignments:

(ALTERNATE I)

LICENSE TERM (AUG 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to in such "License Grant" clause.

(End of clause)

(ALTERNATE II)

LICENSE TERM (AUG 1984)

The license hereby granted shall terminate on the _____ day of _____ 19____; *Provided*, however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

(End of clause)

252.227-7006 License grant—running royalty.

As prescribed at 227.7009-4(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT—RUNNING ROYALTY (AUG 1984)

(a) The Contractor hereby grants to the Government, as represented by the Secretary of _____, an irrevocable, nonexclusive, nontransferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereunder to practice by or cause to be practiced for the Department of _____, throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____
Date _____

Application Serial No. _____
Filing Date _____

together with corresponding foreign patents and foreign applications for patent, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7007 License term—running royalty.

As prescribed at 227.7009-4(b), insert the following clause in patent releases, license agreements, and assignments:

LICENSE TERM—RUNNING ROYALTY (AUG 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to above unless sooner terminated as elsewhere herein provided.

(End of clause)

257.227-7008 Computation of royalties.

As prescribed at 227.7009-4(c), insert the following clause in patent releases, license agreements, and assignments:

COMPUTATION OF ROYALTIES (AUG 1984)

Subject to the conditions hereinafter stated, royalties shall accrue to the Contractor under this agreement on all articles or materials embodying, or manufactured by the use of, any or all inventions claimed under any unexpired United States patent licensed herein, upon acceptance thereof by the Department of _____, at the rate of _____ [percent of the net selling price of such articles or materials] [(amount) per (name of item)] * whether manufactured by the Government or procured under a fixed price contract, and at the rate of (amount) per (name of item) acquired or manufactured by a Contractor performing under a cost-reimbursement contract. With respect to such articles or materials made by the Department of _____, "net selling price," as used in this paragraph, means the actual cost of direct labor and materials without allowance for overhead and supervision.

(End of clause)

*Use bracketed matter as appropriate.

252.227-7009 Reporting and payment of royalties.

As prescribed at 227.7009-4(d), insert the following clause in patent releases, license agreements, and assignments:

REPORTING AND PAYMENT OF ROYALTIES (AUG 1984)

(a) The (procuring office) shall, on or before the sixtieth (60th) day next following the end of each yearly* period ending _____ during which royalties have accrued under this license, deliver to the Contractor, subject to military security regulations, a report in writing furnishing necessary information relative to royalties which have accrued under this contract.

(b) Royalties which have accrued under this contract during the yearly* period ending _____ shall be paid to the Contractor (if appropriations therefor are available or become available) within sixty (60) days next following the receipt of a voucher from the Contractor submitted in accordance with the report referred to in (a) of this clause; *Provided*, that the Government shall not be obligated to pay, in respect of any such yearly period, on account of the combined royalties accruing under this contract directly and under any separate licenses granted pursuant to the "License to Other Government Agencies" clause (if any) of this contract, an amount greater than _____ dollars ($_____), and if such combined royalties exceed the said maximum yearly obligation, each department or agency shall pay a pro rata share of the said maximum yearly obligation as determined by the proportion its accrued royalties bear to the combined total of accrued royalties.

(End of clause)

*The frequency, date, and length of reporting periods should be selected as appropriate to the particular circumstances of the contract.

252.227-7010 License to other Government agencies.

As prescribed at 227.7009-4(e), insert the following clause in patent releases, license agreements, and assignments:

LICENSE TO OTHER GOVERNMENT AGENCIES (AUG 1984)

The Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred to in the "License Grant" clause of this contract, on the same terms and conditions as appear in this license contract, to any other department or agency of the Government at any time on receipt of a written request for such a license from such department or agency; *Provided*, however, that as to royalties which accrue under such separate licenses, reports and payments shall be made directly to the Contractor by each such other department or agency pursuant to the terms of such separate licenses. The Contractor shall notify the Licensee hereunder promptly upon receipt of any request for license hereunder.

(End of clause)

252.227-7011 Assignments.

As prescribed at 227.7010, insert the following clause in assignments.

ASSIGNMENT (AUG 1984)

The Contractor hereby conveys to the Government, as represented by the Secretary of _____, the entire right, title, and interest in and to the following patents (and applications for patent), in and to the

inventions thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore accrued, the same to be held and enjoyed by the Government through its duly appointed representatives to the full end of the term of said patents (and to the full end of the terms of all patents which may be granted upon said applications for patent, or upon any division, continuation-in-part or continuation thereof):

U.S. Patent No. _____
Date _____
Name of Inventor _____
U.S. Application Serial No. _____
Filing Date _____
Name of Inventor _____

together with corresponding foreign patents and applications for patent insofar as the Contractor has the right to assign the same.

(End of clause)

252.227-7012 Patent license and release contract.

As prescribed at 227.7012, insert the following clause in patent releases, license agreements, and assignments:

_____ (Contract No.)

PATENT LICENSE AND RELEASE CONTRACT (AUG 1984)

THIS CONTRACT is effective as of the _____ day of _____ 19____, between the UNITED STATES OF AMERICA (hereinafter called the Government), and _____ (hereinafter called the Contractor), [a corporation organized and existing under the laws of the State of _____], [a partnership consisting of _____], [an individual trading as _____]], of the City of _____ in the State of _____.

WHEREAS, Contractor warrants that he has the right to grant the within license and release, and the Government desires to procure the same, and

WHEREAS, this contract is authorized by law, including 10 U.S.C. 2386.

NOW THEREFORE, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

ARTICLE 1. License Grant.*

(Insert the clause at 252.227-7004 for a paid up license, or the clause at 252.227-7006 for a license on a running royalty basis.)

ARTICLE 2. License Term.*

(Insert the appropriate alternative clause at 252.227-7005 for a paid up license, or the clause at 252.227-7007 for a license on a running royalty basis.)

ARTICLE 3. Release of Past Infringement.

(Insert the clause at 252.227-7001.)

ARTICLE 4. Non-Estoppel.

(Insert the clause at 252.227-7000.)

ARTICLE 5. Payment.

The Contractor shall be paid the sum of _____ Dollars ($_____) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause at 252.227-7006 in accordance with the instructions therein, and also the clause as specified at 252.227-7002 and 252.227-7009 and 252.227-7010.)

ARTICLE 6. Officials Not to Benefit.

(Insert the clause at FAR 52.203-1.)

ARTICLE 7. Covenant Against Contingent Fees.

(Insert the clause at FAR 52.203-5.)

ARTICLE 8. Assignment of Claims.

(Insert the clause at FAR 52.232-23.)

ARTICLE 9. Gratuities.

(Insert the clause at FAR 52.203-3.)

ARTICLE 10. Disputes.

(Insert the clause at FAR 52.223-1.)

ARTICLE 11. Successors and Assignees.

This Agreement shall be binding upon the Contractor, his successors ** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA.

By _____
Date _____
(Signature and Title of Contractor) _____
By _____
Date _____

* If only a release is procured, delete this article; if an assignment is procured, use the clause at 252.227-7011.

** When the Contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

(End of clause)

252.227-7013 Rights in technical data and computer software.

As prescribed at 227.412(a)(1), insert the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (MAY 1981)

(a) *Definitions.* "Commercial Computer Software", as used in this clause, means computer software which is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this clause, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer Data Base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer Program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

"Computer Software", as used in this clause, means computer programs and computer data bases.

"Computer Software Documentation", as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (1) documents the design or details of computer software, (2) explains the capabilities of the software, or (3) provides operating instructions for using the software to obtain desired results from a computer.

"Limited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (1) released or disclosed in whole or in part outside the Government, (2) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (3) used by a party other than the Government, except for:

(1) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work; *Provided*, that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(2) Release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (1) above.

"Restricted Rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to—

(1) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(2) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(3) Copy computer programs for safekeeping (archives) or backup purposes; and

(4) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1)–(4) above that are listed or described in this contract or described in a license or agreement made a part of this contract.

"Technical Data", as used in this clause, 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 acquire, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as

drawings or photographs, text in specifications or related performance or design type 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 computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

"Unlimited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Government Rights.*

(1) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) technical data necessary to enable manufacture of end-items, components, and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see subdivision (b)(2)(ii) below);

(v) technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) technical data pertaining to end-items; components or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes;

(viii) technical data or computer software which is in the public domain, or has been or is normally released or disclosed by the Contractor or subcontractor without restriction on further disclosure; and

(ix) technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined, on the basis of subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights; and

(ii) unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in subdivisions (b)(1) (i), (v), (vi), (vii), and (viii) above. The word *unpublished,* as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to subdivisions (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below in which is inserted:

A. the number of the prime contract under which the technical data is to be delivered,

B. the name of the Contractor and any subcontractor by whom the technical data was generated, and

C. an explanation of the method used to identify limited rights data.

Limited Rights Legend

Contract No. _____
Contractor: _____

Explanation of Limited Rights Data Identification Method Used

_____

_____

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above Contractor, be either (A) used, released or disclosed in whole or in part outside the Government, (B) used in whole or in part by the Government for manufacture or, in the case of computer software documentation, for preparing the same or similar computer software, or (C) used by a party other than the Government, except for: (1) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *Provided,* that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or (2) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (1) above. This legend, together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted Rights.*

(i) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *Provided,* however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor) _____ and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(ii) Notwithstanding subdivision (i) above, commercial computer software and related documentation developed at private expense and not in public domain may, if the Contractor so elects, be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subdivision (b)(3)(ii) of the Rights in Technical Data and Computer Software clause at 252.227–7013.

_____

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third

parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtains without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *Provided*, that the unmodified portions shall remain subject to these restrictions.

(E) If the Contractor, within sixty (60) days after a written request, fails to substantiate by clear and convincing evidence that computer software and documentation marked with the above Restricted Rights Legend are commercial items and were developed at private expense, or if the Contractor fails to refute evidence which is asserted by the Government as a basis that the software is in the public domain, the Government may cancel or ignore any restrictive markings on such computer software and documentation and may use them with unlimited rights. Such written requests shall be addressed to the Contractor as identified in the Restricted Rights Legend.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this paragraph shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) *Copyright.*

(1) In addition to the rights granted under the provisions of paragraph (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in paragraph (a) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights" in paragraph (a) above. With respect to computer software which the parties have agreed in accordance with subparagraph (b)(3) above will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7013 (date).

(d) *Removal of Unauthorized Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder if:

(1) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings, or

(2) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

(e) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) *Limitation on Charges for Data and Computer Software.* The Contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data or computer software on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has a right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(g) *Acquisition of Data and Computer Software from Subcontractors.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next-higher tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to subparagraph (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

ALTERNATE I (MAY 1981)

As prescribed at 227.412(a)(2), add the following paragraph to the basic clause:

Notice of Certain Limited Rights

(h) (1) Unless the Schedule provides otherwise, and subject to (2) below, the Contractor will promptly notify the Contracting Officer in writing of the intended use by the Contractor or a subcontractor in performance of this contract of any item, component or process for which technical data would fall within subparagraph (b)(2) above.

(2) Such notification is not required with respect to:

(i) Standard commercial items which are manufactured by more than one source of supply; or

(ii) Items, components or processes for which such notice was given pursuant to predetermination of rights in technical data in connection with this contract.

(3) Contracting Officer approval is not necessary under this clause for the Contractor to use the item, component or process in the performance of the contract.

ALTERNATE II (MAY 1981)

As prescribed at 227.412(a)(3), add the following paragraph to the basic clause:

( ) Publication for sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than 24 months after delivery of such data, the Contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under subparagraph (c)(1) of this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

252.227-7014 Predetermination of rights in technical data.

As prescribed at 227.412(b), insert the following provision:

PREDETERMINATION OF RIGHTS IN TECHNICAL DATA (JUL 1976)

(a) The Offeror is requested to identify in the proposal which of the below listed data (including data to be furnished in whole or in part by a subcontractor) when delivered, the Offeror intends to identify as limited rights data in accordance with paragraph (b) of the "Rights in Technical Data and Computer Software" clause of this Solicitation. This identification need not be made as to data which relate to standard commercial items which are manufactured by more than one source of supply.

(The solicitation should list here that technical data or portions thereof with respect to which the Government proposes use of the predetermination procedure. Data which clearly comes within subparagraph (b)(1) of the "Rights in Technical Data and Computer Software" clause and would therefore be acquired with unlimited rights should not be listed.)

(b) Limited rights data may be identified as such, pursuant to paragraph (a) above only if it pertains to items, components or processes developed at private expense. Nevertheless, it cannot be so identified if it comes within subparagraph (b)(1) of the "Rights in Technical Data and Computer Software" clause. At the request of the Contracting Officer or representative, the Offeror agrees to furnish clear and convincing evidence that the data which will be so identified comes within the definition of limited rights data.

(c) The listing of a data item in paragraph (a) above does not mean that the Government considers such item to come within the definition of limited rights data.

(End of provision)

252.227-7015 Rights in technical data—specific acquisition.

As prescribed at 227.412(c), insert the following clause:

RIGHTS IN TECHNICAL DATA—SPECIFIC ACQUISITION (MAR 1979)

(a) *Definition.* 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 acquire, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type 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) *Government Rights.* The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the Contractor to the Government under this contract.

(c) *Copyright.*

(1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies of phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1) above.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7015 (date).

(d) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on Charges for Data.* The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived throughout the Military Assistance Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(End of clause)

252.227-7016 Contract schedule items requiring experimental, developmental, or research work.

As prescribed at 227.412(d), insert the following clause:

CONTRACT SCHEDULE ITEMS REQUIRING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK (MAR 1975)

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the "Rights in Technical Data and Computer Software" clause of this contract, it is understood and agreed that items (list applicable schedule line items or sub-line items or data exhibit numbers) require the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this contract falls within the definition of limited rights data.

(End of clause)

252.227-7017 Rights in technical data—major system and subsystem contracts.

As prescribed at 227.412(e), insert the following clause:

RIGHTS IN TECHNICAL DATA—MAJOR SYSTEM AND SUBSYSTEM CONTRACTS (NOV 1971)

The Contractor agrees that it will neither incorporate any provision in its subcontracts nor enter into any agreement, written or oral, either directly or indirectly, with subcontractors which has or may have the effect of prohibiting subcontractor sales directly to the Government of any supplies, like those manufactured or services like those furnished by such subcontractor under this

contract or any follow-on production contract, or under any contract for parts or components of supplies furnished under this or any follow-on production contract. The Contractor further agrees that all data, including data in which the Government may not have unlimited rights, furnished or otherwise made available by the Contractor for use by subcontractors in furnishing such supplies or services, will be furnished to such subcontractors without payment to the Contractor of any fee, royalty or other charge by the subcontractor or the Government for use by such subcontractors in furnishing such supplies or services for sale directly to the Government. For the purpose of this paragraph, the term "fee, royalty or other charge" shall not include within its meaning fees, royalties of charges for reasonable returns on use of patents.

(End of clause)

252.227-7018 Restrictive markings on technical data.

As prescribed at 227.412(f), insert the following clause:

RESTRICTIVE MARKINGS ON TECHNICAL DATA (MAR 1975)

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. Such procedures shall be in writing. The Contractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall maintain (1) records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized, as well as (2) such records as are reasonably necessary to show pursuant to subparagraph (d)(2) of the "Rights in Technical Data and Computer Software" clause that restrictive markings used in any piece of technical data delivered under this contract are authorized.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Contractor hereby authorizes direct contact between the Government and such person(s) in resolving questions involving restrictive markings.

(d) The Contracting Officer may evaluate or verify the Contractor's procedures to determine their effectiveness. Upon request, a copy of such written procedures shall be furnished. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e) (1) If the Contractor fails to make a good faith effort to institute the procedures of paragraphs (a) and (b) above, any limited rights markings on technical data delivered under this contract may be cancelled or ignored by the Contracting Officer. The Contracting Officer shall give written notice to the Contractor of the action taken, including identification of the data on which markings have been cancelled or ignored, and thereafter may use such data with unlimited rights.

(2) The Contracting Officer may give written notification to the Contractor of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, and state a period of time not less than thirty (30) days within which the Contractor shall complete corrective action. If corrective action is not completed within the specified time, restrictive markings on any technical data being prepared for delivery or delivered under this contract during that period shall be presumed to be unauthorized by the terms thereof and the Contracting Officer may cancel or ignore such markings if the Contractor is unable to substantiate the markings in accordance with the procedures of paragraph (d) of the clause at 252.227-7013, "Rights in Technical Data and Computer Software".

(f) Notwithstanding any provisions of this contract concerning inspection and acceptance, the acceptance by the Government of technical data with restrictive legends shall not be construed as a waiver of any rights accruing to the Government.

(g) This clause, including this paragraph (g), shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

252.227-7019 Identification of restricted rights computer software.

As prescribed at 227.412(g), insert the following provision:

IDENTIFICATION OF RESTRICTED RIGHTS COMPUTER SOFTWARE (APR 1977)

The Offeror's attention is called to the requirement in the "Rights in Technical Data and Computer Software" clause that any restrictions on the Government concerning use or disclosure of computer software which was developed at private expense and is to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Therefore, the Offeror is requested to identify in his proposal to the extent feasible any such computer software which was developed at private expense and upon the use of which it desires to negotiate restrictions, and to state the nature of the proposed restrictions. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

(End of provision)

252.227-7020 Rights in data—special works.

As prescribed at 227.412(h), insert the following clause:

RIGHTS IN DATA—SPECIAL WORKS (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which 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, and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claim to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such works delivered under this contract the following notice:

c *(Year date of delivery)* United States Government as represented by the Secretary of *(department)*. All rights reserved.

In the case of a phonorecord, the c will be replaced by P.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the performance of this contract but in which copyright is owned by the Contractor and which is incorporated in the work furnished under this contract, and (2) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in paragraph (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license of other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

252.227-7021 Rights in data—existing works.

As prescribed at 227.412(i), insert the following clause:

RIGHTS IN DATA—EXISTING WORKS (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

252.227-7022 Government rights (unlimited).

As prescribed at 227.412(j), insert the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

(a) 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 license 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 (3) 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)

252.227-7023 Drawings and other data to become property of government.

As prescribed at 227.412(k), insert the following clause:

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 construction 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 (3) 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)

252.227-7024 Notice and approval of restricted designs.

As prescribed at 227.412(l), insert the following clause:

NOTICE AND APPROVAL OF RESTRICTED DESIGNS (APR 1984)

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 that 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 produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

252.227-7025 Rights in technical data and computer software (SBIR program).

As prescribed at 227.412(m), insert the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (SBIR PROGRAM) (APR 1984)

(a) *Definitions.* "Computer Data Base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer Program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

"Computer Software", as used in this clause, means computer programs and computer data bases.

"Computer Software Documentation", as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (1) documents the design or details of computer software, (2) explains the capabilities of the software, or (3) provides operating instructions for using the software to obtain desired results from a computer.

"License Rights", as used in this clause, means rights to use, duplicate, or disclose technical data or computer software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. License Rights do not grant to the Government the right to have or permit others to use technical data or computer software for commercial purposes.

"Limited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (1) released or disclosed in whole or in part outside the Government, (2) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (3) used by a party other than the Government.

"Restricted Rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to:

(1) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(2) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(3) Copy computer programs for safekeeping (archives) or backup purposes; and

(4) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1)–(4) above that are listed or described in this contract or described in a license or agreement made a part of this contract.

"Technical Data", as used in this clause, means recorded information regardless of form or characteristic, of a scientific or technical nature. 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 computer software documentation. Technical

data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Unlimited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data or computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Government Rights.*

(1) *License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under this contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have license rights in:

(i) Technical data and computer software resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in this contract or any subcontract hereunder;

(ii) Computer software required to be originated or developed under this contract or any subcontract hereunder, or generated as a necessary part of performing this contract or any subcontract hereunder;

(iii) Technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modification or processes have been, or are being, developed under this contract or any subcontract hereunder in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see subdivision (b)(2)(i) below);

(iv) Technical data or computer software prepared or required to be delivered under this contract or any subcontract hereunder and constituting corrections or changes to Government-furnished data or computer software;

(v) Technical data pertaining to end-items, components or processes, prepared or required to be delivered under this contract or any subcontract hereunder for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(vi) Manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance, or training purposes; and

(vii) Any other technical data or computer software prepared or required to be delivered unden this contract or any subcontract hereunder, other than technical data furnished with limited or unlimited rights pursuant to subparagraphs (b) (2) and (4) below or computer software furnished with restricted or unlimited rights pursuant to subparagraphs (b) (3) and (4) below.

License Rights shall be effective with respect to the technical data identified in subdivisions (b)(1) (i), (iii), (iv), (v), (vi), and (vii) above only if each piece of data is marked with the License Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered, the name of the contractor and any subcontractor by whom the data was generated, and the period in which the data is subject to limited rights, and shall be effective with respect to the computer software identified in subdivisions (b)(1) (i), (ii), and (iv) and (vii) above only if each unit of software is marked with an abbreviated License Rights Legend reciting that the use, duplication, or disclosure of the software is subject to the same license rights restrictions included in the same contract (identified by number) with the same Contractor (identified by name):

License Rights Legend

Contract No. _____
Contractor or subcontractor: _____

For a period of two (2) years after the delivery and acceptance of the last deliverable item under this contract, this technical data shall not, without the written permission of the above Contractor, be either (A) used, released or disclosed in whole or in part outside the Government, (B) used in whole or in part by the Government for manufacture, or (C) used by a party other than the Government. After the expiration of the two (2) year period, the Government may use, duplicate, or disclose the data, in whole or in part and in any manner, for Government purposes only, and may have or permit others to do so for Government purposes only. All rights to use or duplicate the data in whole or in part for commercial purposes are retained by the Contractor, and others to whom this data may be disclosed agree to abide by this commercial purposes limitation. The Government assumes no liability for use or disclosure of the data by others for commercial purposes. This legend shall be included on any reproduction of this data, in whole or in part.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) Unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in subdivisions (b)(1) (i), (iv), (v), and (vi) above. The word *unpublished*, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited Rights shall be effective with respect to the technical data mentioned in subdivision (b)(2)(i) above only if each piece of data is marked with the Limited Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered and the name of the Contractor and any subcontractor by whom the data was generated:

Limited Rights Legend

Contract No. _____
Contractor or subcontractor: _____

This technical data shall not, without the written permission of the above contractor, be either (A) used, released or disclosed in whole or in part outside the Government, (B) used in whole or in part by the Government for manufacture, or (C) used by a party other than the Government. This legend shall be included on any reproduction of this data, in whole or in part.

(3) *Restricted Rights.* The Government shall have restricted rights in privately developed computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights; *Provided,* however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor).

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) technical data or computer software required to be prepared or delivered under this contract or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) technical data or computer software that is in the public domain or has been or is normally released or disclosed by the Contractor or any subcontractor without restriction on further use or disclosure; and

(iii) computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

(5) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any technical data or computer software which the Contractor or any subcontractor has previously delivered to the Government without restriction. The license, limited or restricted rights provided for by this paragraph (b) shall not impair the right of the Government to use similar or identical technical data or computer software acquired from other sources.

(c) *Copyright.*

(1) The Contractor is hereby granted permission to assert or establish claim to or ownership of copyright in any work of authorship prepared for or acquired by the Government under this contract. In addition to the rights granted under the provisions of paragraph (b) above, the Contractor hereby grants to the Government a nonexclusive, irrevocable, paid-up license throughout the world of the scope set forth below, under any such copyright to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. All published works for which claim to or ownership of copyright has been asserted or established shall contain an appropriate credit line identifying Government support. With respect to technical data and computer software in which the Government has license rights or unlimited rights, the license shall be of the same scope as the rights set forth in the definitions of "license rights" and "unlimited rights" in paragraph (a) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights" in paragraph (a) above. With respect to computer software which the parties have agreed in accordance with paragraph (b)(3) above will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7025 (date).

(d) *Removal of Unauthorized Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder, if:

(1) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(2) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

(e) *Omitted Markings.* Technical data and computer software delivered to the Government without any of the legends or markings specified in paragraph (b) above or that are not copyrighted shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the use, duplication, or disclosure of such data and software. However, to the extent the data and software have not been disclosed without restriction outside the Government, the Contractor may request, within six (6) months after delivery of such data and software, permission to place restrictive legends on such data and software at the Contractor's expense and the Government may so permit if the Contractor:

(1) demonstrates that the omission of the restrictive legends was inadvertent;

(2) establishes pursuant to paragraph (d) above that the use of the markings is authorized; and

(3) acknowledges that the Government has no liability with respect to the use or disclosure of such data and software that was received prior to the addition of the restrictive markings.

(f) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(g) *Acquisition of Data and Computer Software from Subcontractor.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier Contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to subparagraph (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

252.227-7026 Deferred delivery of technical data or computer software.

As prescribed at 227.412(n), insert the following clause:

DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (NOV 1974)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, the delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

252.227-7027 Deferred ordering of technical data or computer software.

As prescribed at 227.412(o), insert the following clause:

DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (NOV 1974)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) generated in the performance of this contract or any subcontract hereunder. When such technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver such technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

252.227-7028 Requirement for technical data certification.

As prescribed at 227.412(p), insert the following provision:

REQUIREMENT FOR TECHNICAL DATA CERTIFICATION (APR 1974)

The Offeror shall submit with its offer a certification as to whether the Offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in its offer; if so, the Offeror shall identify one such contract or subcontract under which such

technical data was delivered or will be delivered, and the place of such delivery.

(End of provision)

252.227-7029 Identification of technical data.

As prescribed at 227.412(q), insert the following clause:

IDENTIFICATION OF TECHNICAL DATA (MAR 1975)

Technical Data (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

252.227-7030 Technical data—withholding of payment.

As prescribed at 227.412(r), insert the following clause:

TECHNICAL DATA—WITHHOLDING OF PAYMENT (JUL 1976)

(a) If "Technical Data" (as defined in the clause of this contract entitled "Rights in Technical Data and Computer Software"), or any part thereof, specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) After payments total ninety percent (90%) of the total contract price or amount and if all technical data specified to be delivered under this contract has not been accepted, the Contracting Officer may withhold from further payment such sum as the Contracting Officer considers appropriate, not exceeding ten percent (10%) of the total contract price or amount unless a lesser withholding limit is specified in the contract.

(c) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 Data requirements.

As prescribed at 227.412(s), insert the following clause:

DATA REQUIREMENTS (APR 1972)

(a) Data means recorded information, regardless of form or characteristics.

(b) The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 252.2 made a part of the contract.

(End of clause)

252.227-7032 Rights in technical data and computer software (foreign).

As prescribed at 227.412(t), insert the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (FOREIGN) (JUN 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

252.227-7033 Rights in shop drawings.

As prescribed at 227.412(u), 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 in 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)

252.227-7034 Patents-subcontracts.

As prescribed at 227.304-4, insert the following clause:

PATENTS-SUBCONTRACTS (APR 1984)

The Contractor will include the clause at FAR 52.227-12, Patent Rights—Retention by the Contractor (Long Form) suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(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 "Workers' 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 on 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 and continue until the aircraft has been re-engaged to 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 contract, 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 members" 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, that Government representative shall notify the Contractor in writing of the conditions the representative 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 the Contractor 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 it 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 this 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, that Government representative 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 termination 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 it 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 the Contractor's 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, or destruction covered by this clause; *Provided,* however in the case of Government-furnished

property, if such 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 if 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 the subcontractor's 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 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 damaged, lost, or destroyed aircraft, or any remaining parts thereof; and, if any 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, the Contractor 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 8 October 1971, Subject: Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

252.228-7002 Flight risks.

As prescribed at 228.307-2(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 from a flight line and continue until the aircraft has completed 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, the Contractor's 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 Logisitics 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 that person's place of employment under circumstances that make it appear probable that that person's 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 that person's 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 that person's 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 the person's place of employment, or to the United States, or is able to be returned to the jurisdiction of the United States, or until the person's 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 the person's dependents, on account of 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, or (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 228.311–70, insert the following clause:

INSURANCE (JAN 1965)

(a) The Contractor shall purchase and thereafter maintain such bonds and insurance in such forms and such amounts 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 obligator to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

(c) The Contractor shall give the Contracting Officer or the Contracting Officer's 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 of 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 tq 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 the Contractor's applicable subcontracts to require subcontractor cooperation and assistance in accident investigation under this clause.

(End of clause)

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 services 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 is 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 nonrefundable 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 Korea, 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 is determined in accordance with Subpart 31.2 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)

252.232-7000 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 required 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 (Public Law 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 invoice 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 office 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 cash flow data generated during performance 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 Pub. L. 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)

252.234-7000 Notice of cost/schedule control systems.

As prescribed at 234.005-71, insert the following provision:

NOTICE OF COST/SCHEDULE CONTROL SYSTEMS (AUG 1985)

(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 252.234-7001 of the DoD FAR Supplement. The Offeror shall identify the Offeror's existing management systems separately from 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)

252.234-7001 Cost/schedule control systems.

As prescribed at 234.005-71, insert the following clause:

COST/SCHEDULE CONTROL SYSTEMS (AUG 1985)

(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 the Contractor's 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 duly authorized representative for the purpose of permitting Government surveillance to ensure 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)

252.235-7000 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 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 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 the Contractor's 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 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. 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 the Contractor's 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 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) The Contractor shall (i) promptly notify the Contracting Officer of any occurrence, action or claim the Contractor 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, participate 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 purchase and maintain, to the extent available, such insurance against unusually hazardous risks as the Contracting 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 REIMBURSEMEMT (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 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 the Contractor's 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 similar indemnification 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 the Contractor's 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 therefore 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 the Contractor 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 and dividing by the total number of units of the 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, the Contractor shall promptly notify the Contracting Officer (or the original DoD Contracting Office in the event the contract is closed) to obtain the applicable nonrecurring recoupment charge.

(1) The Contractor agrees that, with respect to (2) below, the Contractor 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 when 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 evaluation (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 identified 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 purchaser 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 purchaser 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 the Contractor's 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 of 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 the Contractor's 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 designee may waive the Government's rights under this clause, in whole or in part, whenever the Secretary of Defense or designee 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 Animal 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 P.L. 91-579). NOTE: The Contractor may request registration of the Contractor's facility and 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 the Contractor's 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 Officer, 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 1986)

(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 contractual 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)

252.235-7005 Short form research contract clauses.

As prescribed in 235.7008(b), insert the following clauses in SFRC awards to educational institutions and nonprofit organizations. The clauses set forth below are incorporated with the same force and effect as if set forth in full. Clauses with a single asterisk (*) are applicable to educational institutions only. Clauses with a double asterisk (**) are applicable to nonprofit institutions only. For awards where the amount is less than $10,000, the inapplicable clauses shall be identified in the contract.

Definitions. FAR 52.202-1.
Assignment of Claims. FAR 52.232-23 Alternate I.
Disputes. FAR 52.233-1.
Equal Opportunity. FAR 52.222-26. Alternate I shall be added as a special provision when applicable per Alternate I instructions.
Officials Not to Benefit. FAR 52.203-1.
Covenant Against Contingent Fees. FAR 52.203-5.
Notice and Assistance Regarding Patent and Copyright Infringement. FAR 52.227-2 (applicable only if amount of contract action exceeds $25,000).
Affirmative Action for Special Disabled and Vietnam Era Veterans. FAR 52.222-35.
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns. FAR 52.219-8.
Examination of Records by Comptroller General. FAR 52.215-1.
Convict Labor. FAR 52.222-3.
Utilization of Labor Surplus Area Concerns. FAR 52.220-3 (applicable only if contract action exceeds $25,000).
Audit—Negotiation. FAR 52.215-2.
Excusable Delays. FAR 52.249-14.
Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions). FAR 52.249-5 (applicable as set forth in clause preamble).
Authorization and Consent. FAR 52.227-1, and Alternate I. FAR 52.246-9.
Government Property (Cost-Reimbursement, Time and Material, or Labor-Hour Contracts). FAR 52.245-5 and Alternate I.
Affirmative Action for Handicapped Workers. FAR 52.222-36.
Subcontracts under Cost-Reimbursement and Letter Contracts. FAR 52.244-2.
Allowable Cost and Payment. FAR 52.216.
Rights in Technical Data and Computer Software (See 252.227-7013 of this Supplement).
Identification of Technical Data. (See 252.227-7029 of this Supplement.)
Restrictive Markings on Technical Data. (See 252.227-7018 of this Supplement.)
Insurance—Liability to Third Persons. FAR 52.228-7. Alternates I or II apply under the circumstances set forth herein.
Government Supply Sources. FAR 52.251-1.
Preference for United States-Flag Air Carriers. FAR 52.247-63.
Patent Rights—Retention by the Contractor (Short Form). FAR 52.227-11.
Patents—Subcontracts. 252.227-7034.
Competition in Subcontracting. FAR 52.244-5 (applies only if contract action exceeds $25,000).
Utilization of Women-Owned Small Businesses. FAR 52.219-13 (applicable only if contract action exceeds $25,000).
Payment for Overtime Premiums. FAR 52.222-2. (Note: The word "zero" is inserted in the blank space indicated by an asterisk. Clause applicable only in contracts over $100,000.)
Care of Laboratory Animals. 252.235-7003.
Limitation of Cost. FAR 52.232-20 (applicable only when contract action is fully funded).
Limitation of Funds. FAR 52.232-22 (applicable only when contract action is incrementally funded).
Clean Air and Water. FAR 52.223-2 (applicable only if contract action exceeds the dollar amount set forth in the preamble to the clause).
Overseas Distribution of Defense Subcontracts. 252.204-7005 (applicable only when contract action exceeds $500,000 or when any modification increases contract amount to more than $500,000).
Gratuities. FAR 52.203-3.
Certification of Requests for Adjustment or Relief Exceeding $100,000. 252.233-7000 (applicable only if contract action exceeds $100,000).
Ordering From Government Supply Sources. (See 252.251-7000 of this Supplement.)
* Predetermined Indirect Cost Rates. FAR 52.216-15 (applicable only when the contractor has an executed negotiation agreement with the cognizant contract administration office).
** Limitation on Withholding of Payments. FAR 52.232-9.
** Notice of Intent to Disallow Costs. FAR 52.242-1.
** Subcontractor Cost or Pricing Data. FAR 52.215-24 (applicable only if contract action exceeds $500,000).
** Technical Data—Withholding of Payment. (See 252.227-7030 of this Supplement.)
** Fixed Fee. FAR 52.216-8 (applicable only in cost-plus-fixed-fee contracts).
** Price Reduction for Defective Cost or Pricing Data. FAR 52.215-22 (applicable only if contract action exceeds $500,000).
** Cost Accounting Standards. FAR 52.230-3 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).
** Disclosure and Consistency of Cost Accounting Practices. FAR 52.230-5 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).
** Administration of Cost Accounting Standards. FAR 52.230-4 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).
** Changes—Cost Reimbursement. FAR 52.243-2 and Alternate V.
** Facilities Capital Cost of Money. FAR 52.215-30 (applicable as set forth in the clause).
** Waiver of Facilities Capital Cost of Money. FAR 52.215-31 (applicable as set forth in the clause).
** Termination (Cost-Reimbursement). FAR 52.249-6 (applicable only to cost-plus-fixed-fee contracts).
** Excusable Delays. FAR 52.249-14 (applicable only to contracts to which FAR clause 52.249-6 "Termination (Cost-Reimbursement)" is applicable).

Work to be Performed

WORK TO BE PERFORMED (AUG 1983)

The Contractor shall perform research as specified in the unsolicited proposal and identified in the Short Form Research Contract (SFRC) document.

(End of clause)

Acknowledgement of Sponsorship

ACKNOWLEDGEMENT OF SPONSORSHIP (APR 1984)

(a) The Contractor agrees that in the release of information relating to an SFRC, such release shall include a statement to the effect that the project or effort depicted was or is sponsored by the agency set forth in the SFRC, and that the content of the information does not necessarily reflect the position or the policy of the Government, and no official endorsement should be inferred.

(b) For the purpose of this clause, information includes news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association proceedings, symposia, etc.

(c) Nothing in the foregoing shall affect compliance with the requirements of the clause entitled "Security Requirements" (FAR 52.204–2), if such clause is a part of the contract.

(End of clause)

Publications

PUBLICATIONS (AUG 1983)

Publication of results of the research project in appropriate professional journals is encouraged as an important method of recording and reporting scientific information. One copy of each paper planned for publication will be submitted to the Scientific Program Officer simultaneously with its submission for publication. Following publication, copies of published papers shall be submitted to the Scientific Program Officer, or to the other addressees in quantities as may be directed by the Contracting Officer.

(End of clause)

Reporting Requirements

REPORTING REQUIREMENTS (APR 1984)

(a) Reporting shall be as specified in the SFRC. Unless specified otherwise, reporting requirements will include annual letter reports for multiyear research programs and a final technical report due within sixty (60) days after the expiration date of the SFRC.

(b) The Contracting Officer, after coordination with the Scientific Program Officer, will specify the form and content of the required reports. These requirements may be furnished the Contractor as may be mutually agreed.

(c) Technical data and computer software, as defined in 252.227–7013 shall be delivered to the Scientific Program Officer. Unless otherwise specified in the SFRC, these items shall be delivered as part of the final technical report.

(End of clause)

Option to Extend the Term of the SFRC

OPTION TO EXTEND THE TERM OF THE SFRC (APR 1984)

(a) If the Contractor's proposal covers an additional period(s) which could be treated as an optional period(s), such additional period(s) of research may be added to the contract, at the option of the Government, by the Contracting Officer's giving written notice exercising such option(s) at any time during the performance period specified in the contract or any extensions thereof.

(b) If the Government exercises an option, the Contractor agrees to the following:

(i) To comply with the applicable clauses listed in the SFRC; and

(ii) To comply with the policies and regulations for the SFRC as set forth in Subpart 225.70.

(End of clause)

Contractor-Acquired Property

CONTRACTOR-ACQUIRED PROPERTY (APR 1984)

(a) As used in this clause, "property" is as defined in subparagraph (b)(1) of the clause of this contract entitled "Title to Contractor-Acquired Property" which has been specifically identified in the Contractor's proposal which is the basis for award or modification.

(b) The identification and description in the Contractor's proposal of property to be Contractor-acquired may be accepted by the Contracting Officer as advance notification required by subparagraphs (a) and (b) of the clause of this contract entitled "Subcontracts Under Cost Reimbursement and Letter Contracts" (FAR 52.244–2).

(c) Award of this contract, and modifications thereto, shall constitute the written consent of the Contracting Officer, required by subparagraph (c) of FAR 52.244–2, to acquire property identified in the Contractor's proposal, except for those items specifically identified in the contract as required by Block 27A of the DD Form 2222.

(d) The decision to approve subcontracts for acquisition of items listed in Block 27A of the contract will be made subsequent to award of the contract or modification pursuant to FAR 52.244–2.

(End of clause)

Title to Contractor-Acquired Property

TITLE TO CONTRACTOR-ACQUIRED PROPERTY (APR 1984)

(a) This paragraph implements subparagraph (c)(4) of the clause of this contract entitled "Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts)" and FAR 35.014.

(b) For purposes of this paragraph, "property" is all nonexpendable tangible personal property, except material:

(1) As described in FAR 45.101, including ADPE defined in FAR 31.001 and facilities defined in FAR 45.301; and

(2) Which is acquired with funds available for the conduct of research; and

(3) For which the Contracting Officer has authorized acquisition by the Contractor (i) at the time of award of the contract or modification as provided in 252.235–7005, or (ii) subsequent to award pursuant to the Subcontracts clause of this contract.

(c) Title to all property having an acquisition cost of $1,000 or more which is specifically identified in the Contractor's proposal shall vest in the Contractor without further obligation to the Government, unless the determination regarding vesting of title is deferred until after acquisition. Property for which the determination regarding title is deferred shall be identified in Block 27B of DD Form 2222, and title to such property shall vest in accordance with the provisions of (d) below.

(d) Title to all property having an acquisition cost of $1,000 or more which was not specifically identified in the Contractor's proposal, or for which the determination regarding title is deferred pursuant to (c) above, shall vest as follows:

(1) In the Government pursuant to FAR 35.014; or

(2) In the Contractor; or

(3) In the Contractor subject to the right of the Government to direct transfer of the title back to the Government or third parties. This right may be exercised at anytime up to and including the twelfth (12th) month after completion or termination of the contract. The Government may at anytime remove an item of property from this category and transfer title to the Contractor without right of the Government to direct transfer of the title back to the Government or to third parties.

(e) Transfer of title back to the Government or third parties shall not be the basis for any claim by the institution. The provisions of the clause of this contract entitled "Government Property (Cost-Reimbursement, Nonprofit)" apply to any changes in property.

(f) Until title to property acquired with funds made available under this contract has been vested in the Contractor, without right of the Government to direct transfer of the title back to the Government or third parties, it shall be considered Government Property and subject to the provisions of FAR 52.245–5 and Alternate I.

(g) The Contractor shall furnish the Contracting Officer a list of all property having an acquisition cost of $1,000 or more acquired under this contract, to which title has not been vested in the Contractor, within forty-five (45) days following the end of the calendar year of the Contractor's fiscal year during which such property was acquired.

(End of clause)

Research Responsibility

RESEARCH RESPONSIBILITY (APR 1984)

(a) The Contractor shall bear responsibility for the conduct of the research specified in the Contractor's unsolicited proposal identified in the SFRC. The Contractor will exercise judgment in attaining the stated research objectives within the limits of the terms and conditions of the SFRC; *Provided*, however, that the Contractor will obtain the Contracting Officer's approval to change the Statement of Work. Consistent with the foregoing, the Contractor shall conduct the work as set forth in his proposal and accepted by the contract award.

(b) When the decision to enter into the SFRC is based upon the principal investigator's knowledge of the field of study, and the principal investigator's capabilities to manage the research project in an effective and productive manner, the principal investigator identified in the unsolicited proposal shall be continuously responsible for the conduct of the research project, and shall be closely involved with the research efforts.

(c) The Contractor shall advise the Contracting Officer if the principal investigator(s) identified in the SFRC plans to devote substantially less effort to the work than set forth in the proposal.

(d) The Contractor shall obtain the Contracting Officer's approval prior to changing the principal investigator(s) identified in the proposal.

(End of clause)

Restriction on Printing

RESTRICTION ON PRINTING (AUG 1983)

The Government authorizes the reproduction of reports, data, or other written materials, if required; *Provided,* the material produced does not exceed 5,000 production units of any page, and items consisting of multiple pages do not exceed 25,000 production units in the aggregate. The Contractor shall obtain the express prior written authorization of the Contracting Officer to reproduce material in excess of the quantities cited above.

(End of clause)

Contract Items Requiring Experimental, Developmental or Research Work

CONTRACT ITEMS REQUIRING EXPERIMENTAL, DEVELOPMENTAL OR RESEARCH WORK (AUG 1983)

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the Rights in Technical Data and Computer Software clause of this contract, it is understood and agreed that the work to be performed under this contract requires the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this contract falls within the definition of limited rights data.

(End of clause)

Advance Payments

ADVANCE PAYMENTS (AUG 1983)

Advance payments shall be made under this contract pursuant to the advance payment pool agreement between the Contractor and one or more Military Departments applicable to this contract, in effect as of the date of this contract. If such an agreement is not in effect as of the date of award of this contract, the Contractor will be paid in accordance with the clause of this contract entitled "Allowable Cost and Payment".

(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 proposals—price breakdown.

As prescribed at 236.571-2, insert the following clause:

MODIFICATION 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 similar price breakdown. In addition, if the proposal includes a time extension, a justification therefor 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 [Reserved]

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 and shall replace, at no cost to the Government, all salvage 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 any 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 the Contractor, or may be recovered under his bond. The liability of the Contractor for 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 employees.

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 Officer. 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 FAR clause at 52.236-6, entitled "SUPERINTENDENCE BY THE CONTRACTOR":

(i) If more than 50% and less than 70% of the value of the contract work is subcontracted, one superintendent shall be provided at the site and on the Contractor's payroll to be responsible for coordinating, directing, inspecting and expediting the subcontract work.

(ii) If 70% or more of the value of the work is subcontracted, the Contractor shall be required to furnish two such superintendents 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 requirements 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 contract 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 of the 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 for 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 therefor 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 or 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) MOBILIZATION AND DEMOBILIZATION, PAYMENT ITEM NO. _____ (DEC 1985)

(a) All costs connected with the mobilization and demobilization of all of the Contractor's 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 clause at 252.236-7009(b), 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 contemplated 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 ground 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 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 plane is 7:1 (one foot vertically for each 7 feet horizontally), and it continues to the point of intersection with the inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation) or the outer horizontal surface (which is the horizontal plane 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 landing 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 practicable 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)

*At some airfields the width of the primary surfaces is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the 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 Contracts", 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 the 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 and 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 a detailed or subnetwork diagram shall include, in addition to construction activities, the submittal 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 of 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 minimum 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 estimate 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) Scheduled 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 unit 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 forty (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 plan 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 updating 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 complete revisions need be time scaled. Subsequent minor revisions 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 scheduled 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 updated 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.

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 Construction Contracts" 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 he Contractor will also provide information for 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 nor 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)

252.236-7081 Cost limitation.

As prescribed at 236.580-1, insert the following provision:

COST LIMITATION (APR 1974)

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 provision:

ADDITIVE OR DEDUCTIVE ITEMS (APR 1968)

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 amount 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 the 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 clause:

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 followng 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 Contractor's 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 _____ 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.

(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 GOVERNMEMT 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 this 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 [Reserved]

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 Government

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 [Reserved]

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 published 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 furnished 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:

ORDERING OF FACILITIES AND SERVICES—COMMOM 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 at 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 Services."

(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 and 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 Government; *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 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 Government is obligated to pay a minimum 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 1971)

(a) For the purpose of verifying the accuracy of the cost or pricing data submitted pursuant to the clause entitled "Submission of Cost or Pricing Data—Common Carriers," 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 or 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)

*Insert the effective date of the contract.

**Insert the current fiscal year.

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 bills 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 (AUG 1985)

When transportation costs are reimbursed to the Contractor, the Contractor is required to furnish to the General Services Administration, at the address below (or to the ACO if specified), individual commercial

freight bills (or equivalent shipment data and evidence of payment) for transportation charges in excess of five hundred dollars ($500.00).

General Services Administration—BWAA
GSA Building
18th & F Streets, NW.
Washington, DC 20405

(End of clause)

252.242-7001 [Reserved]

252.242-7002 [Reserved]

252.242-7003 Certification of Indirect Costs.

As prescribed in 247.770-1, insert the following clause:

CERTIFICATION OF INDIRECT COSTS (APR 1986)

(a) The Contractor shall certify any proposal to establish or modify billing rates or to establish final indirect cost rates in the form set forth in paragraph (b) of this clause. The certificate shall be signed on behalf of the Contractor by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal. The Contractor understands that if the Contractor fails to submit a certificate as required herein, payments on account of indirect cost shall be at rates unilaterally established by the Government.

(b) *Certificate of Indirect Costs.* The certificate of indirect costs shall read as follows:

Certificate of indirect costs

This is to certify that to the best of my knowledge and belief:

1. I have reviewed the indirect cost proposal submitted herewith;

2. All costs included in the proposal (identify, date) to establish billing or final indirect cost rates for (identify period covered by rate) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Department of Defense applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the Department of Defense, such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and good will; and

4. All costs included in this proposal are properly allocable to Defense contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: _____

Signature: _____

Name of Corporate Official: _____

Title: _____

Date of Execution: _____

(End of clause)

252.243-7000 Engineering change proposals.

As prescribed at 243.205(S-70), insert the following clause:

ENGINEERING CHANGE PROPOSALS (AUG 1985)

(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 DOD-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 4.6 of DOD-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 paragraph 4.10 and 4.11 of DOD-STD-480. Concurrently with the submission of any ECP under this contract in which the proposed aggregate cost is $100,000 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*.

*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.

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 Part 231 of 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:

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 246.670).

(End of clause)

252.246-7001 Warranty of data.

As prescribed at 246.770-10, 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, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications 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, the Contracting Officer may:

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer 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, saveall 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.

(l) *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 Contactor 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	Discharging B
	Ship's gear 2240# 40c/f	Ship's gear 2240# 40c/f

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—Schedule II	Travel time and detentions in nonexplosive area—Schedule III	Overtime differential—Schedule IV	Explosive straight time rate—Schedule V	Travel time and detentions in explosive area—Schedule VI	Explosive overtime differential—Schedule VII	Premium meal hour differential—Schedule VIII	
							Nonexplosive	Explosive
Longshoremen.								
Winch drivers.								
Hatch tenders.								
Fork-lift operators.								
Jitney operators.								
Crane operators.								
Ship foremen.								
Supercargoes.								
Head clerks								
Clerks								
Checkers								
Walking bosses.								
Assistant 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.

(End of clause)

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 of 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 of 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 entitled "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 Workers' 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; or

(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 Workmen'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-insurer 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 estimated 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.	NCWT	NCWT	NCWT

(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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	Unit	Unit price	Total
a. Pickup by Contractor:				
(1) Container, FED SPEC PPP-B-580.		GCWT		
(2) Air Cargo Container.		GCWT		
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_____

	Estimated annual quantity	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		

AREA_____—Continued

(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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	Unit	Unit price	Total
		each 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_____

	Estimated annual quantity	Unit	Unit price	Total
		each piece		

(Repeat for additional areas as needed.)

Items 10–14 Reserved (See DOD FAR Supplement 47.271–4(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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	Unit	Unit price	Total
		GWCT		

(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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	Unit	Unit price	Total
.....	.....	each 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 Moves

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_____

	Estimated annual quantity	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_____

	Estimated annual quantity	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 indorsement 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.-12 p.m. (noon) or 12 p.m (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 (APR 1984)

(a) Notwithstanding the Limitation of Cost/Limitation of Funds clause of this contract, the Contractor shall not include in its 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 the Contractor's 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

(5) costs in categories (1), (2), (3), and (4) above to which subcontractors may be entitled in the event of termination.

(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 therefor 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).

(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, DC 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 interageney 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, DC 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 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)

252.252–7000 Simplified supply contract required clauses.

The following clause for fixed-price supply contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SUPPLY CONTRACT REQUIRED CLAUSES (APR 1984)

The clauses set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR or DoD FAR supplement clause
Definitions (APR 1984)	52.202–1
Officials Not to Benefit (APR 1984)	52.203–1
Gratuities (APR 1984)	52.203–3
Covenant Against Contingent Fees (APR 1984)	52.203–5
New Material (APR 1984)	52.210–5
Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property (APR 1984)	52.210–7
Priorities, Allocations and Allotments (APR 1984)	52.212–8
Variation in Quantity (APR 1984)	52.212–9
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (APR 1984)	52.219–8
Utilization of Labor Surplus Area Concerns (APR 1984)	52.220–3
Notice to the Government of Labor Disputes (APR 1984)	52.222–1
Convict Labor (APR 1984)	52.222–3
Walsh-Healey Public Contract Act (APR 1984)	52.222–20
Equal Opportunity (APR 1984)	52.222–26
Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)	52.222–35
Affirmative Action for Handicapped Workers (APR 1984)	52.222–36
Buy American Act, Trade Agreements Act, and the Balance of Payments Program (APR 1984)	252.225–7006
Federal, State, and Local Taxes (APR 1984)	52.229–3
Payments (APR 1984)	52.232–1
Discounts for Prompt Payment (APR 1984)	52.232–8
Interest (APR 1984)	52.232–17
Assignment of Claims (APR 1984)	52.232–23
Invoices (OCT 1982)	252.232–7000
Disputes (APR 1984)	52.233–1
Changes—Fixed-Price (APR 1984)	52.243–1
Contractor Inspection Requirements (APR 1984)	52.246–1
Inspection of Supplies—Fixed-Price (APR 1984)	52.246–2
Responsibility for Supplies (APR 1984)	52.246–16
Termination for Convenience of the Government (Fixed Price) (APR 1984)	52.249–2
Default (Fixed Price Supply and Service) (APR 1984)	52.249–8

(End of clause)

252.252–7001 Simplified services contract required clauses.

The following clause for fixed price services contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SERVICES CONTRACT REQUIRED CLAUSES (APR 1984)

The clauses set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR or DoD FAR supplement clause
Definitions (APR 1984)	52.202-1
Officials Not to Benefit (APR 1984)	52.203-1
Gratuities (APR 1984)	52.203-3
Covenant Against Contingent Fees (APR 1984)	52.203-5
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (APR 1984)	52.219-8
Utilization of Labor Surplus Area Concerns (APR 1984)	52.220-3
Notice to the Government of Labor Disputes (APR 1984)	52.222-1
Convict Labor (APR 1984)	52.222-3
Contract Work Hours and Safety Standards—Act Overtime Compensation (JAN 1984)	DAR 7-103.16(a)
Payrolls and Basic Payroll Records (JAN 1984)	DAR 7-103.16(c)
Equal Opportunity (APR 1984)	52.222-26
Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)	52.222-35
Affirmative Action for Handicapped Workers (APR 1984)	52.222-36
Service Contract Act of 1965 (JAN 1984)	DAR 7-1903.41(a)
Federal, State, and Local Taxes (APR 1984)	52.229-3
Payments (APR 1984)	52.232-1
Discounts for Prompt Payment (APR 1984)	52.232-8
Interest (APR 1984)	52.232-17
Assignment of Claims (APR 1984)	52.232-23
Invoices (OCT 1982)	252.232-7000
Disputes (APR 1984)	52.233-1
Changes—Fixed-Price Alt II (APR 1984)	52.243-1
Inspection of Services—Fixed-Price (APR 1984)	52.246-4
Default (Fixed-Price Supply and Service) (APR 1984)	52.249-8

(End of clause)

252.252-7002 Simplified supply and services provisions (negotiated).

The following solicitation provision for fixed price negotiated contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SUPPLY AND SERVICES PROVISIONS (NEGOTIATED) (APR 1984)

The solicitation provisions set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR provision
Solicitation Definitions (APR 1984)	52.215-5
Unnecessarily Elaborate Proposals or Quotations (APR 1984)	52.215-7
Acknowledgement of Amendments to Solicitations (APR 1984)	52.215-8
Submission of Offers (APR 1984)	52.215-9
Restriction on Disclosure and Use of Data (APR 1984)	52.215-12
Preparation of Offers (APR 1984)	52.215-13
Explanation to Prospective Offerors (APR 1984)	52.215-14
Failure to Submit Offer (APR 1984)	52.215-15
Contract Award (APR 1984)	52.215-16
Order of Precedence (APR 1984)	52.215-18

(End of provision)

252.252-7003 Simplified supply and services provisions (advertised).

The following solicitation provision for fixed-price advertised contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SUPPLY AND SERVICES PROVISIONS (ADVERTISED) (APR 1984)

The solicitation provisions set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR provision
Solicitation Definitions—Formal Advertising (APR 1984)	52.214-1
Acknowledgement of Amendments to Invitations for Bids (APR 1984)	52.214-3
False Statements in Bids (APR 1984)	52.214-4
Submission of Bids (APR 1984)	52.214-5
Explanation to Prospective Bidders (APR 1984)	52.214-6
Failure to Submit Bid (APR 1984)	52.214-9
Contract Award—Formal Advertising (APR 1984)	52.214-10
Order of Precedence—Formal Advertising (APR 1984)	52.214-11
Preparation of Bids (APR 1984)	52.214-12

(End of Provision)

252.270-7000 Automatic data processing clauses—general.

252.270-7001 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)

252.270-7002 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)

252.270-7003 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 will be based on system (item) life costs, the 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.

252.270-7004 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.

252.270-7005 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)

252.270-7006 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)

252.270-7007 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)

252.270-7008 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 Contract 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)

252.270-7009 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)

252.270-7100 Federal information processing standards publcations (FIPS PUB) clause.

252.270-7101 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)

252.270-7102 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)

252.270-7103 Recorded magnetic tape for information interchange (800 CPI, NRZI).

As prescribed at 270.1103(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)

252.270-7104 Rectangular holes in 12-row punched cards.

As prescribed at 270.1103(a)(4), insert the following clause:

RECTANGULAR HOLES IM 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).

252.270-7105 Hollerith punched card code.

As prescribed at 270.1103(a)(5), insert the following clause:

HOLLERITH PUNCHED 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)

252.270-7106 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)

252.270-7107 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)

252.270-7108 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)

252.270-7109 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)

252.270-7110 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)

252.270-7111 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)

252.270-7112 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 data preparation and processing information represented in OCR form.

(End of clause)

252 270-7113 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)

252.270-7114 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)

252.270-7115 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)

252.270-7116 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)

252.270-7117 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)

252.270-7118 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)

252.270-7119 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, 6.30 MM (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)

252.270–7120 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)

252.270–7121 Computer output microform (COM) formats and reduction ratios, 16MM and 105MM.

As prescribed at 270.1103(a)(21), insert the following clause:

COMPUTER OUTPUT MICROFORM (COM) FORMATS AND REDUCTION RATIOS, 16MM and 105.MM (FEB 1983)

All applicable equipment or services that may result from this solicitation that produce computer generated microforms using plaintype faces shall be in compliance with FIPS PUB 54.

(End of clause)

252.270–7122 Input/output (I/O) channel interface.

As prescribed at 270.1103(a)(22), insert the following clause:

INPUT/OUTPUT (I/O) CHANNEL INTERFACE (AUG 1986)

Unless excluded or waived in accordance with FIPS PUB 60–2, ADP systems and peripheral subsystems that may result from this solicitation shall conform to FIPS PUB 60–2 for the connection of computers to those general classes of peripheral subsystems (such as magnetic tape or disk subsystems) for which operational specifications have been issued and are in effect. The correct operation of these systems conforming interfaces shall be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be made according to procedures issued by the National Bureau of Standards. These procedures may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, Attention: Verification of I/O Channel Interface Standards. The Government may at its option apply instrumentation and test equipment at any interface required to conform with FIPS PUB 60–2 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 60–2.

(End of clause)

252.270–7123 Channel level power control interface.

As prescribed at 270.1103(a)(23), insert the following clause:

CHANNEL LEVEL POWER CONTROL INTERFACE (AUG 1986)

Unless otherwise excluded as specified in FIPS PUB 61–2 by reference to FIPS PUB 60–1 or unless a waiver is granted following the waiver procedures specified in FIPS PUB 60–2, ADP systems and peripheral subsystems that may result from this solicitation, and for which operational specifications FIPS PUBS (such as FIPS PUB 62–1 and 63–1) 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)

252.270–7124 Operational specification for magnetic tape subsystems.

As prescribed at 270.1103(a)(24), insert the following clause:

OPERATIONAL SPECIFICATION FOR MAGNETIC TAPE SUBSYSTEMS (AUG 1986)

Unless otherwise excluded, as specified in FIPS PUB 62–1 by reference to FIPS PUB 60–2 or unless a waiver is granted following the procedures specified in FIPS PUB 62–1, ADP systems and magnetic tape subsystems that may result from this solicitation shall conform to FIPS PUB 62–1. 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 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 62–1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270.7125 Interface: ADP SYstems/ Variable Block, Rotating Mass Storage Subsystems.

As prescribed at 70.1103(a)(25), insert either the clause at (a) or (b):

(a) INTERFACE: ADP SYSTEMS-VARIABLE, BLOCK, ROTATING MASS STORAGE SUBSYSTEMS WITH CONFORMANCE TO SUPPLEMENTAL DEVICE DEPENDENT CHARACTERISTICS (AUG 1986)

Unless excluded or waived in accordance with FIPS PUB 63–1, ADP systems and variable block, rotating mass storage subsystems that may result from this specification shall conform to FIPS PUB 63–1. In addition, conformance to the specifications for Class(es) (Insert class(es) as contained in the NBS report entitled "Additional Operational Specifications for Variable Block Rotating Mass Storage Devices") is required. The correct operation of all interfaces, whose conformance to FIPS PUB 63–1 and the above designated class(es) is required, shall be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 63-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 63–1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

(b) INTERFACE: ADP SYSTEMS/ VARIABLE BLOCK, ROTATING MASS STORAGE SUBSYSTEMS WITHOUT SUPPLEMENTARY DEVICE DEPENDENT CHARACTERISTICS (AUG 1986)

Unless excluded or waived in accordance with FIPS PUB 63–1, ADP systems and variable block, rotating mass storage subsystems that may result from this solicitation shall conform to FIPS PUB 63–1. The correct operation of all interface, whose conformance to FIPS 63–1 is required, shall be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 63-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 63–1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270–7126 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)

252.270-7127 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)

252.270-7128 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)

252.270-7129 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)

252.270-7130 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)

252.270-7131 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)

252.270-7132 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 deliver 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)

252.270-7133 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)

252.270-7134 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)

252.270–7135 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.
FIPS PUB 95 Code for the Identification of Federal and Federally-Assisted Organizations.

(End of clause)

252.270–7136 Additional American Standard Code for Information Interchange (ASCII) controls for character-imaging ADP equipment or services.

As prescribed by 270.1103(a)(38), insert the following clause:

ADDITIONAL AMERICAN STANDARD CODE FOR INFORMATION INTERCHANGE (ASCII) CONTROLS FOR CHARACTER-IMAGING ADP EQUIPMENT OR SERVICES (JUN 1984)

All applicable ADP character-imaging equipment or services (e.g., interactive ADP terminals of the display and printer type, line printers, microfilm printers, typesetting composers, word processors, and related devices or services using such devices) offered as a result of this solicitation shall comply with the requirements set forth in FIPS PUB 86 when such equipment or services employ the character set and encoding conventions prescribed in FIPS PUB 1–1 and FIPS PUB 35, employ primarily character-oriented controls, and are consistent with the architectural assumptions for devices in Appendix B, ANS X3.64–1979. All ADP terminals that meet these conditions are included in this requirement if they contain alphanumeric keyboards and CRT displays or printers that may be used in any form of on-line interactive application or standalone off-line data preparation. Computer resident control software may be used, but is not required, to implement specific features of FIPS PUB 86, unless specified otherwise in this document (insert reference).

(End of clause)

252.270–7137 Interface: ADP Systems/ Fixed Block, Rotating Mass Storage Subsystems.

As prescribed by 70.1103(a)(37), insert the following clause:

INTERFACE: ADP SYSTEMS/FIXED BLOCK, ROTATING MASS STORAGE SUBSYSTEMS (AUG 1986)

Unless excluded or waived in accordance with FIPS PUB 97, ADP systems and Fixed Block, Rotating Mass Storage Subsystems, that may result from this solicitation shall conform to FIPS PUB 97. The correct operation of all interfaces whose conformance to FIPS PUB 97 is required shall be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 97 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 97. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270–7200 Joint Federal Information Processing/Federal Telecommunications Standards (FIPS–FED/STD) Clauses.

252.270–7201 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 wide-band communication channels shall comply with FIPS PUB 37/FED–STD 1001.

(End of clause)

252.270–7202 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)

252.270–7203 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 synchronous or asynchronous mode, shall be capable of transmitting the character structure and sense of character parity prescribed in FIPS PUB 17–1/FED–STD 1011 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)

252.270-7204 Character structure and character parity sense for parallel-by-bit data communication.

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)

252.270-7205 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/FED-STD 1013.

(End of clause)

252.270-7206 Data link control—synchronous bit-oriented data.

As prescribed at 270.1103(b)(6), insert the following:

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)

252.270-7207 Interface Between Data Terminal Equipment (DTE) and Data Circuit Terminating Equipment (DCE) for Operation with Packet-Switched Data Communications Network.

As prescribed at 70.1103(b)(7), inser the following clause:

INTERFACE BETWEEN DATA TERMINAL EQUIPMENT (DTE) AND DATA CIRCUIT TERMINATING EQUIPMENT (DCE) FOR OPERATION WITH PACKET-SWITCHED DATA COMMUNICATIONS NETWORK (AUG 1986)

All applicable ADP and telecommunications equipment or services using public packet switched data communication networks which require an interface based on CCITT Recommendation X.25 shall comply with the requirements specified in FIPS PUB 100/FED-STD 1041.

(End of clause)

252.270-7300 Federal Telecommunications Standards (FED/STD) Clauses.

252.270-7301 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)

252.270-7302 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)

252.270-7303 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)

252.270-7304 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)

252.270-7305 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)

252.270-7306 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 cicuits that is offered as a result of this solicitation shall comply with the electrical characteristics addressed by FED-STD 1020A.

(End of clause)

252.270-7307 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)

252.270-7308 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)

252.270-7309 Cryptographic components, equipment, systems, and services.

As prescribed in 270.1103(c)(9), insert the following clause:

CRYPTOGRAPHIC COMPONENTS, EQUIPMENT, SYSTEMS, AND SERVICES (JUN 1984)

If a requirement for the encryption protection of unclassified digital information in the telecommunications environment is specified elsewhere in this solicitation, all

cryptographic components, equipment, systems, and services offered to meet that requirement shall comply with FED-STD 1027 and be endorsed as so complying by the National Security Agency prior to being proposed. These items include standalone DES cryptographic equipment as well as any Data Terminal Equipment and Data Circuit-Terminating Equipment utilizing the DES algorithm (described in FIPS PUB 46) for digital encryption. Arrangements for endorsement may be made with the Communications Protection Special Projects Office (S84), National Security Agency, 9800 Savage Road, Fort George G. Meade, MD 20755.

(End of clause)

252.270-7310 Acquisition, design, or development of Group 3 facsimile apparatus.

As prescribed by 270.1103(c)(10), insert the following clause:

ACQUISITION, DESIGN, OR DEVELOPMENT OF GROUP 3 FACSIMILE APPARATUS (JUNE 1984)

All Group 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED-STD 1062.

(End of clause)

252.270-7311 Acquisition, design or development of Groups 1, 2, and 3 facsimile apparatus.

As prescribed by 270.1103(c)(11), insert the following clause:

ACQUISITION, DESIGN, OR DEVELOPMENT OF GROUP 1, 2, and 3 FACSIMILE APPARATUS (JUN 1984)

All groups 1, 2, and 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED-STD 1063.

(End of clause)

252.270-7400 Other automatic data processing standards clauses.

252.270-7401 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)

252.270-7402 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)

252 270-7403 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 (SCOCE) National TEMPEST Standards (NACSEM No. 5100 or NACSIM No. 5100A, "Compromising Emanations 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 53—FORMS

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—Prescription 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 and form numbers and titles.

253.303-70-DD-250 DD Form 250: Material Inspection and Receiving Report.
253.303-70-DD-250c DD Form 250c: Material Inspection and Receiving Report—Continuation Sheet.
253.303-70-DD-250-1 DD Form 250-1: Tanker/Barge Material Inspection and Receiving Report.
253.303-70-DD-346 DD Form 346: Raw (Basic Processed) and Semi-Fabricated Stock Form.
253.303-70-DD-347 DD Form 347: Bill of Materials for—Sub-Contracted Parts—Purchased Parts—Government-Furnished Property.
253.303-70-DD-350 DD Form 350: Individual Contracting Action Report (Over $25,000).
253.303-70-DD-375 DD Form 375: Production Progress Report.
253.303-70-DD-375c DD Form 375c: Production Progress Report (Continuation).
253.303-70-DD-375-2 DD Form 375-2: Delay in Delivery (Flash Notice).
253.303-70-DD-416 DD Form 416: Purchase Request for Coal, Coke or Briquettes.
253.303-70-DD-428 DD Form 428: Communication Service Authorization.
253.303-70-DD-448 DD Form 448: Military Interdepartmental Purchase Request.
253.303-70-DD-448-2 DD Form 448-2: Acceptance of MIPR.
253.303-70-DD-558-1 DD Form 558-1: Bidder's Mailing List Application Supplement.
253.303-70-DD-879 DD Form 879: Statement of Compliance.

253.303-70-DD-882 DD Form 882: Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause).
253.303-70-DD-1057 DD Form 1057: Monthly Contracting Summary of Actions $25.000 or Less.
253.303-70-DD-1114 DD Form 1114: Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.
253.303-70-DD-1131 DD Form 1131: Cash Collection Voucher.
253.303-70-DD-1149 DD Form 1149: Requisition and Invoice/Shipping Document.
253.303-70-DD-1155 DD Form 1155: Order for Supplies or Services/Request for Quotations.
253.303-70-DD-1155r DD Form 1155r: General Provisions.
253.303-70-DD-1155r-1 DD Form 1155r-1: Reverse of Order for Supplies or Services/Request for Quotations—Foreign.
253.303-70-DD-1155c-1 DD Form 1155c-1: Order for Supplies or Services (Commissary Continuation Sheet).
253.303-70-DD-1342 DD Form 1342: DoD Property Record.
253.303-70-DD-1348 DD Form 1348: DoD Single Line Item Requisition System Document (Manual).
253.303-70-DD-1348m DD Form 1348m: DoD Single Line Item Requisition System Document (Mechanical).
253.303-70-DD-1348-1 DD Form 1348-1: DoD Single Line Item Release/Receipt Document.
253.303-70-DD-1384 DD Form 1384: Transportation Control and Movement Document.
253.303-70-DD-1419 DD Form 1419: DoD Industrial Plant Equipment Requisition.
253.303-70-DD-1423 DD Form 1423: Contract Data Requirements List.
253.303-70-DD-1425 DD Form 1425: Specifications and Standards Requisition.
253.303-70-DD-1473 DD Form 1473: Report Documentation Page.
253.303-70-DD-1484 DD Form 1484: Post-Award Conference Record.
253.303-70-DD-1499 DD Form 1499: Report of Individual Contract Profit Plan.
253.303-70-DD-1507 DD Form 1507: Department of Defense Work Stoppage Report.
253.303-70-DD-1513 DD Form 1513: United States Department of Defense Offer and Acceptance.
253.303-70-DD-1535 DD Form 1535: Request/Approval for Authority To Advertise.
253.303-70-DD-1547 DD Form 1547: Weighted Guidelines Profit/Fee Objective.
253.303-70-DD-1565 DD Form 1565: Request for Authorization of Additional Classification and Rate.
253.303-70-DD-1567 DD Form 1567: Labor Standards Interview.
253.303-70-DD-1568 DD Form 1568: Labor Standards Investigation Summary Sheet.
253.303-70-DD-1592 DD Form 1592: Contract Cross Reference Data.
253.303-70-DD-1593 DD Form 1593: Contract Administration Completion Record.
253.303-70-DD-1594 DD Form 1594: Contract Completion Statement.
253.303-70-DD-1597 DD Form 1597: Contract Closeout Check-List.
253.303-70-DD-1598 DD Form 1598: Contract Termination Status Report.
253.303-70-DD-1635 DD Form 1635: Plant Clearance Case Register.
253.303-70-DD-1637 DD Form 1637: Notice of Acceptance of Inventory.
253.303-70-DD-1638 DD Form 1638: Report of Excess and Surplus Contractor Inventory.
253.303-70-DD-1639 DD Form 1639: Scrap Warranty.
253.303-70-DD-1640 DD Form 1640: Request for Plant Clearance
253.303-70-DD-1641 DD Form 1641: Disposal Determination/Approval.
253.303-70-DD-1651 DD Form 1651: Industrial Equipment Modernization Program—Post Analysis Report.
253.303-70-DD-1653 DD Form 1653: Transportation Data for IFBs and RFPs.
253.303-70-DD-1654 DD Form 1654: Evaluation of Transportation Cost Factors.
253.303-70-DD-1659 DD Form 1659: Application for U.S. Government Bill(s) of Lading Domestic Route Order/Export Traffic Release.
253.303-70-DD-1660 DD Form 1660: Management Control Systems Summary List.
253.303-70-DD-1662 DD Form 1662: Report of Government (DOD) Facilities.
253.303-70-DD-1664 DD Form 1664: Data Item Description.
253.303-70-DD-1665 DD Form 1665: Solicitation, Offer, and Award (Overseas).
253.303-70-DD-1707 DD Form 1707: Information to Offerors or Quoters.
253.303-70-DD-1784 DD Form 1784: Small Purchase Pricing Memorandum.
253.303-70-DD-1861 DD Form 1861: Contract Facilities Capital and Cost of Money.
253.303-70-DD-2025 DD Form 2025: Packaging Change Recommendation/ Approval.
253.303-70-DD-2139 DD Form 2139: Subcontract Report of Foreign Purchases.
253.303-70-DD-2222 DD Form 2222: Short Form Research Contract (SFRC) Modification (Page 1)
253.303-70-DD-2222 DD Form 2222: Short Form Research Contract (SFRC) Modification (Page 2)
253.303-70-DD-2222 Instructions for Conpleting DD Form 2222
253.303-70-DD-2222-1 DD Form 2222-1: Representations and Certifications From Offerors Submitting Proposals Under DFARS 235.70
253.303-70-DD-2222-1 DD Form 2222-1: Representations and Certifications From Offerors Submitting Proposals Under DFARS 235.70 (Page 2)
253.303-70-DD-2222-2 DD Form 2222-2: Short Form Research Contract Research Proposal Cover Page
253.303-70-DD-2222-2 DD Form 2222-2: Short Form Research Contract Research Proposal (Page 2)

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 USC 2315, or when the acquisition does not fall within the scope of either General Services Administration or 10 USC 2315 authority. ADP protests to GSBCA are covered in FAR Part 33.

Subpart 270.1—General

270.101 Procurement authorities.

(a) *General Services Administration.* Pub. L. 89-306, 40 USC 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 USC 2315.* Section 908 of the DoD Authorization Act, 1982 (Public Law 97-86) added section 2315 to Title 10, United States Code which provides that the provisions of 40 USC 759 are not applicable to DoD procurements of ADPE systems, components, and services if the function, operation or use (see also Subpart 270.4):

(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)

(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 and FAR Subpart 8.8.

(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.

Subpart 270.2—Definitions

270.200 Scope of subpart.

The definitions in this subpart apply only to acquisitions 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, provide 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 any 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.

270.302–2 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. (But see 270.8 for use of the GSA Teleprocessing Services Program.)

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 comtemplated (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 verification 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 contracting on an other-than-full and open competition basis, if applicable;

(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 officer.

(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 used 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, and 205.2, 270.314, and 270.315 of this supplement. The exception of FAR 5.202(a)(6) does not apply to the use of GSA nonmandatory ADP Schedules.

(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 [1] 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 [1] 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 clearly stated in the solicitation along with their relative importance.

(c) Unless waived in accordance with Departmental procedures, the contracting officer shall solicit and evaluate, over the projected systems life,

[1] Editorial Note: Regulations republished in 41 CFR Chapter 201 at 49 FR 20994, May 17, 1984.

all forms of financing an acquisition. These include:

(1) Purchase.

(2) Lease: Vendor retains title to the item 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. Determination of system/item life is optional for a system/item with a purchase price of $25,000 or less; however, this does not apply if the system/item is to be leased or rented. 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 service costs, 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 or 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 252.270–7001, 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 252.270–7002, 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 252.270–7007) 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 252.270–7003, 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) *Option to extend the term of the contract.*

The contracting officer shall insert the clause at 252.270–7004, Option to Extend the Term of the Contract, in solicitations and contracts when the clause at 252.270–7002, Fixed-Price Options, is used.

(e) *Option for increased quantities.*

The contracting officer shall insert the clause at 252.270–7005, Option for Increased Quantities, in solicitations and contracts when the solicitation includes the provision at 252.270–7003, Fixed-Price Options, and the known requirements exceed the basic quantity to be awarded (also see FAR 17.2).

(f) *Discontinuance repricing.*

The contracting officer may insert the provision at 252.270–7006, 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 252.270–7007, Discontinuance of Rental and Repricing.

(g) *Discontinuance of rental and repricing.* The contracting officer shall insert the clause at 252.270–7007, 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 services 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, 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.*

(1) Whether for purchase, lease or rental, orders for ADPE may be placed under ADP Schedule contracts, *provided* that:

(i) The purchase price of the items covered (even though they are rented or leased) does not exceed $300,000; and

(ii) Requirements are synopsized in the CBD in accordance with 270.315, and either;

(A) No response is received to such notice. The contract file shall be documented accordingly; or

(B) The only interest expressed in response to the synopsis is to satisfy the requirement under the terms of an existing ADP schedule contract. The file 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.

(2) Whether for purchase, lease or rental, if a response(s) to the synopsis issued in accordance with (1)(ii) above indicates an intention to offer terms, conditions, or prices not contained in ADP schedule contracts, the requirement shall be met using the policy and procedures of FAR Part 6.

(c) *Continued lease or rental of installed ADPE and software.*

(1) GSA Schedule contracts may be used for the continued lease or rental of installed equipment and software.

(2) A DPA must be obtained before issuing the annual renewal if the ADP Schedule price of the Central Processing Unit (CPU) exceeds $300,000 and the synopsis results conducted in accordance with 270.315 indicate that it is available from a source other than the schedule contract.

(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 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 in accordance with 270.315.

(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 interest of the Government. Requirements shall be synopsized in accordance with 270.315.

270.315 Synopsis of GSA schedule actions.

(a) Orders must be synopsized in accordance with FAR Part 5. GSA has determined, after having consulted with OFPP and SBA, that standard dollar thresholds and waiting periods are neither reasonable nor appropriate for acquisition of ADP under GSA Scheduled. Accordingly, a threshold of $50,000 rather than $10,000 is applicable, and a 15 calendar day waiting period rather than 30 calendar days shall be used. 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 quotations/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.

(c) As appropriate, synopses shall refer to Note 22 as specified in 205.207(d)(S–70).

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 contracting 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 a mandatory requirement solely for reasons of economy or efficiency. When conversion and other costs associated with acquiring noncompatible systems are to be evaluated, the solicitation shall provide for the submission and evaluation of acceptable 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.

(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 justification 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 and 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.

720.320 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 Acquisitions," 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 benchmark 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 20:

(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 Contracting Office (DACO), Cameron Station, Alexandria, VA 22314

Subpart 270.4—Acquisitions Under 10 USC 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 of 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, etc.). This does not include logistic systems supporting, 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.

270.402 Procedures.

Unless the contracting officer elects to use the procedures at 270.3, normal acquisition procedures as prescribed in the FAR and this Supplement shall be used in acquiring automatic data processing resources covered by the 10 U.S.C. 2315 authority. Other DoD and Departmental regulations treating acquisition and management of ADP resources may also apply.

Subpart 270.5—Acquisitions 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 a 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 an annual cost in excess of $100,000.

(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 section 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 justifying 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 section.

(2) The use of a realistic Useful Life, Present Value and Residual Value analysis for each component is critical. (See 270.604(f)(1).)

SUGGESTED PURCHASE/LEASE ANALYSIS FORMAT

ADP system As of Date

ADPS Compo-nents	Qty.	Vendor	Avg. Monthly Rental(A)/ Lease(B)	Instal. date	Useful Life (C)	Orig. Purchase Price	Equity (D)	(7–8) Current Purchase Price	Other Vendors Pruchase Price	Residual Value (E)	(9–11 or 10–11) Owner Depreciation Costs	Other Costs (F)	(12+13) Total Owner Costs	(4×6) Total Rental/ Lease Costs (G)	(15–14) Differential (H)
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

(A) Includes projected extra shift where necessary.
(B) Includes other costs (taxes, maintenance, insurance, etc.)
(C) Documentation must be provided and attached per ASPR 3–1100.3 or 15–205.48, as applicable.
(D) Accrued equity on rented/leased equipment (accumulated rental credits).
(E) Residual value forecast at end of useful life.
(F) Includes taxes, maintenance, insurance, selling costs, lease cancellation costs, etc.
(G) When considering annual justification for retention of existing ADPE capacity and the need to continue leasing, only the remaining rental costs to be paid under the lease should be shown.
(H) If lease is favorable, bracket differential figures.

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 Between 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 communications 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 to 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 property 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 the 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.

(j) Except as pertains to the applications of pertinent provisions of section 5, Public Law 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, the 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 Public Law 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 Services 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 price list; 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 when other-than-full and open competition is justified. Policies and procedures for using the GSA MAS are contained in the GSA TSP Handbook (see 270.802–3).

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. Contracting actions using other-than-full and open competitive procedures, if properly justified, may be placed 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 work load 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 costs 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 systemlife 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 USC 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 252.270–7008, Rights in Privacy Safeguards, and 252.270–7009, 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 70.11);

(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 252.270–7403, 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 NW., 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 Investigative Service, Directorate for Industrial Security, Attn: V0410, 1900 Half Street NW., 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 70.2. Prior to the award of any contract for these items, contracting officers shall assure that the otherwise successful offeror satifies 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 60-2, 61-1, 62, and 63-1;

(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 60-2, 61-1, 62, and 63-1); and

(iii) Peripheral equipment acquired to replace existing peripheral equipment or to augment ADP systems that do not conform to FIPS PUBS 60-2, 61-1, 62, and 63-1, 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) 252.270-7101, 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) 252.270-7102, Punched Paper Tape Readers and Punches; when acquiring equipment which punches or reads perforated tape.

(3) 252.270-7103, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI); when acquiring 9-track ½-inch wide, 800 characters-per-inch magnetic tape equipment.

(4) 252.270-7104, Rectangular Holes in 12-Row Punched Cards; when acquiring equipment or services involving the reading or punching of 3 ¼-inch cards.

(5) 252.270-7105, Hollerith Punched Card; when acquiring punched card machines (PCM) used to punch or read 12-row 3 ¼-inch wide cards utilizing rectangular holes.

(6) 252.270-7106, 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) 252.270-7107, Flowcharts, Symbols, and their Usage in Information Processing; when flowcharts of information processing systems is part of the documentation to be delivered to the Government.

(8) 252.270-7108, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Code 0); when acquiring tape drives as described in the clause.

(9) 252.270-7109, One-inch Perforated Paper Tape for Information Interchange; when acquiring one-inch paper tape or associated equipment.

(10) 252.270-7110, 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) 252.270-7111, 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) 252.270-7112, Optical Character Recognition Equipment; when acquiring Optical Character Recognition (OCR) equipment, or services relating thereto, except as described in 70.1103(a)(13) below.

(13) 252.270-7113, Character Set for Handprinting; when acquiring Optical Character Recognition (OCR) equipment requiring data entry of handprinted material.

(14) 252.270-7114, 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) 252.270-7115, 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) 252.270–7116, 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) 252.270–7117, 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) 252.270–7118, 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) 252.270–7119, 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) 252.270–7120, Description of Computer Magnetic Tape File Properties; when the acquisition involves delivery of coded information on magnetic tape.

(21) 252.270–7121, Computer Output Microform (COM) Formats and Reduction Ratios, 16MM and 105MM; when the acquisition involves computer generated microforms.

(22) 252.270–7122, Input/Output (I/O) Channel Interface; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 60–2 controls. This standard does not apply to minicomputers, microcomputers and other small scale systems that are specifically excluded by the National Bureau of Standards (NBS).

(23) 252.270–7123, Channel Level Power Control Interface; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 61–1 controls.

(24) 252.270–7124, Operational Specification for Magnetic Tape Subsystems; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 62 controls.

(25) 252.270–7125, Interface: ADP Systems/Variable Block, Rotating Mass Storage Subsystems; when an acquisition conforming to 270.1101(c) is effected, and the clauses at 252.270–7122 and 252.270–7123 are applicable, use of the clause at 252.270–7125(a) is required when acquiring variable block, rotating mass storage subsystems with supplementary device characteristics. When the clause at 252.270–7125(a) is used, it shall be completed in accordance with Departmental procedures. The clause at 252.270–7125(b) is required when acquiring variable block rotating mass storage subsystems when conformance to supplementary device dependent characteristics is not required and unless otherwise excluded by use of the clauses at 252.270–7122 and 252.270–7123. Neither clause is required if waived under the provisions of FIPS PUB 63–1.

(26) 252.270–7126, Magnetic Tape Labels and File Structure Information Interchange; when acquiring information processing systems that will either generate or accept magnetic tapes for information interchange.

(27) 252.270–7127, 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.

(28) 252.270–7128, Microform Readers; when acquiring microform readers to be used in conjunction with computer-generated microform conforming to the clause at 252.270–7029.

(29) 252.270–7129, 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.

(30) 252.270–7130, 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 252.270–7112.

(31) 252.270–7131, Digital Magnetic Tape Cassette Equipment and Associated Programs; when acquiring magnetic tape cassette equipment or associated programs specified in the clause.

(32) 252.270–7042, Acquisition and Validation of COBOL Compilers; when the acquisition includes a COBOL compiler.

(33) 252.270–7133, Acquisition of COBOL Programs and/or Programming Services; when the acquisition involves delivery of a program written in COBOL.

(34) 252.270–7134, Delayed Validation of Compilers; when delayed validation of compilers is necessary or advantageous.

(35) 252.270–7135, 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.

(36) 252.270–7136, Additional American Standard Code for Information Interchange (ASCII) Controls For Character-Imaging ADP Equipment or Services; when acquiring ADPE such as interactive terminals, line and microfilm printers, word processors and other types of character-imaging equipment subject to 270.1103(a) (1) and (14).

(37) 252.270–7137, Interface: ADP Systems/Fixed Block, Rotating Mass Storage Subsystems; when acquiring fixed block, rotating mass storage subsystems, unless excluded by reference to the FIPS PUBS in 252.270–7022 and 252.270–7023.

(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) 252.270–7201, 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) 252.270–7202, 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) 252.270–7203, 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) 252.270–7204, 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) 252.270–7205, 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) 252.270–7206, 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.

(7) 252.270–7207, Interface Between Data Terminal Equipment (DTE) and Data Circuit Terminating Equipment (DCE) for operation with Packet-Switched Data Communications Networks, whenever an interface based on the International Telegraph and Telephone Consultive Committee (CCITT) recommendation X.25 is required.

(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) 252.270–7301, 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) 252.270–7302, 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) 252.270–7303, 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) 252.270–7304, 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) 252.270–7305, 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) 252.270–7306, 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) 252.270–7307, 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) 252.270–7308, Group 2 Facsimile Apparatus for Document Transmission; when acquiring Group 2 facsimile equipment.

(9) 252.270–7309, Cryptographic Components, Equipment, Systems, and Services; when acquiring these items to be used in a telecommunication environment and this clause is more appropriate for use than the one indicated at 270.1103(a)(16).

(10) 252.270–7310, Acquisition, Design, or Development of Group 3 Facsimile Apparatus; when acquiring, designing or developing Group 3 facsimile equipment. This clause is not applicable to equipments subject to Military Standard 188–161 or equipments to be used in the transmission of mixed mode information (e.g., code character data and image data).

(11) 252.270–7311, Acquisition, Design, or Development of Group 1, 2, and 3 Facsimile Apparatus; when acquiring, designing or developing Group 1, 2, and 3 facsimile equipment.

(d) The contracting officer shall include the following clauses properly completed, in solicitations and contracts in accordance with agency procedures:

(1) 252.270–7401, BASIC Language Compilers, when an acquisition includes a BASIC compiler.

(2) 252.270–7402, FORTRAN Language Compilers, when an acquisition includes a FORTRAN compiler.

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 these services.

(b) *Services available.*

(1) Services available nationally are comprised of FEDSIM resources and FEDSIM-monitored contractual services for computer services simulation and performance 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) an 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. resources for the

(iv) Recommend to GSA that GSA acquire required 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 (FDPC).

(a) *Services available from FDPCs.* FDPC's 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 component requirements.

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 270.14—Reuse of Computer 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 justification for use of other-than-full and open competition (see FAR 6.303) or the equipment be selected as a result of a full and open 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.

Appendix A—Armed Services Board of Contract Appeals

Approved 1 May 1962.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 1 July 1979.

Part 1—Charter.

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the

Secretary of the Air Force, in hearing, considering and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Sec. 601, et seq.), (b) pursuant to the provisions of contracts requiring the decision by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative or board, or (c) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure. The Board may determine contract disputes for other departments and agencies by agreement. The Board shall operate under general policies established or approved by the Under Secretary of Defense (Research and Engineering).

2. Membership of the Board shall consist of attorneys at law who have been qualified in the manner prescribed by the Contract Disputes Act of 1978. Members of the Board are hereby designated Administrative Judges. There shall be appointed from members of the Board a chairman and two or more vice-chairmen. Appointment of the chairman and vice-chairmen and other members of the Board shall be made by the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement. The chairman and vice-chairmen shall serve in that capacity for a two-year term unless sooner removed or reappointed for an additional term or terms. The Under Secretary will also designate the order in which the vice-chairmen will act for the chairman in his absence. In the absence of a vice-chairman, the chairman or acting chairman may designate a member of the Board to serve as a temporary vice-chairman.

3. It shall be the duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals on the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

4. The chairman of the Board shall be responsible for establishing appropriate divisions of the Board to provide for the most effective and expeditious handling of appeals. He shall be responsible for assigning appeals to the divisions for decision without regard to the military department or other procuring agency which entered into the contract. A division may consist of one or more members of the Board. The chairman shall designate one member of each division as the division head. The division heads and the chairman and vice-chairmen shall constitute the senior deciding group of the Board. A majority of the members of a division or of the senior deciding group shall constitute a quorum for the transaction of the business of each, respectively. Decisions of the Board shall be by majority vote of the members of a division participating and the chairman and a vice-chairman, unless the chairman refers the appeal for decision by the senior deciding group. The decision of the Board in cases so referred to the senior deciding group shall be by majority vote of the participating members of that group. The chairman may refer an appeal of unusual difficulty, significant precedential importance, or serious dispute within the normal decision process for decision by the senior deciding group. An appeal involing $50,000 or less may be decided by a single member or fewer members of the Board than hereinbefore provided for cases of unlimited dollar amount, under accelerated or expedited procedures as provided in the Rules of the Board and the Contract Disputes Act of 1978.

5. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies shall provide legal personnel to prepare and present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board, unless it otherwise desires, to communicate with more than one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records deemed by the Board to be pertinent thereto.

6. Any member of the Board or any examiner, designated by the chairman, shall be authorized to hold hearings, examine witnesses, and receive evidence and argument for consideration and determination of the appeal by the designated division. A member of the Board shall have authority to administer oaths and issue subpoenas as specified in Section 11 of the Contract Disputes Act of 1978. The chairman may request orders of the court in cases of contumacy or refusal to obey a subpoena in the manner prescribed in that Section.

7. The Chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of the Board with non-member personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

8. The Board will be serviced by the Department of the Army for administrative support for its operations as required. Administrative support will include budgeting, funding, fiscal control, manpower control and utilization, personnel administration, security administration, supplies, and other administrative services. The Departments of the Army, Navy, Air Force and the Office of the Secretary of Defense will participate in financing the Board's operations on an equal basis and to the extent determined by the Assistant Secretary of Defense (Comptroller). The cost of processing appeals for departments and agencies other than those in the Department of Defense will be reimbursed.

9. The chairman of the Board will furnish the Secretary of Defense and to the Secretaries of the Military Departments by October 31 of each year a report containing an account of the Board's transactions and proceedings for the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board's proceedings for the quarter to the Under Secretary of Defense (Research and Engineering), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Logistics Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

10. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals." This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

11. This revised charter is *effective April 21, 1980.*

Approved:

W. Graham Claytor, Jr.,

Deputy Secretary of Defense.

Clifford L. Alexander, Jr.,

Secretary of the Army.

E. Hidalgo,

Secretary of the Navy.

Hans M. Mark,

Secretary of the Air Force.

Part 2—Rules

Approved 15 July 1963.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 30 June 1980.

Preface

I. Jurisdiction for Considering Appeals

The Armed Services Board of Contract Appeals (referred to herein as the Board) shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Public Law 95-563, 41 U.S.C. 601-613) relating to contracts made by (i) the Departments of Defense, Army, Navy and Air Force or (ii) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

II. Location and Organization of the Board

(a) The Board's address is Hoffman Building #2, 200 Stovall Street, Alexandria, Virginia 22332, telephone (202) 325-9070.

(b) The Board consists of a chairman, two or more vice chairmen, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. Board members are designated Administrative Judges.

(c) There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearing may be held by a designated member (Administrative Judge), or by a duly authorized examiner. Except for appeals processed under the expedited or accelerated procedure, the decision of a majority of a division constitutes the decision of the Board, unless the chairman refers the appeal to the Board's Senior Deciding Group (consisting of the chairman, vice chairmen and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty, significant precedential importance, or serious dispute within the normal division decision process. For decisions of appeals processed under the expedited or accelerated procedure, see Rules 12.2(c) and 12.3(b).

Preliminary Procedures

1. *Appeals, How Taken.* (a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a properly certified claim over $50,000 to the contracting officer or has requested a decision by the contracting officer which presently involves no monetary amount pursuant to the Disputes clause, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) hereof, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under (b) or (c) hereof, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

2. *Notice of Appeal, Contents of.* A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. *Docketing of Appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

4. *Preparation, Content, Organization, Forwarding, and Status of Appeal File.* (a) *Duties of Contracting Officer*—Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including pertinent specifications, amendments, plans and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the Appellant*—Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) *Organization of Appeal File*—Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthly Documents*—Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File*—Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(f) Notwithstanding the foregoing, the filing of the Rule 4(a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

5. *Motions.* (a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

6. *Pleadings.* (a) *Appellant*—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government*—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(c) A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The Board, in determining foreign law, may consider ar v

relevant material or source, including testimony, whether or not submitted by a party or admissible under Rules 11, 13 or 20. The determination of foreign law shall be treated as a ruling on a question of law.

7. *Amendments of Pleadings or Record.* The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

8. *Hearing Election.* After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

9. *Prehearing Briefs.* Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. *Prehearing or Presubmission Conference.* (a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge or examiner of the Board for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) The administrative judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge or examiner and this writing shall thereafter constitute a part of the record.

11. *Submission Without a Hearing.* Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

12. *Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.*

These procedures are available solely at the election of the appellant.

12.1 *Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.* (a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

12.2 *The SMALL CLAIMS (EXPEDITED) Procedure.* (a) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether either party wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal; and (v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

12.3 *The ACCELERATED Procedure.* (a) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within

180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge with the concurrence of a vice chairman, or by a majority among these two and the chairman in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single administrative judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

12.4 *Motions for Reconsideration in Rule 12 Cases.* Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

13. *Settling the Record.* (a) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. *Discovery—Depositions.* (a) *General Policy and Protective Orders*—The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted*—After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions*—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence*—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses*—Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas*—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

15. *Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents.* After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 45 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service. The Board may allow a shorter or longer time. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

16. *Service of Papers Other Than Subpoenas.* Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

Hearings

17. *Where and When Held.* Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

18. *Notice of Hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

19. *Unexcused Absence of a Party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. *Hearings: Nature, Examination of Witnesses.* (a) *Nature of Hearings*—Hearings shall be as in formal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses*—Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

21. *Subpoenas.* (a) *General*—Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chairman may issue a subpoena requiring:

(i) Testimony at a deposition—the deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(ii) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) Production of books and papers—in addition to (i) or (ii), the production, by the

witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation*—Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas*—

(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify*—Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance*—

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service*—

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena*—In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

22. *Copies of Papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. *Post-Hearing Briefs.* Post-hearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge or examiner at the conclusion of the hearing.

24. *Transcript of Proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be established by contract between the Board and the reporter, provided that ordinary copy of transcript shall be supplied to the appellant at an amount no greater than the cost of duplication.

25. *Withdrawal of Exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

26. *The Appellant.* An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

27. *The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time.

Decisions

28. *Decisions.* (a) Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(b) Any monetary award to a contractor by the Board shall be promptly paid in accordance with the procedures provided by section 1302 of the Act of July 27, 1956 (70 Stat. 694, as amended; 31 U.S.C. 724a). To assure prompt payment the Recorder will forward a waiver form to each party with the decision. If the parties do not contemplate an appeal or motion for reconsideration, they will execute waivers which so state, and return them to the Recorder. The Recorder will forward the waivers and a certified copy of the award decision to the General Accounting Office for certification for payment.

Motion for Reconsideration

29. *Motion for Reconsideration.* A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Suspensions, Dismissals and Defaults: Remands

30. *Suspensions; Dismissal Without Prejudice.* The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. *Dismissal or Default for Failure to Prosecute or Defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the

Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 35. If good cause is not shown, the Board may take appropriate action.

32. *Remand from Court.* Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

Time, Computation and Extensions

33. *Time, Computation and Extensions.* (a) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

Ex Parte Communications

34. *Ex parte Communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

Sanctions

35. *Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Effective Date and Applicability

36. *Effective Date.* These rules shall apply (i) mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and (ii) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

Pursuant to the Charter of the Armed Services Board of Contract Appeals, the attached rules are hereby approved for use and application to appeals to the Armed Services Board of Contract Appeals under the Contract Disputes Act of 1978.

(signed) William J. Perry (30 Jun 1980),

Under Secretary of Defense for Research and Engineering.

(signed) Percy A. Pierre,

Assistant Secretary of the Army (Research, Development and Acquisition).

(signed) J.A. Doyle,

Assistant Secretary of the Navy (Manpower, Reserve Affairs and Logistics)

(signed) Eugene H. Kopf,

(Acting) Assistant Secretary of the Air Force (Research, Development and Logistics).

Appendices B–C—[Reserved]

Appendix D—Notice and Hearing Under Gratuities Clause

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Notice and Hearing Under Gratuities Clause

D–1. Introduction

10 U.S.C. 2207 requires all contracts, other than contracts for personal services which call for the expenditures of funds appropriated for the Department of Defense, to contain a clause permitting the termination of the contractor's right to proceed under any such contract and permitting the Government to pursue the remedies that it could pursue in the event of breach of contract if it is found after notice and hearing by the Secretary of the Department with which the contract was made, or by his duly authorized representative, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the contractor or by his agent or representative to any officer or employee of the Government with a view toward securing a Government contract or favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such contract. The Military Departments have prescribed the use of such clause, as set forth in the Armed Services Procurement Regulation, paragraph 7–104.16, in contracts as required by the above Act and in other procurement contracts. It is the purpose of these rules to make provisions for the giving of the notice of hearing, for the conduct of the hearing, and for other procedural matters incident to the exercise of the rights and special remedies provided by the prescribed clause, wherever it is now or may hereafter be used in contracts of the Military Departments. In the interest of uniformity in proceedings before the three Military Departments, those rules are hereby adopted. Nothing herein shall be construed to affect or impair (1) the pursuit of other remedies available to the Government in any instance, or (2) the right of termination of any contract for any reason available to the Government under the terms of such contract.

D–2. Definitions

Department. The term "*Department*" means the Department of the Army, the Department of the Navy, or the Department of the Air Force.

Secretary. The term "*Secretary*" means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department.

Designee. The term "*Designee*" means the person or board to whom authority has been delegated by the Secretary under Rule 3. The designee is the Secretary's authorized representative.

D–3. Delegation of Authority

The Secretary may delegate to any person, military or civilian, or board of such persons within his Department all the authority of the Secretary conferred by statute or the prescribed contract clause to give notice of hearings, to conduct hearings and to make findings of fact with respect to (i) whether a gratuity was offered or given by a contractor or any agent or representative of such contractor to a Government officer or employee with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of such contract; and (ii) where appropriate, the amount of the costs incurred by the contractor in providing such gratuity. If the Secretary delegates his authority to a board, one of the members thereof shall be a person trained in the law, and the Secretary shall designate one member to be the presiding officer of the board.

D–4. Notice and Contents

Whenever information coming to the attention of the Department indicates that the procedures provided herein may be properly invoked, the Department may cause a written notice to be served upon the contractor in the manner hereinafter provided. The notice shall be signed by the Secretary of his designee and dated and shall include the following items:

(i) A statement of the time, place, and purpose of the hearing, and the authority and jurisdiction under which it will be held. The statement as to purpose need only identify the contract clause, the contract or contracts involved and the ultimate facts to be determined. The time of the hearing shall not be less than 10 days after service of the notice.

(ii) Brief allegations setting forth the circumstances surrounding the offering or giving of the gratuity, including a description of the alleged gratuity itself and its estimated cost to the contractor; an identification of the offeree or donee and of the offeror or donor and the latter's relationship to the contractor;

and the approximate date and place of the alleged offer or gift. Such allegations need be only sufficient to apprise the contractor reasonably of the issues involved in the hearings.

(iii) A request that the contractor answer in writing the allegations of the notice, including in his answer such facts or arguments as he may wish, and that he attend the hearing to adduce such evidence with respect to the alleged offer or gift as he may desire.

A suggested form of notice is set out as an appendix to these rules.

D–5. Service of Notice

Service shall be made by mailing or delivering a copy of the notice to the contractor. Delivery of a copy means handing it to the party to be served, or, if the party is a corporation, partnership, or unincorporated association, handing it to an officer, partner, managing or general agent, or any other agent authorized by appointment or by law to receive service of process, or by leaving the copy at the contractor's office with the person in charge thereof. Service by mail shall be made only by certified mail and service shall be complete upon mailing. The manner of service shall be evidenced by the signed endorsement of the person making the service upon a copy of the notice to be included in the record of the proceeding. Service of notice may be accepted or waived by the contractor by written endorsement on a copy of the notice.

D–6. Continuances and Delays

The authority to grant continuances or to adjourn the hearing shall rest with the person presiding at the hearing. Continuances will only be allowed for the most compelling reasons.

D–7. Parties

The parties to the hearing will be the contractor concerned and the Government. No intervention by other persons shall be permitted.

D–8. Representation and Hearing Assistants

The parties may be represented at the hearing and proceedings incident thereto by legal counsel. Upon the appearance of record of legal counsel of the contractor in the proceedings, service of papers as may thereafter be required may be made upon such legal counsel. The Department will make available such technical assistants, including a reporter, secretary or notary, as may be required.

D–9. Transcript

Testimony and arguments shall be reported verbatim. The reporter or secretary shall make available to the contractor and to the Government transcripts of the proceedings, including all testimony and copies of all documentary exhibits upon the payment of the reasonable costs thereof as the Department may by order fix.

D–10. Hearings

Hearings shall be conducted by the Secretary or his designee. Hearings will be as informal as may be reasonably appropriate under all the circumstances. Evidence and testimony, although not ordinarily admissible under legal rules of evidence, may be received subject to the discretion of the person presiding at the hearing. Immaterial, irrevelant, or unduly repetitious evidence shall be excluded. The parties may stipulate as to any facts or testimony. The testimony of witnesses shall be under oath and witnesses shall be subject to cross-examination. The hearing officer shall make such rulings with respect to the conduct of hearings as circumstances may require to ensure the orderly and expeditious presentation of evidence in a manner fair to the parties and consistent with these Rules and requirements of due process of law.

D–11. Depositions

Following service of the notice of hearing, a deposition may be taken as herein provided, and placed in evidence whenever the ends of justice will be served thereby.

(a) *Notice to Take.* When either party desires to take a deposition, unless the parties stipulate as to the time when, and place where, the deposition is to be taken, the name of the officer before whom it is to be taken, and the names and addresses of the witnesses, the moving party shall give to the opposite party at least ten days' notice of the time when and the place where such deposition will be taken, the name and address and official title of the officer before whom it is proposed to take the deposition, and the names of the witnesses. A deposition may be taken either upon written interrogatories or upon oral examination, as may be specified in the notice. If the deposition is to be taken upon written interrogatories, copies thereof must accompany the notice to take depositions; if the opposite party desires to submit cross-interrogatories, written cross interrogatories should be served upon the party giving the notice within 5 days from the receipt of the notice to take the deposition. Notices may be served upon the contractor as provided by Rule 4 or upon his legal counsel of record. Service upon the Government may be made upon the person signing the notice of hearing or the Government representative of record. If service is made by mail, the mail shall be registered and service will be complete upon mailing.

(b) *Taking Depositions.* Depositions may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken, to administer oaths. Witnesses shall be under oath and shall be subject to cross-examination as at the hearing. Objections will be reserved for determination at the hearing; *provided,* however, objections as to the form of questions shall be made and noted in the deposition. Each deposition shall show the caption of the proceeding, the place and date of taking, the names of the witnesses, and the party by whom called. The officer taking a deposition shall enclose the original deposition and exhibits, in a sealed packet, with postage or other transportation prepaid, and forward the same to the Secretary or his designee.

(c) *Use of Deposition.* Testimony taken by deposition will not be considered until offered in whole or in part and received in evidence. A deposition taken by one party may be offered by the opposite party.

D–12. Submissions Without Appearance: Absence of Parties

If the contractor fails or refuses to appear or to make a written submission without appearing at the hearing, the hearing shall proceed upon such evidence as the Government may offer. The unexcused absence of any party shall not be occasion for delay of the hearing. Nothwithstanding the nonappearance of the contractor at the hearing, proposed findings, conclusions, and argument may be submitted in writing on the contractor's behalf as provided in Rule 13.

D–13. Argument and Request for Findings

Within the discretion of the person presiding at the hearing, limited oral argument may be presented by the parties upon the completion of the hearing. Within ten days after the hearing is completed, both parties may file in writing with the person or board conducting the hearing proposed findings and conclusions with reasons and argument in support thereof. Copies will be provided to the opposite party.

D–14. Findings and Decision

As soon as practicable after completion of the hearing and the timely submission of proposed findings and conclusions, the person or board that conducted the hearing shall make written findings and conculsions with respect to all material issues; reasons for the findings will be included at such length as may be appropriate. The findings where adverse to the contractor will include, in addition to other appropriate items, the following: (i) A description of the gratuity that was offered or given; (ii) a statement of the costs incurred by the contractor in providing the gratuity; (iii) the name and relationship to the contractor of the person by whom the gratuity was offered or given on the contractor's behalf; (iv) the name and position of the officer or employee of the Government to whom the gratuity was offered or given; (v) a description of the contract which the Contractor sought to secure by the offering or giving of the gratuity, or a statement as to the nature of the favorable treatment so sought with respect to the awarding or amending, or the making of any determinations with respect to the performing of a contract. When the findings are made by a designee they shall be forwarded to the Secretary with recommendations as to whether the right of the contractor to proceed under any contract mentioned in the notice of hearing shall be terminated, and as to the exemplary damages to be imposed against the contractor, which shall be in an amount which shall not be less than three nor more than ten times the costs incurred in providing the gratuity.

Approved this 5th day of July 1952.

(Signed) Earl D. Johnson,
Assistant Secretary of the Army.
(Signed) H.R. Askins,
Assistant Secretary of the Navy.
(Signed) Roswell L. Gilpatric,
Under Secretary of the Air Force.

Appendix to Rules

Form of Notice

BEFORE THE _____
OF THE _____

In the Matter of the XYZ Corporation,

Contract _____: Proceedings
Pursuant to Clause _____ of
Contract No. _____
File No. _____

To: XYZ Corporation,
Rockefeller Plaza, New York City, New York

1. You are hereby notified that at _____ M. on _____ 1952, at room _____ of the _____ Building, _____, a hearing will be held before _____ to determine whether or not under the provisions of clause _____ of Government contract _____ a gratuity has been offered or given on behalf of the XYZ Corporation to an officer or employee of the Government of the United States with a view toward securing (a contract) (favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of a contract). If it is found that a gratuity was so offered or given, your right to proceed under the contract may be terminated, and a penalty imposed in accordance with the contract clause mentioned above. In the event of such termination the Government will be entitled to pursue the remedies available for breach of contract.

2. The hearing at the time and place aforesaid will be held under the authority of (cite applicable Public Law and clause of contract(s)). Enclosed is a copy of the Rules promulgated by the Secretary of the _____ pursuant to which the hearing will be conducted. Papers pertaining to the proceedings may be captioned as above.

3. The contract(s) involved in the hearing, and which is (are) subject to termination if a gratuity is found to have been given or offered to secure favorable action as aforesaid, is (are) identified as follows: Contract number _____ dated _____ under the cognizance of _____ and executed by _____ on behalf of the Government as the Contracting Officer.

4. The gratuity offered or given and the circumstances relating thereto are alleged to be as follows: (Include in a concise statement the nature of the alleged gratuity; a fair estimate of the costs incurred by the contractor in providing the gratuity; the identity of the offeree or donee and his position with the Government; the identity of the offerer or donor and his relationship to the contractor; and the approximate date, time, and place of the alleged offer or gift. Also allege, as appropriate, that the gratuity was (offered) (given) with a view toward securing a Government contract or favorable treatment with respect to the awarding or amending, or the making of a determination with respect to the performing of a Government contract. Identify or describe the contracts involved). On proof of the facts alleged as aforesaid, the Government, in accordance with the applicable statutory and contract provisions mentioned in paragraph 2, may terminate your right to proceed under the contract identified in paragraph 3 and to pursue the remedies available for breach of contract; also to impose exemplary damages as provided in such law and contract provision.

5. If you desire to be heard in this matter, you are requested to file with the Department on or before the time of the hearing a written answer and to appear at the hearing.

Dated _____
By direction of the _____
of the _____

Note.— Portions set apart by parentheses should be stricken or modified as appropriate to conform to the facts.

Appendices E–G—[Reserved]

Appendix H—Military Standard Requisitioning and Issue Procedure

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H–000 Scope of MILSTRIP.

Military Standard Requisitioning and Issue Procedure (MILSTRIP), as the name implies, is a requisitioning and issue procedure for use by the Military Departments and contractors authorized by the terms of a contract, to requisition or move Government materiel to supply control cognizance. MILSTRIP is a system with uniform codes and punch-card formats designed to provide standard procedures of requisitioning, receiving, and returning Government materiel and to permit the maximum utilization of automatic data processing equipment. MILSTRIP applies when DoD contractors requisition on GSA supply sources. (See DoD Manual 4140.17–M, Military Standards Requisitioning and Issue Procedures (MILSTRIP).)

Part 1—Introduction

H–100 Scope.

This Appendix H provides policies, procedures, forms and instructions for use by contractors in the requisitioning of Government-furnished materiel (GFM) and the return of such materiel when directed by the cognizant Military Department in accordance with the requirements of the MILSTRIP system. (See DoD Manual 4140.17–M, Military Standards Requisitioning and Issue Procedures (MILSTRIP).)

H–101 Applicability.

(a) These procedures, forms, and instructions for the requisitioning and returning of Government-furnished materiel are prescribed for use by contractors when required by the terms of a contract pursuant to the appropriate Government Property clause as referenced in FAR Part 45 and Part 45 of the DoD FAR Supplement. For the purpose of MILSTRIP, the Defense Personnel Support Center may furnish the following items of special tooling under these procedures: shoe lasts, shoe patterns, hubs, dies, shaping blocks, printing rollers, printing roller containers, and inspection gauges.

(b) These procedures are not applicable to in-house control of Government-furnished materiel. Neither are MILSTRIP procedures applicable to the movement of Government-furnished materiel within or between contractors.

(c) These procedures do not prescribe the frequency of submitting requisitions, nor do they prescribe the source of supply or specify the materiel to be furnished by the Government, which shall be determined by the Military Department.

(d) Any requisition placed on a distribution system is a requirement for a serviceable item, unless otherwise agreed to between the Military Department and the contractor. However, this does not change the contractual obligations of the parties, and when the provisions of a contract are in conflict with MILSTRIP, the specific terms of the contract shall govern. However, the codes, forms and formats contained in MILSTRIP will be used as prescribed.

H–102 Definitions.

As used herein, the following terms shall have the meanings set forth below:

H–102.1.

"Advice Codes" means a coding structure for the purpose of transmitting instructions considered by the originator of requisitions to be essential to the desired supply action. Insertion of advice codes is at the discretion of the initial document originator. These codes are opposite to status codes in that directional flow is reversed. (See H–607.)

H–102.2.

"Document Identifier" means a code that identifies the basic type of administrative action, the specific sub-type of supply transaction, and related modifying instructions for each type of supply document used throughout the requisitioning, processing, and issuing functions or other types of supply transactions within and between military supply and distribution systems. (See H–602.)

H–102.3.

"Government-Furnished Materiel" means property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor. All items necessary for the equipment, maintenance, operation, and support of military activities without distinction as to their application for administrative or combat purposes; excludes ships or naval aircraft.

H–102.4.

"Passing Actions (Generic Term)" is a general term identifying all types of supply actions associated with materiel demands within military supply distribution systems. The term is applicable when forwarding materiel demands from one military supply source to another military supply source. Specific types of passing actions are passing orders and referral orders.

H–102.5.

"Passing Order" means an order used to pass an erroneously routed requisition to the appropriate military depot or distribution point and to pass a requisition from one military distribution system to another.

H–102.6.

"Referral Order" means an order used between depots, inventory managers, or other managers in an established supply distribution system for the purpose of passing correctly routed requisitions for continued supply action when the initial activity cannot fill the demand.

H–102.7.

"Routing Identifier" means a code that identifies a specific supply and distribution organization as to its Military Department or governmental ownership and its geographical location. Routing identifier codes required by contractors will be provided in the contract or otherwise furnished by the procuring Military Department or Government Agency.

H–102.8.

"Status Codes" means a coding structure for the purpose of transmitting status information from the inventory manager and/or supply source to the originator of a requisition or the consignee. These codes are the opposite of advice codes in that directional flow is reversed. (See H–607.)

Part 2—General Policies

H–200 Scope of part.

This part: (a) Sets forth procedures and instructions for amending and deviating from this Manual, (b) precribes the forms for use by contractors, and (c) contains general policies on the use by contractors of the MILSTRIP system.

H–201 System maintenance.

(a) The Defense Logistics Standard Systems Office (DLSSO) is responsible for the Military Standard Requisitioning and Issue Procedure as prescribed by this Manual.

(b) Recommendations, revisions, or suggested changes originated by contractors shall be forwarded to the cognizant contract administration office.

(c) Recommendations, revisions, or suggested changes received and concurred in or originated by the Military Departments shall be forwarded to Defense Logistics Standard Systems Office, ATTN: DLSS–OBM, Cameron Station, Alexandria, VA 22304–6100.

(d) Changes to this Manual shall be coordinated by the Defense Logistics Standard Systems Office (DLSSO). The provisions of the Federal Acquisition Regulation (FAR) and the DoD FAR Supplement (DFARS) pertaining to deviations and to amendments do not apply to this Manual. Requests by the Military Departments for deviations or waivers from this Manual may be approved by the Defense Logistics Standard Systems Office but only the Assistant Secretary of Defense (Acquisition and Logistics) may disapprove such requests.

H–202 Forms and use.

H–202.1 DoD Single Line Item Requisition System Document (Manual) (DD Form 1348).

DD Form 1348 is a four or six part form consisting of either two electrical accounting machine (EAM) cards—manila or paper (arranged as the first copy and the fourth or sixth copy), with two or four paper forms, carbon interleaved. The use of EAM cards or paper as the first and fourth or sixth copies is optional. However, when paper is used, the first copy shall be bond paper or equivalent, and the fourth or sixth copy may be bond paper or tissue. The form size shall remain unchanged when either cards or paper is used. All copies are identical in format except that the original copy does not provide for unit and total price data. In addition, the original card, when used, is upper left corner cut. DD Form 1348 is illustrated below. DD Form 1348 is used as a manual——

(a) Requisition.
(b) Followup.
(c) Cancellation.
(d) Requisition modifier.

H–202.2 DoD single line item requisition system document (mechanical) (DD Form 1348m).

DD Form 1348m is a standard electrical accounting machine (EAM) card—"Natural", with upper left corner cut. DD Form 1348m is illustrated below. DD Form 1348m is used as a—

(a) Requisition.
(b) Followup.
(c) Cancellation.
(d) Supply status card.
(e) Reply to followup.
(f) Shipment status card.
(g) Passing order.
(h) Referral order.
(i) Reply to cancellation request.
(j) Requisition modifier

H–202.3 DoD single line item release/receipt document (DD Form 1348–1).

DD Form 1348–1 is a six-part paper carbon interleaved continuous form of pin-feed, tear-away configuration, measuring 8 inches wide (usable) and 5½ inches in length (top to bottom). The form is designed to accept 10 printed characters to the inch. This form may be reproduced when additional copies are required. DD Form 1348–1 is illustrated below. DD Form 1348–1 is used as a—

(a) Release document from distribution point to consignee resulting from a requisition.
(b) Receipt document by the consignee.
(c) Shipping document for CFM turn-in.
(d) Release document for retrograde materiel.

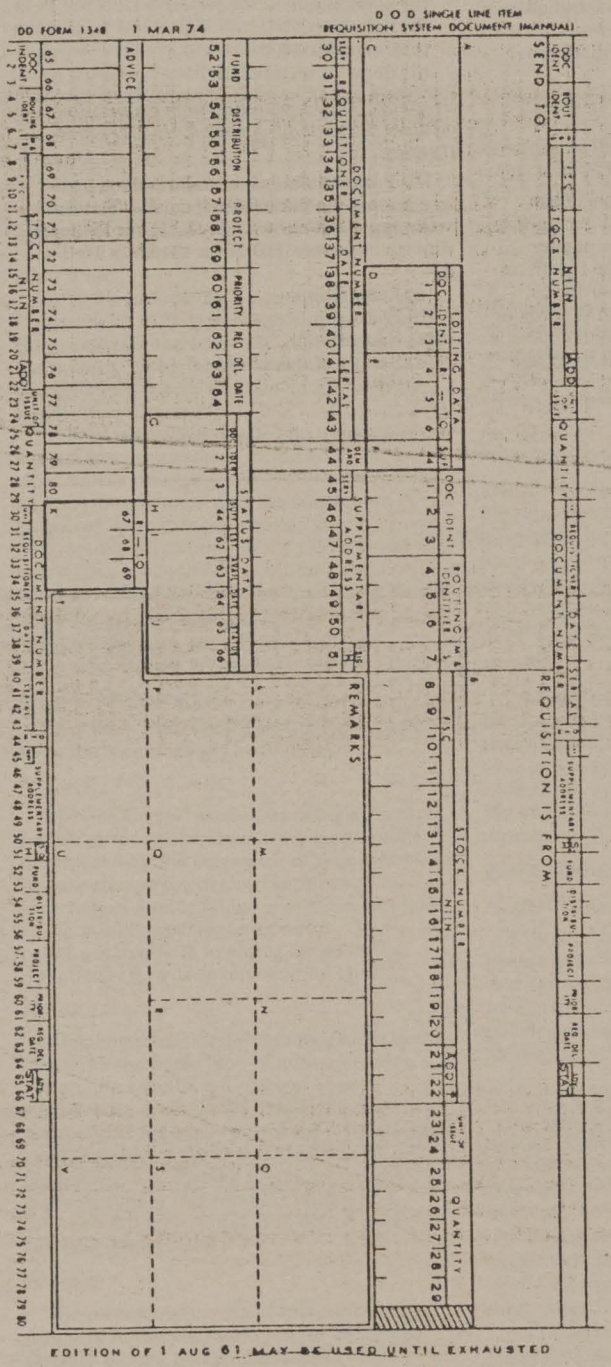
BILLING CODE 3810-01-M

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

DoD Single Line Item Requisitioning System Document (Manual) (DD Form 1348)

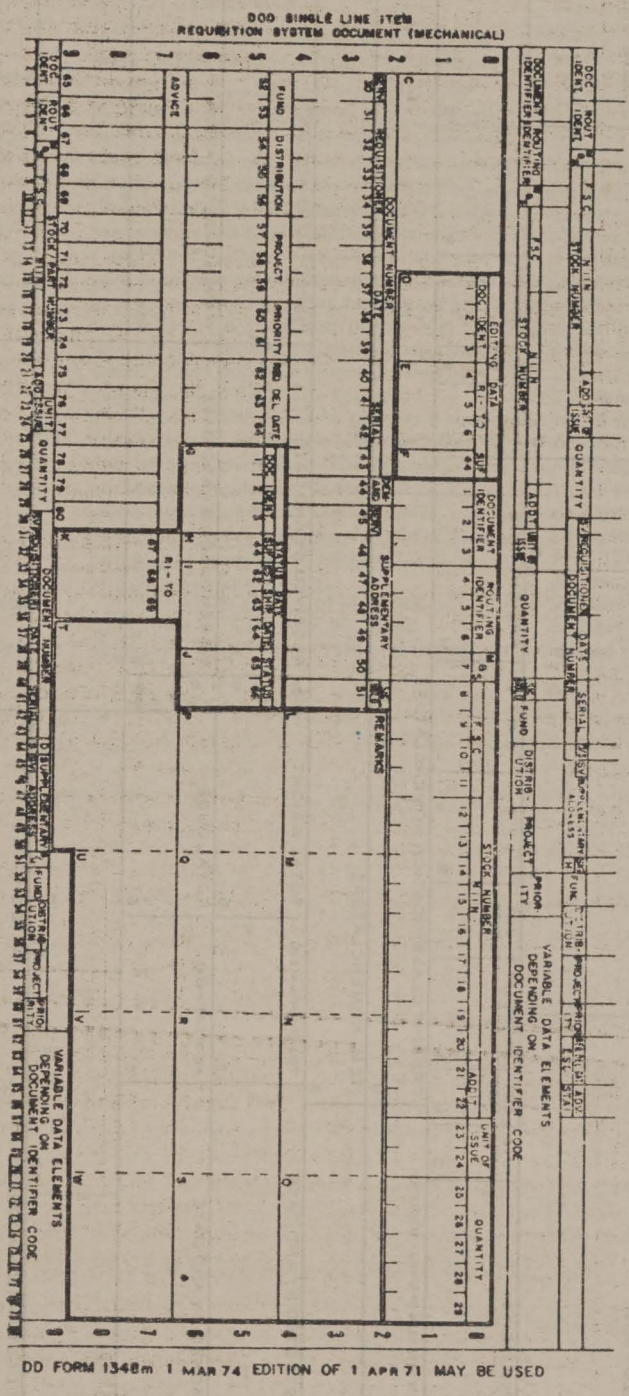
USE TYPEWRITER OR PRESS BALL POINT PEN HARD

TO ASSURE LEGIBILITY ON ALL COPIES



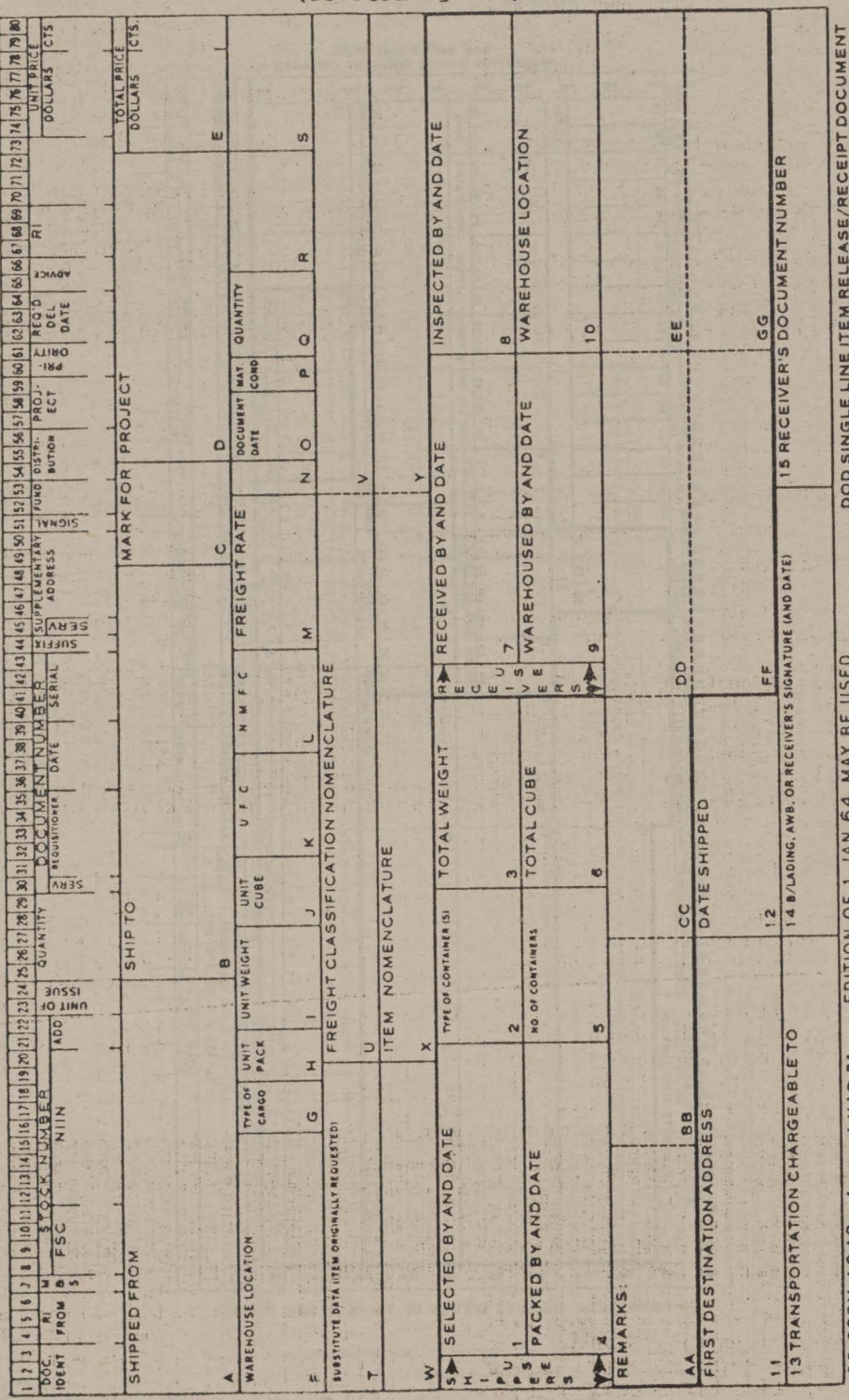
MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

DOD Single Line Item Requisition System Document (Mechanical) (DD Form 1348m)



MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

DoD Single Line Item Release/Receipt Document
(DD Form 1348-1)



H–202.4 Messages.

Messages may be used for transmitting requisitions, followups, and cancellations. Set forth below is a sample of a message containing multi-requisitions.

Sample Message Format

(Insert Addressee)
(Insert Message Number)
MILSTRIP Requisitions:
1. AOA/FMZ/6/5950001234567/EA/00040/EY9185/7049/6001/N/*BLNK/D/*BLNK*BLNK/*BLNK/07/*BLNK/2B.
2. AOA/FMZ/F/5950002345678/EA/00021/EY9185/7049/6002/0/*BLNK/D/*BLNK/*BLNK/*BLNK/07/*BLNK/*BLNK.
3. AOE/FMZ/6/12343456789/EA/00015/EY9185/7049/6003/N/*BLNK/D/*BLNK/*BLNK/*BLNK/07/*BLNK/2B.
Remarks: Mfg Part Number referenced on Page 121 of Technical Instruction No. 45.
4. AOA/FMZ/W/5950005671234/EA/00024/7049/6004/N/*BLNK/D/*BLNK/*BLNK/*BLNK/07/*BLNK/2B.
For explanatory purposes, the first requisition (Item 1) is segmented and explained.
First Line: AOA/(Document Identifier), FMZ/(Routing Identifier), 6/(Media and Status), 5950001234567/(Stock or Part Number), EA/(Unit of Issue), 00040/(Quantity), EY9185/(Requisitioner), 7049/(Julian Date), 6001/(Serial Number).
Second Line: N/(Demand Code), *BLNK/(Supplementary Address), D/(Signal), *BLNK/(Fund Code), *BLNK/(Distribution Code), *BLNK/(Project), 07/(Priority), *BLNK/(Required Delivery Date), 2B (Advice Code).
* When an element of data is not applicable, the field shall be recognized and entered as "BLNK".

H–202.5 Reserved.

H–202.6 Multiuse standard requisitioning/issue system document (Standard Form 344).

Standard Form 344 is a multi-line item paper document designed to accommodate a maximum of fifteen single line items on one sheet. The form may be used as a requisition by Defense contractors for requisitioning Government-furnished materiel when such use is approved by the Military Service.

(a) The Standard Form 344 is a multiple part, paper document, measuring 10½ inches by 8 inches. The form may be prepared manually by ballpoint pen, pencil or typewriter. The form consists of two parts which reflect document identification data and requisition data. The document identification data serve to identify a single document and are applicable to each line item being requisitioned. The requisition data are the data applicable to the specific item being requisitioned. No deviations or modifications are authorized in the size, format, or use of the SF 344 other than as prescribed in this Manual.

(b) The block alignment of SF 344 is compatible with the numeric block alignments of DD Forms 1348 and 1348m.

(c) The data entries of SF 344 are the same as prescribed for requisitions submitted on DD Forms 1348 and 1348m. The signature block is not required to be completed on contractor requisitions submitted on Department of Defense supply sources. Block 23 (Remarks) is provided for entry of data necessary to assist in supply decisions and which cannot be accommodated by the prescribed MILSTRIP codes.

(d) Each item contained on SF 344 will be processed separately as a single line without regard to other items contained on the document. In this respect, subsequent transactions, such as status, cancellations, followups, etc., will be accomplished on a single line item basis by use of the DD Form 1348 or 1348m or message.

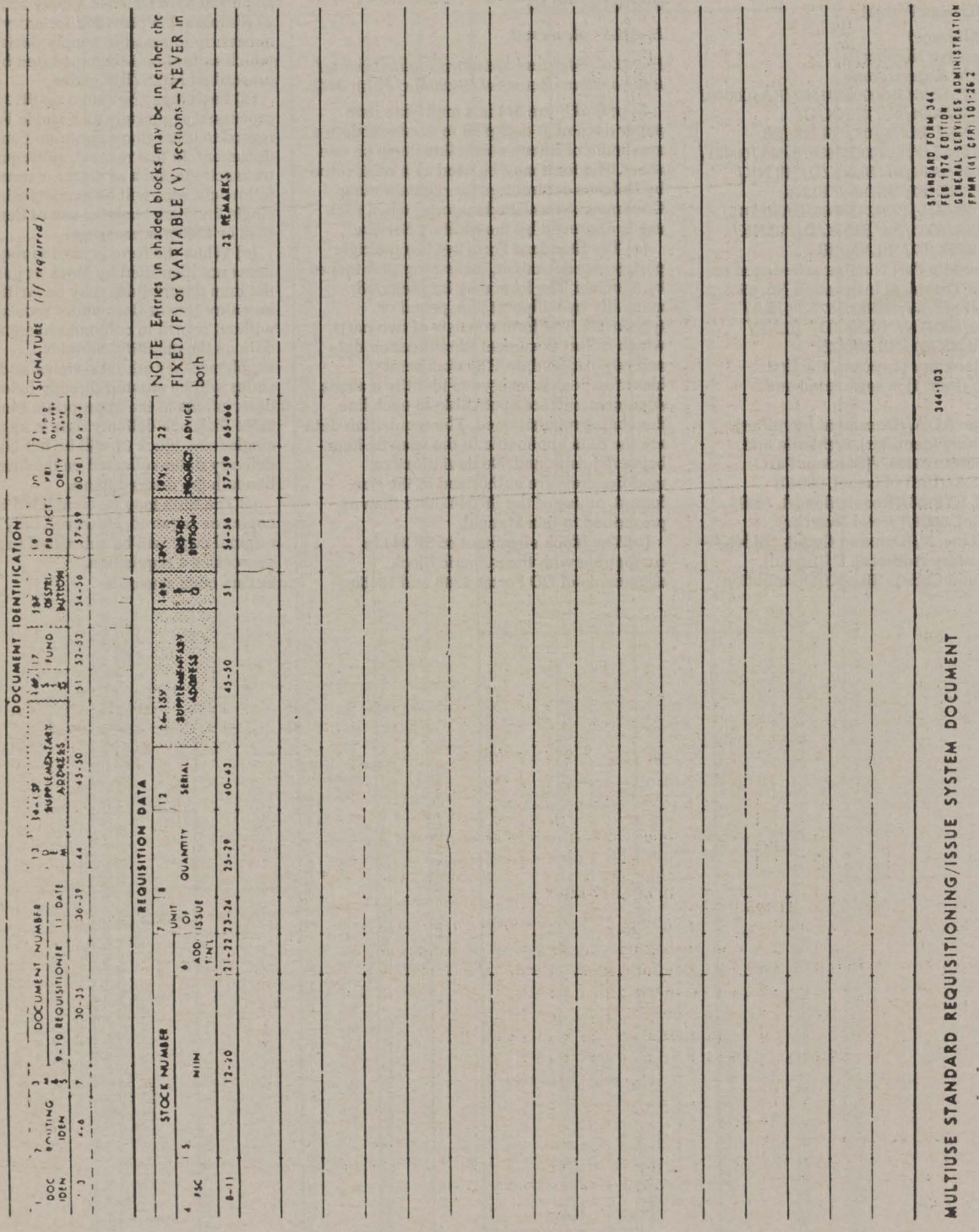
(e) When the form is used to requisition items not identified by stock or part numbers, the item descriptions may be written across an entire line or lines under requisition data, without regard to columnar headings. Such data as the quantity, Serial No., supplementary address, signal and advice codes will be entered directly below the item descriptions in the appropriate blocks. When more than one delivery date is applicable a single item, block 21 will be left blank and delivery dates reflected on the line(s) directly beneath the desired items.

(f) The form may be completed in as many copies as required. However, only the original copy will be submitted to supply sources as a requisition.

BILLING CODE 3810-01-M

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

Multiuse Standard Requisitioning/Issue System Document (Standard Form 344)



H-203 Priority designators on requisitions for government-furnished materiels.

When a Military Department executes a contract which provides that a contractor will requisition Government-furnished materiel, the contracting officer will advise the contractor of the Priority Designators to be shown in such contractor-prepared requisitions. The advice will take cognizance of the Force Activity Designator of the National priority, program or force/activity for which the contract is executed, and potential urgencies of need in accordance with DoD Directive 4410.6 (Uniform Materiel Movement and Issue Priority System).

H-204 Time frames.

Time frames have been established for furnishing supply status and for delivery of materiel as follows:.

(a) *Supply Status—*

Priority designator	Dispatched after receipt of requisition or followup
01 through 08	Within 2 days
09 through 15	Within 5 days.

(b) *Delivery of Materiel CONUS (includes Canada)—*

Priority designator	From requisition date to receipt of materiel by consignee (days)
01 through 03	8
04 through 08	12
09 through 15	31

(c) *Delivery of Materiel Overseas—*

Priority designator	From requisition date to receipt of materiel by consignee		
	Area 1 (days)	Area 2 (days)	Area 3 (days)
01 through 03	12	12	13
04 through 08	16	16	17
09 through 15	69	74	84

Note.—Area 1 includes Alaska, Hawaii, South America, Caribbean and North Atlantic.

Area 2 includes Northern Europe, Mediterranean, and Africa.

Area 3 is Western Pacific.

Time standards for delivery of Materiel (CONUS and Overseas) include one day for Priority Designator 01–08 requisitions and two days for Priority Designator 09–15 requisitions when the initial supply source passes the requisition to another supply source for action. Passing actions are identified by Supply Status documents containing Status Code BM in columns 65–66.

H-205 Status data.

H-205.1 General.

The MILSTRIP system requires that processing elements of the military supply activity show action taken or being taken on certain requisitions. The term for this information is known as "status data" and the specific types of such data are categorized as exception status, 100% supply status, and shipment status.

H-205.2 Exception status.

Exception status is any of the following supply source action decisions, alone or in combination:

(a) Back order,
(b) Procurement for direct delivery,
(c) Partial issue or partial other action,
(d) Substitution,
(e) Change of unit of issue,
(f) Requisition rejected,
(g) Passing order,
(h) Referral order,
(i) Cancellation acknowledgement,
(j) Any circumstance which predicts that issue may not be made within the number of days established for the priority assigned.

H-205.3 100% supply status.

Notice of all actions taken or being taken by supply sources on a requisition, redistribution and referral order. This includes all positive supply action decisions, all applicable exception non-positive supply action decisions, and combinations thereof.

H-205.4 Rejection status.

Used by supply sources to advise all status eligible recipients, i.e., cc 30–35, 45–50 and 54, of rejected requisitions, redistribution orders, passing orders and referral orders regardless of the M&S Code in cc 7.

H-205.5 Direct delivery supply status.

DI Codes AB1, 2 and 3 will be used only for intra-Service/Agency transactions, on an optional basis, and serve as notice of items to be supplied by direct delivery from procurement. This status also provides a cross-reference between the requisition document number and the Procurement Instrument Identification Number.

H-205.6 Shipment status.

Informs recipients of estimated shipping dates (i.e., awaiting release for transportation), or actual shipping dates (i.e., released to a carrier). It also provides for interface with transportation and for shipment tracing by consignees, as provided in MILSTAMP.

H-205.7 Acknowledgement status.

Either supply or shipment status and informs recipients of the results of supply source processing of the following types of documents received:

(a) Materiel Obligation Validation Response (DI Code AP__).
(b) Cancellation (DI Codes AC__ and/or AK__).
(c) Document Modifier (DI Code AM__).
(d) Follow-Up Request for Improved ESD (DI Code AFC).
(e) Follow-up Request for Status (DI Codes AF1, 2, 3, AF6, and AT__).

H-206 Followups.

The MILSTRIP system provides for followups. A followup may be submitted by the requisitioner or supplementary addressee or by the activity designated in card column 54 of the original requisition provided that status data is not on hand and the time frame for receiving such data has elapsed, or the time frame for the receipt of materiel has elapsed.

H-207 Media and transmission of MILSTRIP documents.

The MILSTRIP forms and procedures are designed for both manual and mechanized application, transmission, and processing of requisitions and followon transactions. Methods of submission and transmission, in order of preference, are as follows:

(a) Data pattern AUTODIN;
(b) Air or regular mail, with the container conspicuously marked "MILSTRIP";
(c) Courier;
(d) Administrative electrical message; and
(e) Telephone or radio.

H-208 Required delivery date.

(a) Normally, a required delivery date will not be placed on a requisition. However, if the prescribed time frame for the priority assigned does not meet the "actual need date", a required delivery date may be placed on the requisition indicating that the materiel must be delivered by that specific date to preclude work stoppage.

(b) On Defense Logistics Agency bailment type contracts, the required delivery date indicates the date on which the Government-furnished materiel must be ready for pickup at the Military Department distribution point by a carrier (contractor's truck or commercial carrier designated by the contractor).

H-209 Codes.

H-209.1 General.

Part 6 provides the codes and other data normally required by contractors on a repetitive basis to:

(a) Requisition and turn-in Government-furnished materiel,
(b) Prepare cancellation of requisitions,
(c) Initiate followups on requisitions, and
(d) Interpret status.

Infrequently used codes and codes of limited application will, if required, be provided in the contract or otherwise furnished to the contractor by the procuring Military Department or Government Agency.

H-209.2 Routing identifier.

The name, address, and routing identifier code of the supply and distribution organization responsible for MILSTRIP supply support will be provided in the contract or otherwise furnished to the contractor by the procuring Military Department or Government Agency. When more than one supply and distribution organization is responsible for MILSTRIP supply support, the name, address routing identifier code and logistics responsibility assigned each supply and distribution organization will be provided in the contract or otherwise furnished to the contractor by the procuring Military Department or Government Agency.

H-210 Address.

Contractors shall use their activity address codes, as assigned by the Military Departments, on MILSTRIP documents. These identifying codes are published for the

Departments in the DoD Activity Address Directory (DoDAAD), DoD 4000.25–D.

Part 3—Requisitions, Followups, Cancellations and Requisition Modifiers

H–300 Scope of part.

This part sets forth uniform instructions for the preparation, submission, and distribution of MILSTRIP documents for use as requisitions, followups, cancellations and requisition modifiers.

H–301 General.

Depending on the mechanized capabilities of the contractor, the means of transmitting the request and the urgency of need, the requisition may be prepared as a manual requisition on a DD Form 1348, or Standard Form 344, a prepunched requisition on a DD Form 1348m, or as a message-type or telephonic request. Requisitions may be prepared by either the contractor or the Procuring Activity, as specified in the contract.

H–302 Preparation and utilization of the DoD single line item requisition system document (manual) (DD Form 1348). (See H–202.1.)

H–302.1 Uses.

Contractors not having mechanized capabilities shall utilize DD Form 1348 for the following purposes:

(a) Manual requisitions,
(b) Manual followups,
(c) Manual cancellations, and
(d) Manual requisition modifiers.

H–302.2 Use of DD Form 1348 as a requisition.

When used as a requisition, DD Form 1348 shall be prepared as follows:

Item and explanation and instructions

Block A Send to: Enter "in the clear" the source of supply addressee as indicated by the Military Department.

Block B Requisition is from: Enter "in the clear" contractor's name and activity address code furnished by the Military Department, and address of the contractor.

Card Columns 1–3 Document Identifier: Enter one of the following 3-digit document identifier codes:

For domestic shipment	For overseas shipment
AOA w/NSN/NATO Stock No	A01
AOB w/Part No	A02
AOD w/Other	A04
AOE w/Exception data (See H–602)	A05

Item and Explanation and Instructions

Card Columns 4–6—Routing Identifier: For maintenance contracts, enter the three-digit routing identifier applicable to the Management Control Activity (MCA). For other than maintenance contracts, enter the 3-digit routing identifier indicating the source of supply to which the requisition is to be submitted.

Card Column 7—Media and Status Code: Enter one of the following codes indicating the type of status required, the activity to receive status, and the communication method by which status is to be transmitted:

a. Numeric Series:
- 0 No status to requisitioner or supplementary addressee.
- 2 Exception status to requisitioner by transceiver.
- 3 Exception status to requisitioner by mail.
- 4 Exception status to supplementary addressee by transceiver.
- 5 Exception status to supplementary addressee by mail.
- 6 Exception status to requisitioner by message.
- 7 Exception status to supplementary addressee by message.

b. Alpha Series:
- A 100% supply and shipment status from DAAS to requisitioner on a Clear-Text Supply/Shipment Information Mailer.
- B 100% supply status to requisitioner by transceiver.
- C 100% supply status to requisitioner by mail.
- D 100% supply status to supplementary addressee by transceiver.
- E 100% supply status to supplementary addressee by mail.
- F 100% supply status to requisitioner by message.
- G 100% supply status to supplementary addressee by message.
- H 100% supply and shipment status from DAAS to supplementary addressee on a Clear-Text Supply/Shipment Status Information Mailer.
- J Exception supply and shipment status from DAAS to requisitioner on a Clear-Text Supply/Shipment Status Information Mailer.
- K Exception status plus shipment status to requisitioner by transceiver.
- L Exception status plus shipment status to requisitioner by mail.
- M Exception status plus shipment status to supplementary addressee by transceiver.
- N Exception status plus shipment status to supplementary addressee by mail.
- P Exception status plus shipment status to supplementary addressee by message.
- Q Exception supply and shipment status from DAAS to supplementary address on a Clear-Text Supply/Shipment Status Information Mailer.
- R Exception status plus shipment status to requisitioner by message.
- S 100% supply status plus shipment status to requisitioner by transceiver.
- T 100% supply status plus shipment status to requisitioner by mail.
- U 100% supply status plus shipment status to supplementary addressee by transceiver.
- V 100% supply status plus shipment status to supplementary addressee by mail.
- W 100% supply status plus shipment status to requisitioner by message.
- X 100% supply status plus shipment status to supplementary addressee by message.

Card Columns 8–22, Stock or part number: In card columns 8–20, enter the National Stock Number, NATO Stock Number, or other number identifying the item. Card columns 21–22 shall be utilized for additional identification data when required by the Military Department. (See H–603.)

Card Columns 23–24, Unit of Issue: Enter the two-letter abbreviation as shown in the applicable catalog or stock list; e.g., EA, LB, FT.

Card Columns 25–29, Quantity: Enter the quantity being requisitioned. If the quantity exceeds 99,999, prepare additional requisitions as required. Zeros shall precede significant numerics.

Card Columns 30–43, Document number, Card Column 30 Service: Enter the 14-digit number constructed as set forth below. (See also H–604.) Enter the alphabetic code (For Contractor Use Only) used to identify the military organization. (See H–601.)

Card Columns 31–35, Requisitioner Address: Enter the applicable activity address code of the requisitioner as listed in the DoD Activity Address Directory.

Card Columns 36–39, Date: Enter the Julian day calendar date (see H–609); i.e., in the first column indicate the last numeric digit of the calendar year (for example, "3" for 1983, "4" for 1984) and in the last three columns indicate the numeric consecutive day of the calendar year (for example, "004" for 4 January, "157" for 6 June).

Card Columns 40–43, Serial number: For maintenance contracts, enter an "M" in Card Column 40 and the serial number in Card Columns 41–43. For other than maintenance contracts, enter the serial number of the requisition. This number will be assigned by the requisitioner but shall not be duplicated on any one day. (See H–604.3(d) for certain limitations in the assignment of the serial number.) Note: May be used to code contract numbers, if desired.

Card Column 44, Demand: Enter the appropriate demand code as follows: (a) An "R" shall be used if it is a recurring demand (a demand to replenish materiel utilized on a day-to-day basis). (b) An "N" shall be used if it is a nonrecurring demand (a demand made on a one-time basis). (c) An "O" shall be used if a requisitioning activity is submitting requisitions for substitute items which are acceptable in lieu of previously requisitioned, but delayed, items.

Card Columns 45–50, Supplementary address: When materiel is to be "shipped to" or "billed to" an activity other than the requisitioner, the activity address code identifying the "ship to" or "bill to" activity shall be entered. (See H–608.)

Card Column 51 Signal: Enter one of the following codes which indicate the "ship to" or "bill to" activity when applicable:

Ship to requisitioner and Bill to

- A Card Columns 30–35 (Requisitioner)
- B Card Columns 45–50 (Supplementary Address)
- C Bill to activity designated by card column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. (See H–606.)

D No billing required (free issue). Not to be used on requisitions submitted to General Services Administration.

Ship to supplementary address and Bill to

J Card Columns 30–35 (Requisitioner)
K Card Columns 45–50 (Supplementary Address)
L Bill to activity designated by card column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. (See H–606.)
M No billing required (free issue). Not to be used on requisitions submitted to General Services Administration. See H–605.

Note.—Codes A, B, C, J, K, and L will be provided by the contract or otherwise furnished by the Military Department to the contractor.

Item and Explanation and Instructions

Card Columns 52–53, Fund Code: Enter fund code furnished by the Military Department, if applicable. (See H–606.)
Card Columns 54–56, Distribution: Leave blank, unless directed otherwise by the Military Department.
Card Columns 57–59, Project: Leave blank, unless directed otherwise by the Military Department.
Card Columns 60–61, Priority: Enter appropriate priority designator in accordance with H–203.
Card Columns 62–64, Required Delivery Date: Will normally be left blank. The date will be entered only when conditions meet the requirements set forth in H–208.
Card Columns 65–66, Advice: Enter the applicable advice code to convey instructions to the supply source, if necessary. When code is not required, leave blank. (See H–607.)
Card Columns 67–71: Leave blank.
Card Column 72: Enter the appropriate management code as prescribed by the contracting Military Department or Agency; otherwise, leave blank. (See H–615.)
Card Columns 73–80, Blocks L thru V, Remarks: For maintenance contracts, enter last eight positions of the Procurement Instrument Identification Number (PIIN). Leave blank for other contracts. In the Remarks block, enter any additional information not provided for in the requisition format. When data are entered in the Remarks field, the third digit of the document identifier code entered in block 1 must be an "E" or "5", as appropriate. When required by the Military Department, the contract number shall be entered in the "Remarks" blocks.

H–302.3 Use of DD Form 1348 as a followup.

(a) When used as a followup and when no status has been received from the supply source, DD Form 1348 shall be prepared as follows:

Card Columns 1–3, Document Identifier: Followups will be initiated by the requisitioner or the supplementary addressee (Code AT__).
All other Card, Columns: Enter duplicate entries from the original requisition.

(b) When used as a followup and status has been received from the supply source, DD Form 1348 shall be prepared as follows:

Item and Explanation and Instructions

Block A Send to: Enter "In the clear" address of the last known source of supply as indicated in the latest status document. When this block is used, card columns 4–6 may be left blank.
Card Columns 1–3, Document Identifier: Enter the code AF1, AF2, or AT__.
Card Columns 4–6, Routing Identifer: Enter the code identifying the last known supply source indicated on the supply status card. When this entry is made, block A may be left blank.
All other Card, Columns: Duplicate the entries in the last status card received.

H–302.4 Use of DD Form 1348 as a cancellation.

(a) A cancellation, in whole or in part, shall be initiated only by the requisitioner or the supplementary addressee. When cancellation is necessary, DD Form 1348 shall be prepared as follows:

Item and Explanation and Instructions

Block A Send to: Enter "in the clear" address shown on the original requisition or the "in the clear" address of the last known source as indicated on the latest status document.
Block B Requisition is from: Card Columns 1–3, Document Identifier: Enter "in the clear" address of the activity requesting cancellation. Cancellation will be initiated by the originator (Code AC1) or the supplementary addressee (Code AC2).
Card Columns 4–6, Routing Identifier: Enter the appropriate code for the last known source of supply.
Card Column 7 Media and Status: Enter Code as shown in the original requisition.
Card Columns 8–22; Stock number: Enter stock number shown on requisition or supply status card.
Card Columns 23–24, Unit of issue: Enter the unit of issue as shown on the requisition or status card.
Card Columns 25–29, Quantity: Enter the quantity for which cancellation is requested.
Card Columns 44, Demand: Enter the suffix code as shown in the supply status card, when applicable. Otherwise, enter demand code from requisition.
Card Columns 45–61: Enter data as shown in the original requisition or supply status card.
Card Columns 62–64, Date of Preparation: Julian Date of Preparation.
All other Card, Columns: Enter identical information in other card columns as shown on original requisition or supply status card.

(b) Cancellation requests shall not be submitted for requisitioned material destined for CONUS contractor activities after receipt of shipment status information advising that shipment has occurred.

(c) Cancellation requests shall not be submitted for requisitioned materiel destined for overseas contractor activities after receipt of shipment status or lift information advising that:

(i) The materiel has been shipped by air or parcel post,

(ii) The total value of the materiel is less than $200,

(iii) The materiel was shipped more than:

(A) Ten days previously by air to an APOE, or

(B) Forty-five days previously by surface to a WPOE.

H–302.5 Use of DD Form 1348 as a requisition modifier.

(See H–307.)

H–302.6 Submission to the supply source.

Methods of submission of DD Form 1348 to the supply source are as follows:

(a) Air or regular mail, with the container conspicuously marked "MILSTRIP";

(b) Courier;

(c) Administrative electrical message; and

(d) Telephone or radio.

H–302.7 Confirmation copies.

When requisitions are relayed by telephone, radio, or electrical message, confirmation copies are not required and shall not be forwarded.

H–302.8 Distribution of DD Form 1348.

(a) When used as a requisition, copies of DD Form 1348 shall be distributed as follows:

(i) Original—to supply source, and

(ii) Remaining copies—for contractor use.

(b) When used as a followup or a cancellation, copies of DD form 1348 shall be distributed as follows:

(i) Original—to supply source, except when status has been received indicating that another activity is responsible for processing the demand (in such case, submit to activity so designated on the status card), and

(ii) Remaining copies—for contractor use.

H–303 Preparation and transmission of DoD single line item requisition system document (mechanical) (DD Form 1348m).

H–303.1 Use of DD Form 1348m as a requisition.

(a) Contractors with mechanized capabilities shall prepare a punched DoD Single Line Item Requisition System Dooument (Mechanical) (DD Form 1348m) for submission to the supply source by transceiver. However, air or regular mail, courier, or electrical media may be utilized for transmission of the punched card. When a requisition is prepared by using the DD Form 1348m, duplicates may be prepared for internal use by the requisitioning activity, as required.

(b) The DD Form 1348m (see H–202.2), prepared as a requisition, shall contain the required data punched in the appropriate card columns, as follows:

Card columns	Field/legend	Explanation and instructions
1–3	Document Identifier	Enter one of the following appropriate document identifier codes: For domestic shipment and for overseas shipment. AOA w/NSN/NATO Stock No., A01 AOB w/Part No., A02 AOD w/Other A04

Card columns	Field/legend	Explanation and instructions
		AOE w/Exception data, A05.
4-6	Routing Identifier.	For maintenance contracts, enter the 3-digit routing identifier applicable to the Management Control Activity (MCA). For other than maintenance contracts, enter the 3-digit routing identifier indicating the source of supply to which the requisition is to be submitted.
7	Media and status.	Enter one of the following codes indicating the type of status desired, the activity to receive status and the communication method by which status is to be transmitted: (1) Numeric Series: 0 No status to requisitioner or supplementary addressee. 2 Exception status to requisitioner by transceiver. 3 Exception status to requisitioner by mail. 4 Exception status to supplementary addressee by transceiver. 5 Exception status to supplementary addressee by mail. 6 Exception status to requisitioner by message. 7 Exception status to supplementary addressee by message. (2) Alpha Series: B 100% supply status to requisitioner by transceiver. C 100% supply status to requisitioner by mail. D 100% supply status to supplementary addressee by transceiver. E 100% supply status to supplementary addressee by mail. F 100% supply status to requisitioner by message. G 100% supply status to supplementary addressee by message. K Exception status plus shipment status to requisitioner by transceiver. L Exception status plus shipment status to requisitioner by mail. M Exception status plus shipment status to supplementary addressee by transceiver. N Exception status plus shipment status to supplementary addressee by mail. P Exception status plus shipment status to supplementary addressee by message. R Exception status plus shipment status to requisitioner by message. S 100% supply status plus shipment status to requisitioner by transceiver. T 100% supply status plus shipment status to requisitioner by mail. U 100% supply status plus shipment status to supplementary addressee by transceiver. V 100% supply status plus shipment status to supplementary addressee by mail. W 100% supply status plus shipment status to requisitioner by message. X 100% supply status plus shipment status to supplementary addressee by message. (See H-607.)

Card columns	Field/legend	Explanation and instructions
8-22	Stock or part number.	Enter stock or part number with additional identification data, when applicable. (See H-603.)
23-24	Unit of issue.	Enter the two-letter abbreviation as shown in the applicable catalog or stock list, e.g., Ea, Lb, Ft.
25-29	Quantity.	Enter quantity being requisitioned. If the quantity exceeds 99,999, prepare additional requisitions as required. Zeros shall precede significant numerics.
30-43	Document number.	Enter the 14-digit number constructed as set forth below. (See also H-604.)
30	Service.	Enter the alphabetical code (For Contractor Use Only) used to identify the military service. (See H-601.)
31-35	Requisitioner.	Enter the applicable activity address code of the requisitioner as listed in the DoD Activity Address Directory.
36-39	Date.	Enter the Julian day calendar date (see H-609), i.e., in the first column indicate the last numeric digit of the calendar year (for example, "3" for 1983, "4" for 1984), and in the last three columns indicate the numeric consecutive day of the calendar year (for example, "004" for 5 January, "157" for 6 June).
40-43	Serial Number.	For maintenance contracts, enter an "M" in Card Column 40 and the serial number in Card Columns 41-43. For other than maintenance contracts, enter the serial number of the requisition. This number will be assigned by the requisitioner but shall not be duplicated on any one day. See H-604.3(d) for certain limitations in the assignment of the serial number. NOTE.—May be used to code contract numbers, if desired.
44	Demand.	Enter the appropriate demand code as follows: (1) An "R" shall be used if it is a recurring demand (a demand to replenish materiel utilized on a day-to-day basis). (2) An "N" shall be used if it is a nonrecurring demand (a demand made on a "one-time" basis). (3) An "O" shall be used if a requisitioning activity is submitting requisitions for substitute items which are acceptable in lieu of previously requisitioned, but delayed items.
45-50	Supplementary Address.	When material is to be "shipped to" or "billed to" an activity other than the requisitioner, the service code and activity address code identifying the "ship to" or "bill to" activity shall be entered. See H-608.
51	Signal.	Enter one of the following codes which indicate the "ship to" and "bill to" activity: Ship to Requisitioner and Bill to: A Card Columns 30-35 Requisitioner. B Card Columns 45-50 Supplementary address. C Bill to activity designated by column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. (See H-606.) D No billing required. Not to be used on requisitions submitted to General Services Administration. Ship to Supplementary Address and Bill to: J Card Columns 30-35 Requisitioner. K Card Columns 45-50 Supplementary address. L Bill to activity designated by column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. (See H-606.) M No billing required. (See H-605.) Not to be used on requisitions submitted to General Services Administration. NOTE.—Codes A, B, C, J, K, and L will be provided by the contract or otherwise furnished by the Military Department to the contractor.
52-53	Fund.	Enter fund code furnished by the Military Department, as applicable. (See H-606.)
54-56	Distribution.	Leave blank, unless directed otherwise by the Military Department.
57-59	Project.	Leave blank, unless directed otherwise by the Military Department.
60-61	Priority.	Enter appropriate priority designator in accordance with H-203.
62-64	Required Delivery Date.	Will normally be left blank. The date shall be entered only when conditions meet the requirements set forth in H-208.
65-66	Advice.	Enter applicable advice code to convey instructions to the supply source, if necessary. When code is not required, leave blank. (See H-607.)
67-71	Blank.	Leave blank.
72	Management.	Enter the appropriate management code as prescribed by the contracting Military Department or Agency; otherwise, leave blank. (See H-615.)
73-80	PIIN.	For maintenance contracts, enter last eight positions of the Procurement Instrument Identification Number (PIIN). Leave blank for other contracts. In the Remarks block, enter any additional information not provided for in the requisition format. When data are entered in the Remarks field, the third digit of the document identifier code entered in block 1 must be an "E" or "5", as appropriate. When required by the Military Department, the contract number shall be entered in the "Remarks" blocks.

H-303.2 Use of DD Form 1348 as a followup.

(a) Followups may be submitted only by the requisitioner, the supplementary addressee or if applicable, the activity indicated by an alpha character in card column 54. Prior to submission, the contractor following up will ensure that status data are not on hand and that the time frame for receipt of status has elapsed or that the time frame for receipt of the material has elapsed.

(b) Followups for requisitions with Priority Designators 09 through 15 may be submitted only after expiration of at least 7 days from the date of requisition or transaction date of the latest supply status. Followups for requisitions with Priority Designators 01 through 08 may be submitted only after expiration of 3 days from the requisition submission date or transaction date of the latest supply status. Submission of followups under these criteria will be accomplished only after activities insure that:

(1) Status information has been requested under the provisions of the Media and Status Code;

(2) Status data are not on hand to indicate a delay in receipt of material beyond the Standard Delivery Date or Required Delivery Date; or

(3) The order and shipping time standards for receipt of materiel have elapsed.

Activities following up on overseas requisitions, prior to submission of followups, will ensure that 48 hours have elapsed since the Required Delivery Date or the Standard Delivery Date expressed on the requisition, or that 48 hours have elapsed since expiration of the established time frame for receipt of status.

(c) Followups shall be submitted to the point to which the requisition was submitted, except when supply status has been received indicating that another supply activity is responsible for processing the demand. In the latter case, followup shall be to the activity indicated as currently processing the requisition (i.e., "last known source of supply", which is the distribution point holding the demand for decision to issue the materiel). Transmission of followups will normally be by the same method employed for submission of requisitions.

(d) When used as a followup and when no status has been received from the supply source, the following entries shall be punched in the DD Form 1348m:

Card columns	Data	Explanation and instructions
1-3	Document Identifier.	Enter Code AT__
4-80	All other fields of data.	Duplicate entries from the original requisition.

(e) When used as a followup and when status has been received from a supply source, the following entries shall be punched in the DD Form 1348m:

Card columns	Data	Explanation and instructions
1-3	Document Identifier.	Enter the code AF1, AF2 or AT__
4-6	Routing Identifier.	Enter code identifying the last known supply source indicated on the supply status card in columns 67-69.
7-80	All other fields of data.	Duplicate the entries from the last status card received.

H-303.3 Use of DD Form 1348m as a cancellation.

(a) A cancellation, in whole or in part, may be initiated by the requisitioner, the supplementary addressee, the activity designated by the code in card column 54, Service of Agency headquarters, or authorized Service or Agency command elements.

(b) Preparation of the DD Form 1348m for use as a cancellation shall be as follows:

Card columns	Field/legend	Explanation and instructions
1-3	Document Identifier.	Enter code AC__ as applicable to a cancellation.
4-6	Routing Identifier.	Enter code for last known source of supply.
7	Media and status.	Enter code shown on requisition.
8-22	Stock number.	Enter stock or part number as shown on requisition or on supply status card when such status has been received.
23-24	Unit of Issue	Enter unit of issue as shown on requisition or status card.
25-29	Quantity	Enter quantity for which cancellation is requested.
30-43	Document number.	Enter the Document Number of the requisition for which cancellation is requested.
44	Suffix or Demand.	Enter Suffix Code as shown in supply status card when applicable; otherwise, enter Demand Code from requisition.
45-61		Enter the data in the requisition or supply status card.
62-64	Date of Preparation.	Julian date of preparation.
65-80	All other fields.	Enter data in the requisition or supply status card.

(c) Cancellation requests shall not be submitted for requisitioned materiel destined for CONUS contractor activities after receipt of shipment status information advising that shipment has occurred.

(d) Cancellation requests shall not be submitted for requisitioned materiel destined for overseas contractor activities after receipt of shipment status or lift information advising that:

(1) The materiel has been shipped by air or parcel post,

(2) The total value of the materiel is less than $200,

(3) The materiel was shipped more than:

(i) Ten days previously by air to an APOE, or

(ii) Forty-five days previously by surface to a WPOE.

H-303.4 Use of DD Form 1348m as a requisition modifier.

See H-307.

H-304 Preparation and use of messages.

H-304.1 General.

Requisitions, followups, and cancellations may be transmitted by messages when time is of the essence and other means are not considered appropriate.

H-304.2 Limitations.

When messages are used for any of the foregoing purposes, each transmission shall be limited to a maximum of seven transactions or the contents of a single page, whichever is greater. When explanatory comments are required, the appropriate entry shall be entered on the line immediately following each transaction. All transactions on a single message must be intended for the same elements within the recipient processing point; i.e., the routing identifier codes must be identical on all transactions.

H-304.3 Use of messages as requisitions.

The first line in the body of the message shall contain the words "MILSTRIP Requisition(s)". Thereafter, each transaction shall be numbered commencing with number 1 and the first 66 columns of data, except that dividing slashes (/)shall be inserted, and divided exactly as shown in H-202.4. Each transaction shall consist of 18 separate field lengths of data.

H-304.4 Use of messages as cancellations, followups and requisition modifiers.

Cancellations, followups and requisition modifiers by message shall be in the same format as that shown for a sample requisition, except that the first line in the body of the message shall be shown as "MILSTRIP Cancellation(s)", "MILSTRIP Followup(s)," or "MILSTRIP Requisition Modifier(s)", as appropriate. Data shown on cancellations and followups, except the first element of data which will show the correct document identifier, shall be a repeat of the original requisition as changed by the latest status received. An exception to this general rule is that a cancellation of part of the quantity originally requisitioned will contain the quantity to be cancelled in the quantity field. An entry in a requisition modifier document may differ from that in the original requisition only to reflect the data to be modified. A modifier document may be initiated to change a Priority Designator and/or the Required Delivery Date or the Media and Status and/or Distribution Code in conjunction with Priority Designator and/or Required Delivery date changes. When the priority of an item ordered changes but the quantity required is different from the quantity previously requisitioned, a new requisition shall be submitted for the quantity required under the new priority.

H-304.5 Confirmation copies.

When requisitions are relayed by electrical message, confirmation copies are not required by the supply source and shall not be forwarded.

H 305 Telephone and radio requisitions.

H-305.1 General.

Under exceptional circumstances when other methods of transmission are not adequate, requisitions may be submitted by telephone or radio. When considered necessary, requisitions will be prepared on DD Form 1348 or DD Form 1348m, as appropriate, and read to the supply source by telephone or radio in exact columnar alignment.

H-305.2 Confirmation copies.

When requisitions are relayed by telephone or radio, confirmation copies are not required by the supply source and shall not be forwarded.

H-306 Formats for status, replies to followups, and replies to cancellation requests.

The formats used by military processing elements (i.e., depots, inventory control points, inventory managers, etc.) in furnishing status and in replying to followups and cancellation requests are as follows:

(a) Exception status, see H-611;

(b) 100% supply status, see H-611;

(c) Shipment status, see H-612;

(d) Reply to followup, see H-613;

(e) Reply to cancellation request, see H-614.

H–307 Submission and use of requisition modifier documents.

(a) A requisition modifier document may be initiated by the requisitioner or supplementary addressee to modify previously submitted requisitions when the required dates for previously requisitioned materiel must be changed to prevent work stoppage at industrial/production activities engaged in repair, modification or manufacture of primary weapons, equipment and supplies.

(b) The activity initiating a requisition modifier document will be responsible for furnishing notification of such action to other interested activities, such as the requisitioner and the supplementary addressee. The requisition modifier document will be transmitted to the last known source of supply.

(c) Supply sources will process requisition modifier documents to provide for modification of requisitions on back-order or modification of requisitions for which materiel release orders have not been processed to storage activities. The corresponding original requisitions in process, and materiel obligations, will be recycled in accordance with Service/Agency policy, and normal processing actions will be continued to accommodate the modifier priority designator or required delivery date. Requisitions which have been submitted to procurement sources for direct delivery of required items are not required to be modified. When requisition modifier documents are processed, the original requisitions identified by document numbers of the modifier documents, will be suspended from processing. Should the original requisitions be held on backorder, upon receipt of the requisition modifier document, the priority designators and/or required delivery dates will be amended in accordance with the requisition modifier documents. Procurement sources will be advised of the priority designator and/or required delivery date amendments. Modification of materiel release orders is at the discretion of the Military Services and Agencies. Supply sources will furnish requiring activities with the latest supply or shipment status information when modification of materiel release orders will not be accomplished. In those instances where the Services or Agencies elect to modify materiel release orders, materiel release order modifier document will be prepared as a result of processing the requisition modifier.

(d) Storage activities, upon receipt of materiel release order modifier documents, will cancel the original materiel release order. Identification of these latter documents will be accomplished by matching the document numbers of modifier documents with document numbers of materiel release orders having been previously received. The modifier documents will be processed in the normal manner prescribed for materiel release orders.

(e) In those instances where requisition modifiers are received and modification action cannot be taken due to no record of the requisition/MRO, the following actions will be taken:

(1) Requisition processing points will process the requisition modifier document as a new requisition.

(2) Storage activities will process the materiel release order modifier document as a new materiel release order.

(f) When storage activities receive materiel release order modifier documents and shipment action applicable to the original materiel release order has been accomplished, no action will be taken relative to the modifier document.

(g) Document Identifier Codes to be used on requisition modifier documents are listed in H–602.2.

H–308 Submission and use of followup (request for improved ESD).

(a) A followup requesting improvement of Estimated Shipping Dates (ESDs) contained in previously furnished supply status documents may be initiated by prime contractors. These followup inquiries will contain Document Identifier Code AFC in card columns 1–3 and the data from the previously received supply status document in card columns 4–80. The AFC documents will be prepared only for transactions applicable to Priority Designators 01–08. The necessity for such inquiries will generally result from such conditions which necessitate receipt of materiel prior to expiration of certain dates.

(b) When determination is made that improvement in ESDs can be accomplished, supply status documents, containing the revised ESD in columns 70–73, will be transmitted to status recipients designated in the original requisitions. When actions taken by management do not result in improved ESDs, status recipients designated in the original requisitions will be provided the latest status applicable to the requisitions concerned with the requests for ESD improvement.

H–309 Submission and use of followup on cancellation request document.

(a) A followup to obtain the status on a previously submitted cancellation request may be submitted by the requisitioner, the supplementary addressee, or the activity designated by an alpha character in card column 54. The followup will be processed as a cancellation request by the supply source, provided that the original cancellation request was not received.

(b) The followup on a cancellation request will be prepared by originating activities completing all prescribed data elements for cancellation requests. (See H–302.4 and H–303.3.) Document Identifier AK__, as appropriate, will be entered in Card Columns 1 through 3. Followups on cancellation requests will be transmitted to the last known source of supply.

Part 4—Release/Receipt Documentation

H–400 Scope of part.

This part sets forth instructions for the preparation and use of the MILSTRIP documentation prepared by the military supply activity to accompany Government-furnished materiel to contractors.

H–401 General.

All contractor receipts of Government-furnished material under MILSTRIP will be accompanied by a Release/Receipt Document (DD 1348–1) (see H–202.3) prepared by the military supply activity, regardless of whether shipment is in response to a contractor's requisition or is the result of action by a military supply activity. The military supply activity will supply a minimum of three copies of DD Form 1348–1 with the materiel. Additionally, if an advance copy of a bill of lading is received, a copy of the DD Form 1348–1 will be attached.

H–402. Responsibilities.

On Military Department originated requisitions for Government-furnished materiel, it is the responsibility of the originating Military Department to ensure that the contractor is furnished a cross reference between the requisition document and the contract number. The requisition will be treated as a supply directive and the originating Military Department will provide the contractor the required cross reference by:

(a) Ensuring that the contract number appears on the documentation accompanying the shipment, i.e. on the DD Form 1348–1; or

(b) Furnishing the contractor "supply directive memoranda", cross referencing the requisition document number to the applicable contract number.

H–403 Exceptions in preparation of DD Form 1348–1.

Release/Receipt Document (DD Form 1348–1) resulting from Materiel Release Orders prepared by DLA activities will perpetuate requisition submission time in columns 21 and 22 of the document.

H–404 Data entries.

H–404.1 Minimum data entries.

The minimum data entries shown on the DD Form 1348–1 shall be as follows:

Columns	Item	Identification or source of data
1–3	Document identifier.	Identifies the source document used to prepare DD Form 1348–1.
4–6	Routing identifier.	The routing identifier of the shipping activity.
7	Media and status code.	The code originally assigned to the requisition document.
8–22	Stock or part number.	The stock or part number of the item shipped. (See H–403.)
23–24	Unit of issue	The unit of issue of stock or part number being shipped.
25–29	Quantity	The quantity being shipped.
30–43	Document number.	The document number originally assigned to the requisition.
44	Suffix	Blank, if the document represents shipment of the total quantity requisitioned; otherwise, an appropriate character is assigned to indicate a partial quantity shipped.
45–50	Supplementary address.	The code as shown on the original requisition.
51	Signal	Do.
52–53	Fund code	Do.
54–56	Distribution	Do.
57–59	Project code	Do.
60–61	Priority code	Do.
62–64	Required delivery date.	Do.

Columns	Item	Identification or source of data
65–66	Blank	Leave blank or perpetuate data from requisition or other source document.
67–69	Routing identifier code.	The routing identifier code (if any) appearing in columns 67–69 of the source document identifies the activity directing release of the materiel.
70–73	Management codes.	Distribution system management codes as prescribed by the contracting Military Department or Agency. (See H–615.)
74–80	Unit price	The unit price of the item being released.

H–404.2 Other data.

In order to accommodate the various distribution systems and equipment, DD Form 1348–1 provides blocks for entry of other data. The use of these blocks with the exception of block 5 is optional; but, when used, they shall contain the following:

Block and Data Which May be Entered

A The shipping point identified by name and/or code.
B The consignee by name and address and/or code listed in DoD Activity Address Directory.
C Repeat of data entered in the supplementary address field (columns 45–50).
D The project and/or code, if any.
E The extended value of the transaction.
F The location from which materiel is to be selected.
G Coded cargo data.
H The number of issue units in a package.
I The unit weight applicable to the unit of issue.
J The unit cube applicable to the unit of issue.
K Uniform freight classification.
L National motor freight classification.
M Percentage of first class.
N Physical Security/Pilferage Code.
O Date of document preparation.
P Supply Condition Code.
Q Quantity.
R For internal use.
S For internal use.
T Stock or part number of item originally requested, if other than item released.
U Freight classification nomenclature.
V For internal use.
W For internal use.
X Item nomenclature.
Y For internal use.
1–4 Shipper and receivers use.
5 Block 5 of DD Forms 1348–1 will reflect the shipping container number and the total number of containers in a shipment under the rules contained in paragraph 5.3.4 of MIL–STD 129. The shipping container number(s) will indicate the specific container(s) in which the item reflected on a DD Form 1348–1 is packed. EXAMPLE: 7/12; container number 7 of a 12-container shipment. When an item is shipped in more than one container of a shipment, the container numbers and number of containers will be entered in block 5 as: 3, 5, 7/12; container 3, 5, and 7 of a 12-container shipment.
6–10 Shipper and receivers use.
AA–FF Provided for any special notes or instructions deemed appropriate.
GG Provided for any special notes or instructions deemed appropriate. For Air Force Government-furnished materiel, the Expendability-Recoverability-Repair Code (ERRC) shall be entered in block GG by the shipping activity.
11–15 Self-explanatory.

H–405 Document distribution. Distribution of the individual copies of DoD Single Line Item Release/Receipt Document (DD Form 1348–1) shall be as follows:

(a) Original is retained by the distribution point (shipper);
(b) Two copies—to consignee with materiel;
(c) One copy—to consignee attached to outside of No. 1 shipping container after use for picking, packing and item identification;
(d) One copy [1]—to consignee with advance copy of the bill of lading;
(e) One copy—transportation copy retained by the distribution point (shipper).

Part 5—Requisitions for Government-Furnished Materiel (GFM)

H–500 Scope of part.

This part sets forth instructions for the preparation and use of the MILSTRIP documents for requisitioning Government-Furnished Materiel (GFM).

H–501 General.

(a) The Management Control Activity (MCA) is a DoD Component activity designated to initially receive and effect control over contractor initiated requisitions for GFM to support commercially performed maintenance contracts and/or requirements which would be supplied from the DoD wholesale supply system.

(b) Requisitions for GFM may be initiated by the responsible Service/Agency or, subject to the terms of the contract, by the contractor.

H–502 Preparation of requisitions for government-furnished materiel (GFM).

(a) Contractor initiated requisitions for GFM will reflect the appropriate Service/Agency Code, MILSTRIP Appendix B2, and requisitioners account number in cc 30–35. Requisitions initiated by DoD maintenance contractors will be processed through the MCA. DoD maintenance contracts will specify a Routing Identifier (RI) Code applicable to the MCA for entry in cc 4–6. Also, the contract will specify that an "M" will be entered in card column 40, MILSTRIP Appendix B7, and that the last eight positions of the Procurement Instrument Identification Number (PIIN) will be entered in cc 73–80 of all requisitions prepared by the contractor.

(b) Supply sources receiving MILSTRIP requisitions, modifiers, passing orders, referral orders, followups, redistribution orders and cancellations, irrespective of method of transmission, will process such transactions in accordance with MILSTRIP procedures. Supply sources will validate the data elements and codes in these documents and accomplish changes thereto, continue the processing action, or reject the documents, as indicated. See MILSTRIP Appendix B16 for appropriate requisition transaction status codes.

Code or data element	Entry in card column blank or incorrect
Routing Identifier	Determine correct source and continue processing. Exception—Reject when all five of the following conditions exist: (1) Document Identifier is— AO (Requisition), or AM (Modifier), or AT (Followup), *and* (2) CC 30 contains one of the following codes: "C, E, L, Q, U", *and* (3) CC 40 contains an "M", *and* (4) CC 72 does not contain Management Code "Y", *and* (5) Supply source is not the MCA for the contract.
Media and Status	Process as 0.
Stock Number or Appropriate Item Identification	Reject.
Unit of Issue	Enter correct unit of issue or reject.
Quantity	Reject.
Requisitioner	Discard.
Date	Reject.
Serial	Reject.
Demand	Process as recurring.
Supplementary Address	If not affected by the Signal Code, process; otherwise, reject.
Signal	Reject.
Fund	If not affected by Signal Code, or if Signal Code is D or M, process; otherwise, reject.
Distribution	Process as blank.
Project Code	Process as blank.
Priority	(1) If code 999 is not entered in Required Delivery Date field, demand is not NMCS and no OSD/JCS Project Code is assigned, enter Priority Designator 15. (2) If Code 999 is entered in Required Delivery Date Field or OSD/JCS Project Code is assigned or demand is NMCS, enter Priority Designator 03. (3) If date is in Required Delivery Date Field and no "X" or "S" is entered in cc 62, enter Priority Designator 08. (4) If date is in Required Delivery Date Field and "A", "X", or "S" is entered in cc 62, enter Priority Designator 15. (5) If expedited handling signal "555" is entered in cc 62–64 and PD 01–08 in cc 60–61, process immediately after NMCS in accordance with the priority. If PD 09–15 is entered in cc 60–61, process in accordance with the priority.
Required Delivery Date	If there is an "N" in cc 62 and PD 01–08 in cc 60–61, process. If expedited handling signal "555" is entered in cc 62–64, process. If there is an "N" in cc 62 and PD 09–15 in cc 60–61, blank the entry in cc 62–64 and process in accordance with the priority. In all other cases, process as blank.
Advice	Process as blank.

(c) Rejection of MILSTRIP documents will be accomplished only after an attempt has been made to correct the questionable data element or code. When rejection actions are applicable to more than one data element or code and no other reject status code is applicable, the rejection will use Status Code CA.

[1] When shipment is accomplished by a method not requiring backup documentation to a movement document (i.e., parcel post, Government truck, etc.), this copy will be destroyed by the shipping point.

H–503 Requisition processing and related actions.

(a) Management Control Activities (MCAs), when processing DoD Maintenance Contractor initiated requisitions for Government Furnished Materiel (GFM), will utilize the following procedures.

(1) Management Control Activities (MCAs) receiving maintenance contractor initiated requisitions (AO__), modifiers (AM__), and followups (AT__), irrespective of method of transmission, will process such transmissions in accordance with procedures prescribed herein. Based upon criteria furnished by Procurement/ Contracting Offices, MCAs will validate the data elements and codes in these requisitions and accomplish changes thereto, reject, or continue processing action, as indicated below.

Code or data element	Entry in card column blank or incorrect
Stock Number Field	If blank or incorrect, reject. Verify part number or National Stock Number against contract to determine authority for contractor issue and continue processing or reject if determined to be unauthorized.
Quantity	If blank, reject. If determined to be excessive, process off-line and reject or continue processing.
Requisitioner	Discard if blank or incorrect. If correct, and cc 40 contains an "M", verify requisitioning authority and continue processing or reject as appropriate. If correct, and cc 40 does not contain an "M", forward requisition to supply source for normal processing.
Distribution	Enter the distribution code for the MCA and continue processing.
Contract Identification	Reject if contract is not on MCA files.

Rejection of documents will be accomplished only after an attempt has been made to correct the questionable data element or code. If rejection actions are applicable to more than one data element or code and no other reject status code applies, reject using MILSTRIP Status Code CA.

(2) The Services/Agencies will assign a unique Routing Identifier (RI) Code and Distribution Code to each MCA.

(3) Following validation of contractor initiated requisitions (AO), modifiers (AM__) and followups (A__) for Government-Furnished Materiel, the AO__, AM__, or AT__ transaction will be forwarded to the appropriate supply source, through DAAS, with the following changes entered in the document:

(i) Routing Identifier (RI) Code, cc 4–6 will be blank.

(ii) The Distribution Code of the MCA will be entered in cc 54.

(iii) The contract identification will be deleted from cc 73–80.

(iv) Management Code "Y" will be entered in cc 72.

DAAS will route all contractor initiated requisitions (AO__), modifiers (AM__), and followups (AT__) of Government Furnished Materiel coming from a MCA (i.e., "M" in cc 40 and "Y" in cc 72) to the correct supply source.

(b) The MILSTRIP System requires that supply sources or Management Control Activities (MCAs) provide status data to designated activities as notice of action taken or being taken on MILSTRIP documents received, using status codes in MILSTRIP Appendix B16. Activities to receive status data and the type of data required are designated by entry of a Media and Status (M&S) Code in cc 7, MILSTRIP Appendix B4. A significant Distribution Code in cc 54 also designates monitoring/control offices to receive all status data. In addition to supply sources furnishing status, the Defense Automatic Addressing System (DAAS) also generates status in selected situations as a result of editing the stock number field of requisitions. The DAAS status is furnished using the unique DI Code of AE9 and the DAAS RI Code (from) is cited in these transactions.

(c) Exception Supply Status is any of the following supply sources or, as indicated, Management Control Activity (MCA) action decisions, alone or in combination:

(1) Backorder;
(2) Procurement for direct delivery;
(3) Partial issue and partial other action;
(4) Substitution;
(5) Change of unit of issue;
(6) Requisition rejected (supply source or MCA);
(7) Passing Order;
(8) Referral Order;
(9) Cancellation Acknowledgment;
(10) Any circumstance which predicts that issue may not be made within the time frames established for the assigned priority designator.

(d) Management Control Activities (MCAs) will be responsible for furnishing Rejection Status for requisitions processed by that activity. Supply sources will be responsible for maintaining and furnishing current supply and shipment status as provided below. For these purposes, accessible requisition history records will be maintained by MCAs and supply sources for a minimum of six months after completion of shipment or cancellation, to provide timely response to followups. MCAs will maintain requisition history records indexed by Procurement Instrument Identification Number (PIIN) until contract termination.

Part 6—Codes and Other Data

H–600 Scope of part.

This part sets forth the codes and other miscellaneous data and instructions for their use by contractors in the preparation and interpretation of MILSTRIP documents.

H–601 Service assignment codes.

(Blocks 9 and 14—Manual.) (Columns 30 and 45—Mechanical.) Service assignment codes are designed to accommodate service identity and use of specific fields or columns without duplication by other services. Service assignment codes are as follows:

Code	Column 30	Use 45	Service
C	X	X	Army (For Contractor Use Only).
Q	X	X	Navy (For Contractor Use Only) (Contractors not listed in DoDAAD).
L	X	X	Marine Corps (For Contractors Use Only).
E	X	X	Air Force (For Contractors Use Only).
U	X	X	Defense Logistics Agency (For Contractors Use Only).

H–602 Document identifier codes.

(Block 1—Manual.) (Columns 1, 2, and 3—Mechanical.)

H–602.1 General.

The document identifier code provides a means of identifying a given transaction (i.e., requisition, cancellation, followup, supply status, etc.) to the system to which it pertains and further identifies such data as to its intended purpose and usage. This code will furnish personnel with the ability to recognize the data and then to perform the operation dictated. When used in conjunction with electronic computers, it will enable the equipment to select the appropriate programs and mechanically assimilate and/or react to the data.

H–602.2 Entry.

The document identifier is a mandatory entry on all requisitions and related products entering the supply distribution systems under MILSTRIP. Document identifier codes are as follows:

Columns 1, 2, 3		
AO1	Requisition	For overseas shipment with National Stock Number (NSN)/NATO Stock No.
AO2	Requisition	For overseas shipment with Part Number.
AO4	Requisition	For overseas shipment with other.[3]
AO5 [1]	Requisition	For overseas shipment with exception data.
AOA	Requisition	For domestic shipment with NSN/NATO Stock No.
AOB	Requisition	For domestic shipment with Part Number.
AOD	Requisition	For domestic shipment with other.[3]
AOE [1]	Requisition	For domestic shipment with exception data.
AC1	Cancellation	By requisitioner (cols 30–35).
AC2	Cancellation	By supplementary addressee (cols 45–50).
AC3	Cancellation	By card column 54.
AF1	Followup	By requisitioner (cols 30–35).
AF2	Followup	By supplementary addressee (cols 45–50).
AF3	Followup	By card column 54.
AFC	Followup (Request for Improved ESD).	Furnished by prime contractors as requests to supply sources to initiate actions which will improve estimated shipping dates provided in supply status transactions.
AE1	Supply Status	For requisitioner (cols 30–35).
AE2	Supply Status	For supplementary addressee (cols 45–50).
AE3	Supply Status	For Card Column 54.
AE9	Supply Status	From the Defense Automatic Addressing System (DAAS): a. To activities identified by M&S Code (cc 7), and/or Distribution Code (cc 54) to advise of the rerouting or change to a MILSTRIP requisition document as reflected by the Supply Status Code (cc 65–66).

Columns 1, 2, 3		
		b. To activity in cc 30–35 when the M&S Code is "0", and cc 54 is blank or invalid to advise of rerouting or change to a MILSTRIP requisition document as reflected by the Supply Status Code (cc 65–66). c. To activities in cc 30–35, 45–50, and 54 to advise of rejection of a MILSTRIP requisition document as reflected by Supply Status Code (cc 65–66). d. To "From" Routing Identifier Code (cc 74–76) to advise of the rerouting of an A3__ (Passing Order), or A4__ (Referral Order).
AS1	Shipment Status	For requisitioner (cols 30–35).
AS2	Shipment Status	For supplementary addressee (cols 45–50).
AK1	Followup on Cancellation Request.	By requisitioner (cols 30–35).
AK2	Followup on Cancellation Request.	By supplementary addressee (cols 45–50).
AK3	Followup on Cancellation Request (Process as cancellation if original cancellation not received).	By cc 54.
AM1	Requisition Modifier.	For overseas shipment/with NSN/NATO Stock Number.
AM2	Requisition Modifier.	For overseas shipment/with Part Number.
AM4	Requisition Modifier.	For overseas shipment/with other.[2]
AM5	Requisition Modifier.	For overseas shipment/with exception data.
AMA	Requisition Modifier.	For domestic shipment/with NSN/NATO Stock Number.
AMB	Requisition Modifier.	For domestic shipment/with Part Number.
AMD	Requisition Modifier.	For domestic shipment/with other.[2]
AME	Requisition Modifier.	For domestic shipment/with exception data.
ATA	Followup (Process as Stock Number. Requisition if original Requisition not received).	For domestic shipment/with NSN/NATO Stock Number.
ATB	Followup (Process as Requisition if original Requisition not received).	For domestic shipment/with Part Number.
ATD	Followup (Process as Requisition if original Requisition not received).	For domestic shipment/with other.
ATE	Followup (Process as Requisition if original Requisition not received).	For domestic shipment/with exception data.
AT1	Followup (Process as Requisition if original Requisition not received).	For overseas shipment/with NSN/NATO Stock Number.
AT2	Followup (Process as Requisition if original Requisition not received).	For overseas shipment/with Part Number.
AT4	Followup (Process as Requisition if original Requisition not received).	For overseas shipment/with other.
AT5	Followup (Process as Requisition if original Requisition not received).	For overseas shipment/with exception data.
AU1	Reply to cancellation request–shipment status.	To requisitioner (cols 30–35).
AU2	Reply to cancellation request–shipment status.	To supplementary addressee (cols 45–50).
AU3	Reply to Cancellation request–shipment status.	To cc 54.

[1] Processing activity will, by screening of documents, ascertain whether requisition or passing action contains a National Stock Number or other Part Number or NATO Stock Number. If data can be acted upon without need for further passing actions, the digit in column 3 shall be changed to correspond with correct National Stock Number, Part Number or NATO Stock Number.

[2] For use when requisition or related document contains other National Stock Number, Part Number, or NATO Stock Number (i.e., Plant Equipment Code (PEC) No., DoD Ammunition Number, etc.).

H–603 Stock number entries (rules for entry).

H–603.1 National stock number.

(a) When a 13-digit National Stock Number is applicable:

(1) The Federal Supply Class (FSC) shall be entered in columns 8 through 11, and

(2) The National Item Identification Number (NIIN) shall be entered in columns 12 through 20.

Example:

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
8	3	2	0	0	0	1	2	3	1	2	3	4		

Blank

Military Departments cognizance symbols, stratification codes, fraction symbols, condition codes, etc., are never to be entered in columns 8 through 20.

(b) When codes are required in addition to the National Stock Number to properly identify the item and these codes are recognizable to the initial processing inventory manager or depot, these codes shall be entered in columns 21 through 22. If less than two digits, entry shall be made in column 21.

Example:

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
8	3	2	0	0	0	1	2	3	1	2	3	4	1	

Blank

or

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
1	5	6	0	0	0	1	2	3	1	2	3	4	A	B

H–603.2. NATO stock number.

When a 13-digit NATO Stock Number is applicable:

(a) The NATO Supply Class (FSC) shall be entered in columns 8 through 11,

(b) The two-digit NATO Country Code shall be entered in columns 12 and 13, and

(c) The seven-digit NATO Identification Number (NIIN) shall be entered in columns 14 through 20.

Example:

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
5	3	4	0	0	0	1	2	3	1	2	3	4		

Blank

H–603.3 Manufacturer's part number.

(a) When a manufacturer's part number is applicable, the manufacturer's identity code (Federal Supply Code for Manufacturers) shall be entered in columns 8 through 12. Entry shall commence in column 8 and progress to the right. Spaces not required shall be left blank.

(b) The manufacturer's part number, if 10 digits or less, shall be entered in columns 13 through 22 progressing from left to right, with unrequired spaces, if any, left blank.

(c) When a manufacturer's part number exceeds 10 digits, the entire manufacturer's code and part number shall be entered in the "Remarks" space and properly identified. The construction of part numbers will conform to the requirements of the DIDS Procedures Manual (DoD 4100.39–M).

(d) If a stock number or manufacturer's part number is not known but a description or publication reference is available to adequately identify the item, and such reference is meaningful to the processing point, the Stock or Part Number Field shall be left blank and the descriptive or reference data shall be entered in the "Remarks" space.

H–603.4 Other numbers.

When other than a National Stock Number, part number, or NATO Stock Number is applicable (i.e., a Plant Equipment Code (PEC), DoD Ammunition Number, locally assigned number, etc.), the following rules apply:

(a) If 15 digits or less, it shall commence in column 8 and progress to the right, with unused spaces left blank.

Examples:

(Less than Fifteen digits)														
8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
1	2	3	4	5	6	7	8	9	1	2	3			
														Blank
(Fifteen digits)														
8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
1	2	3	4	5	6	7	8	9	1	2	3	4	5	6

(b) If 16 digits or more, the entire number shall be entered in the "Remarks" space.

H–603.5 Additional rules.

Column 3 of the document identifier code (see H–602) is significant to the type of number entered in columns 8 through 22, as follows:

(a) Any requisition containing a National Stock Number/NATO Stock Number, irrespective of additional codes in columns 21 and 22, must have a "1" (for overseas shipment) or an "A" (for domestic shipment) entered therein unless additional data is contained in the "Remarks" space.

(b) Any requisition containing a part number must contain a "2" or "B" unless additional data is entered in the "Remarks" space;

(c) Any requisition containing a Plant Equipment Code (PEC), DoD Ammunition Number, or locally assigned number, etc., must contain a "4" or "D" unless additional data is entered in the "Remarks" space.

When additional data are entered in the "Remarks" space, regardless of the content of any columns of the requisition (including columns 8 through 22), column 3 must contain a "5" or "E" and the requisition must not be transceived. When these requisitions are mailed, the envelopes will be conspicuously marked "MILSTRIP EXCEPTION DATA REQUISITIONS".

H–604 Document number entries.

H–604.1 General.

These instructions for document number entries are applicable to both requisitions and turn-ins for columns 30 through 43—manual requisition (DD Form 1348), mechanized requisitions (DD Form 1348m).

H–604.2 Composition.

The document number is a non-duplicative number throughout the MILSTRIP system and is constructed of four basic elements as follows:

(a) Service (column 30),

(b) Requisitioner/shipping contractor address (columns 31 through 35),

(c) Julian date (columns 36 through 39), and

(d) Serial number (columns 40 through 43).

Example:

Service	Requisitioner/shipping contractor					Julian date				Serial number			
30	31	32	33	34	35	36	37	38	39	40	41	42	43

H–604.3 Entries.

(a) The entry in column 30 (service) always shall be the appropriate character from H–601 that indicates the service or other governmental element ownership or sponsorship.

(b) For requisitions, the entry in columns 31 through 35 indicates the activity address code of the requisitioner. It may also indicate the intended consignee or ship to address. (See H–605.) For turn-ins, the entry in columns 31 through 35 indicates the activity address code of the contractor making the turn-in. Activity address codes are published in the DoD Activity Address Directory. (See H–210.)

(c) Entries in columns 36 through 39 (date) shall always be numeric and will be the date of transmittal from the requisitioning activity to the appropriate supply source as follows:

(1) Column 36 shall indicate the last numeric digit of the calendar year in which the document was transmitted. For example, "5" for 1975, "6" for 1976, etc.; and

(2) Columns 37 through 39 shall indicate the numeric consecutive day of the calendar year on which the document was transmitted. For example, "063" for 4 March. (See Julian day calendar in H–609.)

(d) Entries in columns 40 through 43 may be numeric or alphabetic characters to indicate the serial number of the document and may be assigned at the discretion of the document originator. The serial number shall not be duplicated on the same day. The use of alphabetic characters can serve to provide for block assignment by Service/Agency designated activities. The following alphabetic codes have been reserved for use in column 40 as indicated:

Code	Explanation
J	To identify requisitions resulting from interogations of the Interrrogation Requirements Information System (see DoD 4160.21–M).
K	To identify requisitions submitted to DPDS, DPDO, or GSA for excess property located at a DPDO that is requested as a result of reviewing manual screening lists, e.g., Excess Personal Property Lists (EPPL), GSA Regional Catalog listings.
L	To identify requisitions submitted at DPDOs which result from physical screening of property at the DPDO. This type of screening is referred to as "Local Area, Screening" without any consideration of the distance traveled by the screener.
M	To identify contractor initiated requisitions for Government Furnished Material (GFM) to support commercially performed maintenance contracts.
N	Reserved.
P	Reserved.
Q	Reserved.
R	To identify requisitions submitted to DPDS/DPDOs from Inventory Control Points or Integrated Materiel Managers based on a final asset screening notice of surplus personal property.
S	To identify requisitions submitted to DPDS/DPDOs from Inventory Control Points or Integrated Materiel Managers based on a Front End Screening notice of excess personal property.
T	Reserved.
U	Reserved.
Y	To identify Marine Corps ownership of materiel applicable to Contractor Inventory Utilization Group (CIUG) Procedures.

(e) *Air Force transactions.*

(1) For requisitions in support of Air Force maintenance (repair, modification, PDM) contracts and for turn-in of GFM, the contractor's activity address code (EZ number) as published in Section 3 of the DoD Activity Address Directory shall be entered in columns 30 through 35 (blocks 9 and 10—manual) of the requisition or columns 30 through 35 of the turn-in document.

(2) An EY number shall be used when the materiel being turned in was received in support of any other type contract such as production or research and development.

(3) The procuring activity shall request Headquarters Air Force Logistics Command (LOZMS) to assign EY and EZ activity address codes when such codes are not included in the DoD Activity Address Directory (DoD 4000.25–D). Requests shall indicate the specific code needed.

(4) The Contract Administration Office (CAO) shall advise Headquarters Air Force Logistics Command (LOZMS) of all required changes to EY or EZ activity address codes (e.g., contractor name changes and mail or freight addresses). The CAO shall also promptly notify HQ AFLC/LOZMS of EY or EZ activity address codes for cancellation actions when the contractor no longer has Air Force contracts.

H-605 Signal codes (column 51).

H-605.1 General.

The purpose of the signal code is two-fold in that it designates the fields containing the intended consignee (ship to) and the activity to receive and effect payment of bills, when applicable. All requisitions and documents resulting therefrom used under MILSTRIP shall contain the appropriate signal code.

H-605.2 Coding structure and meaning.

(a) When the materiel is to be shipped to the activity indicated in cblumns 30 through 35 (requisitioner), the signal code shall be as follows:

(1) Code "A"—Bill to the activity in columns 30 through 35.

(2) Code "B"—Bill to the activity in columns 45 through 50.

(3) Code "C"—Bill to activity designated by column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. (See H-606.)

(4) Code "D"—No billing required (free issue). Not to be used on requisitions submitted to General Services Administration.

(b) When the materiel is to be shipped to the activity indicated in columns 45 through 50 (supplementary address), the signal code shall be as follows:

(1) Code "J"—Bill to the activity in columns 30 through 35.

(2) Code "K"—Bill to the activity in columns 45 through 50.

(3) Code "L"—Bill to activity designated by column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. (See H-606.)

(4) Code "M"—No billing required (free issue). Not to be used on requisitions submitted to General Services Administration.

H-606 Fund codes (columns 52 and 53).

H-606.1 General.

(a) The fund code is provided for the specific use of the requisitioner, when directed by the Military Department to enter a code that will indicate, to the distribution system, that funds are available to pay the charge when and where received. In addition, this fund code will be perpetuated by the distribution system in all follow-on documentation. The fund code construction is the responsibility of the appropriate Military Department.

(b) A secondary use for the fund code field has been provided when the signal code in column 51 (see H-605) is "C" or "L", to indicate the activity that is to be billed. When the signal code (column 51) is "C" or "L", the first position (column 52) of the fund code shall contain an alphabetic character which will indicate the activity to receive the bill.

(c) When the third position of the document identifier (column 3 is "5" or "E" and column 51 is "C" or "L", the information in the "Remarks" field may indicate other billing information.

(d) Requisitions submitted to Defense Supply Centers, other Departments, and the General Services Administration, shall always contain a fund code, unless the materiel requested has been offered without a reimbursement, in which case the signal code (column 51) will be "D" or "M" (free issue) and the fund code field shall be blank. The submission of a MILSTRIP requisition citing a fund code constitutes sufficient authority for release of materiel and subsequent billing therefor. The billing activity shall always perpetuate the fund code cited on the requisition.

(e) Intra-Service requisitions (transactions other than (d) above) may or may not require entries in the fund code field dependent upon the Department regulations.

(f) Service use of fund code with signal code "C" or "L" in column 51 will be as follows:

(1) Air Force—in accordance with H-606.2;

(2) Army—not applicable;

(3) Navy—not applicable;

(4) Marine Corps—not applicable; and

(5) Defense Logistics Agency—not applicable.

(g) Fund code entries are required in turn-in documents for Government-Furnished Materiel prepared by Army contractors. These entries will be as directed by the contracting officer. Fund code entries are required in turn-in documents prepared by other service contractors only when specifically requested by the contracting officer. In such cases, the contracting officer will provide the fund code to be used.

H-606.2 Air Force entries in fund code (columns 52 and 53).

(a) Air Force contractor activities, when directed by that Department, submitting requisitions to Defense Supply Centers, other Departments, and the General Services Administration for base funded items, shall enter a two-digit fund code in which the first position (column 52) shall always be a numeric (used with signal codes "A", "B", "J", and "K" in column 51).

(b) Air Force contractor activities submitting requisitions to Air Force depots, when funding is not a condition of requisitioning, shall leave columns 52 and 53 blank (used with signal codes "D" and "M" in column 51).

(c) Air Force inventory managers, when passing requisitions for centrally funded items to Defense Supply Centers, other Departments, and the General Services Administration shall enter a two-digit fund code in which the first position (column 52) shall always be the appropriate alphabetic character, as listed below, identifying the depot obligating the funds and to effect payment (used with signal codes "C" and "L" in column 51).

Code	Activity
AF	Acctg Disb Sta Nr 595600.
AN	ASD/ACF.
AW	WPAFB, OH 45433.
BN	Acctg Disb Sta Nr 669800.
BW	AFFTC/ACF, Edwards AFB, CA 93523.
CC	Acctg Disb Sta Nr 678100.
CN	ESD/ACF.
CW	Hanscom AFB, MA 01731.
DB	Acctg Disb Sta Nr 679200.
DW	USAFA/ACF, USAF Academy, CO 80840.
EM	Acctg Disb Sta Nr 662400.
EN	ESMC/ACF.
EW	Patrick AFB, FL 32925.
FF FM FU	Acctg Disb Sta Nr 503200.
FJ FN FW	2852 ABG/ACF.
FK FR	McClellan AFB, CA 95652.
GF GM GW	Acctg Disb Sta Nr 504400.
GJ GR	2849 ABG/ACF.
GK GU	Hill AFB, UT 84056.
HF HM	Acctg Disb Sta Nr 503100.
HJ HR	2854 ABG/ACF.
HK HW	Tinker AFB, OK 73145.
LF LM	Acctg Disb Sta Nr 503300.
LJ LR	2853 ABG/ACF.
LK LW	Robins AFB, GA 31098.
MM	Acctg Disb Sta Nr 503600.
MN	63 MAW/ACF.
MW	Norton AFB, CA 92409.
NM NW	Acctg Disb Sta Nr 503000.
NS	2750 ABG/ACF.
NU	WPAFB, OH 45433.
PF PM PU	Acctg Disb Sta Nr 504300.
PJ PN PW	2851 ABG/ACF.
PK PR	Kelly AFB, TX 78241.
RM	Acctg Disb Sta Nr 662300.
RW	1606 ABW/ACF, Kirtland AFB, NM 87117.
SN	Acctg Disb Sta Nr 667300.
SW	AEDC/ACF, Arnold AFS, TN 37389.
TM	Acctg Disb Sta Nr 594100.
TN	4392 AEROSG/ACF.
TW	Vandenberg AFB, CA 93437.
UN	Acctg Disb Sta Nr 528500.
UW	6570 ABG/ACF, Brooks AFB, TX 78235.
VN	Acctg Disb Sta Nr 527900.
VW	AD/ACF, Eglin AFB, FL 32542.
WN	Acctg Disb Sta Nr 503900.
WW	416 BMW/ACF, Griffiss AFB, NY 13441. Acctg Disb Sta Nr 599100. 2803 ABG/ACF, Newark AFS, OH 43055.
YF YN	Acctg Disb Sta Nr 594200.
YJ YW	SD/ACF.
YK	Los Angeles AFS, CA 90009.
3L	AFAFC/SAAC.
3M	ATTN: FSRS, Denver, CO 80279.

H-607 Advice and status codes (columns 65 and 66).

H-607.1 General.

(a) The advice/status field is of dual use and its application and the coding structures are dependent upon the directional flow of the documents.

(b) Advice codes (see H-607.2) are numeric/alphabetic and flow from requisition originators to initial processing points and are thereafter perpetuated into passing actions and Release/Receipt documents. The purpose of advice codes is to provide coded instructions to supply sources when such data are considered essential to supply action and entry in narrative form is not feasible.

(c) Status codes (see H-607.3) are alphabetic/alphabetic and alphabetic/numeric and flow from supply sources to requisitioners or consignees and inform recipients of the status of requisitions.

H-607.2 Advice codes—numeric/alphabetic.

(From Requisitioner to Initial Processing Point)

(a) General Codes.

Columns		
65	66	
2	A	Item is not locally obtainable through manufacture, fabrication or procurement.
2	B	Requested item only will suffice. Do not substitute/interchange. Also applies to "Obsolete"/"Inactivated" items previously rejected with Status Code CJ.

Columns 65	66	
2	C	Do not back-order. Reject any unfilled quantity not available to meet SDD/RDD. Suitable substitute acceptable.
2	D	Furnish exact quantity requested (i.e., do not adjust to unit pack quantity).
2	F	Free issue. Stock lists or other publications offer this materiel without reimbursement (to be used with signal codes D or M on interservice requisitions).
2	F	Item known to be coded "Obsolete" but still required for immediate consumption. Service coordinated/approved substitute is acceptable. If unable to procure, reject requisition with Status Code CJ.
2	G	Multiple use: (1) Ship new stocks or stocks having new appearance; (2) Strategic mission requires latest model and configuration (for electronic tubes); (3) Strategic mission requires newest stock only (for photographic film or for aerial requirements for ammunition devices or cartridges); (4) Anticipated usage requires latest expiration dates only (for biologicals).
2	H	Special textile requirement for use in Airborne operations where personal safety is involved.
2	J	Do not substitute or back-order any unfilled quantities.
2	K	Item being requisitioned from Continental United States pursuant to the balance of payments program (to be used only by overseas requisitioner).
2	L	Quantity reflected in quantity field exceeds normal demands; however, this is a confirmed valid requirement.
2	N	Item required in one continuous length as expressed in cc 25–29 and unit of issued in cc 23–24. No other configuration is acceptable and/or multiples of the unit pack are not acceptable.
2	P	Item required in one continuous length as expressed in card columns 25–29 and the Unit of Issue in card columns 23–24. If requirements exceed the unit pack lengths, multiples of the unit pack are acceptable.
2	T	Deliver to the ultimate consignee by the SDD or RDD entered hereon or cancel requirement.
2	W	This requisition is substituted for free issue of assets above the Approved Force Acquisition Objective on a fill or kill basis (applicable to MAP/MASF requisitions only).
3	A	This requisition is for assets located in the DPDO activities, as advertised by DPDS for which the requisitioner desires to inspect materiel prior to shipment. Fill or kill. Use of this code is limited to requisitions with J, K, L, R, or S in cc 40.
3	B	Item being requisitioned has been designated as commercial-type item. Unable to obtain item from commercial sources. Request supply of requisitioned quantity be accomplished against the FMS case reflected in cc 48–50.
3	C	The item required is in FSC 5510 (Lumber and Related Basic Wood Materiels) and the end-use application is for high appearance, cabinetry, furniture. Lumber grades associated with this application are B and better, C and better, D and better.
3	D	The item required is in FSC 5510 (Lumber and Related Basic Wood Materiels) and the end-use application is for structural light framing. Lumber grades associated with this application are #1, #2, #3, and Select Structural.
3	E	The item required is in FSC 5510 (Lumber and Related Basic Wood Materiels) and the end-use application is for light framing. Lumber grades associated with this application are Construction, Standard, Economy, and Utility.
3	F	The item required is in FSC 5510 (Lumber and Related Basic Wood Materiels) and the end-use application is for crating, boxing, dunnage, blocking, or bracing. Lumber grades associated with this application are #2, #3, Standard, Economy Common, and Utility.
3	G	The item required is in FSC 5510 (Lumber and Related Basic Wood Materiels) and the end-use application is for beams, stringers and timbers. Lumber grades associated with this application are #1, #2, and Select Structural.
3	H	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application is for appearance of both sides relative to cabinets, signs, and built-ins. The plywood grade associated with this application is A-A Interior.
3	J	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application is for appearance of one side relative to cabinets, signs, partitions and fences. The plywood grades associated with this application are A-B Interior and Exterior.
3	K	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application is for appearance of one side relative exterior structures, gable ends and bulletins. The plywood grades associated with this application are A-C Exterior.
3	L	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application only one side will show relative to wall paneling, ceiling, displays, and partitions. The plywood grades associated with this application are A-D Interior.
3	M	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application is relative to concrete forms, good face for paintability, counter, and table tops. The plywood grades associated with this application are B-B and B-C Exterior, B-D Interior, and B-B HDO.
3	N	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application is relative to outside construction, pallets, crates, subflooring, siding, roof decking, wall and floor sheathing, target ranges, and containers. The plywood grades associated with this application are C-C Exterior, C-D Interior, and CDX.
3	P	The item required is in FSC 5510 or 5530 and because of the single purpose use of the item, identification of the end-use application is not necessary. Examples within FSC 5510 are all hardwood items, poles, pilings, crossarms, ties, decking, ship lumber, molding, stripping, stepping, scaffold plank, vehicle lumber, wedges, posts, stakes, plugs, laths, dowels, and logs. Examples within FSC 5530 are all treated, fire retardant, boat and ship construction, hardwood, aircraft flatpanel and veneer items.
		EXCESS TRANSACTION ADVICE CODES
3	T	Document has been edited by DAAS. Records indicate that NSN is correct and that the activity identified in cc 4-6 is the managing ICP/IMM.

(b) *Air Force Transactions only.*

Columns 65	66	
6	A	Request for shipment of Reparable Materiel, FILL or KILL.
6	B	Request for shipment of TOC Materiel, FILL or KILL.

H–607.3 Status codes.

Alphabetic/Alphabetic and Alphabetic/Numeric, From Processing Point to Authorized Activity.

(a) *Supply status.* Supply status advises requisitioners and other designated status recipients of on-time shipments, delays, or rejection of specific requisitions. Latest status can be determined by "transaction dates" entered in columns 71 through 73. Supply status codes are as follows:

Columns 65	66	
B	A	Item being processed for release and shipment. The estimated shipping date is contained in card columns 70–73 when provided in response to a follow-up.
B	B	Item backordered against a due-in stock. The estimated shipping date for release of materiel to the customer is contained in columns 70 through 73.
B	C	Item on original requisition containing this document number has been backordered. Long delay is anticipated and estimated shipping date is in columns 70–73. Item identified in stock number field (or "Remarks" field if stock number field cannot accommodate the item number), which is not an automatic/coordinated substitute, can be furnished. The price for the substitute item is in columns 74–80. If desired, submit cancellation for original requisition and submit a new requisition for the offered substitute.
B	D	Requisition is delayed due to need to verify requirement relative to authorized application, item identification, technical data, or when the intent to procure for direct delivery is known. When the intent is to place the requirement on direct delivery, the estimated shipping date will be entered in card columns 70–73. Upon completion of review or procurement, additional status will be provided to indicate action taken.
B	E	Depot/storage activity has a record of the MRO but no supporting transaction/record of the action taken (Depot/storage activity response to ICP request for MRO status, for use with DI code AE6 only).
B	F	No record of your document for which your DI code AF _ followup or cancellation request was submitted. (1) If received in response to a cancellation request, subsequently received requisitions (AO_) or other documents (AM _, AT_) will be returned by the supply source with BF status. Deobligate funds and, if then still required, submit requisition using new document number.[1][2] (2) If received in response to a followup (AF_) request, supply source action to process subsequently received documents (AQ_, AM _, AT_) will continue under regular MILSTRIP procedures. (3) If received in response to DI codes AFX/AFZ followups from DPDS, used by shipping activities to indicate that no shipment had actually been made or that no record of shipment could be located.
B	G	One or more of the following fields have been changed: (1) Stock Number (as the result of a formal catalog change). (A) Requisitioned NSN has been replaced by or consolidated with NSN in stock number field. (B) NSN is assigned to part number that was requisitioned. (C) FSC has changed but NIIN remains the same as originally requisitioned. Review NSN (FSC & NIIN) to ensure that requisition under process is for desired item. If NSN is not for desired item, submit cancellation request to source of supply. (D) FSC has changed but NIIN remains the same as expressed in original transaction (applies to DoD MILSTRAP DZ9 status notification only). (2) Unit of Issue (as the result of a formal catalog change). (3) Requisitioned part number has been identified to/replaced by the part number reflected in the stock number field. Examine the quantity and unit process as a result of the above changes. Revise appropriate records accordingly. Additional status will be provided by the supply source to indicate further action on this requisition.

Columns 65	66	
B	H	Service/coordinated/approved substitute/interchangeable item, identified in stock number field will be supplied. Examine unit of issue, quantity and unit price fields for possible changes. Revise appropriate records accordingly. Additional status will be provided.
B	J	Quantity changed to conform to unit pack, adjust the due in records accordingly. Unit of issue is not changed.
B	L	Notice of Availability was forwarded to the country representative or freight forwarder on date entered in cc 70-73.
B	M	Your document is forwarded to activity indicated in card columns 67 through 69. Forward all future transactions for this document number to that activity (also applies to DoD MILSTRAP DZ9 status notifications).
B	N	Requisition being processed as free issue. Signal and fund code fields corrected as noted. Adjust local fund obligation records.
B	P	Item is on backorder or procurement for direct delivery. Shipping action will be delayed. Revised estimated shipping date is cc 70-73.
B	Q	Cancelled. Results from receipt of cancellation request from requisitioner, consignee, manager, or other authorized activity. Also applies to cancellations resulting from deletion of an activity from the DoDAAD. Deobligate funds, if applicable.
B	R	Cancelled. Requisitioning activity authorized cancellation in response to materiel obligation validation request furnished by processing point.
B	S	Cancelled. Requisitioning activity failed to respond to materiel obligation validation request from processing point.
B	U	Item being supplied against your Foreign Military Sales Case Designator reflected in cc 48-50, or your Grant Aid Program and Record Control Number reflected in cc 46-50. This document represents a duplicate of the requisition prepared by the U.S. Military Service.
B	V	Item procured and on contract for direct shipment to consignee. The contract shipping date is entered in columns 70-73. Cancellation, if requested, may result in billing for contract termination costs and/or transportation costs, if applicable.
B	W	Your FMS/Grant Aid requisition containing this document number has been received by the ILCO and submitted to the supply system. A current ESD is not presently available but will be provided by subsequent status transactions (may be used by ILCOs in acknowledging requisition receipt or in reply to followup when ESDs are not available).
B	X	Reserved for Air Force/DEPRA interface.
B	3	The RAD contained in the original requisition is unrealistic. The date in cc 70-73 is the date when materiel will be available.
B	4	Cancelled. Results from receipt of cancellation request from requisitioner, consignee, manager or other authorized activity. Do not deobligate funds. Billing for materiel or contract termination charges will be made.
B	5	The activity identified by the code in cc 4-6 is in receipt of your followup request. Action to determine current status and/or improve the ESD is being attempted. Further status will be furnished.
B	6	The materiel applicable to the requisition requested for cancellation has been diverted to an alternate consignee.
B	7	Unit price change. The lastest unit price for the item, identified by the stock or part number in columns 8-22, is reflected in columns 74-80.
B	8	Quantity requested for cancellation or diversion not accomplished.
B	9	The activity identified by the code in columns 4-6 is in receipt of your cancellation request. Action to cancel the demand or to divert the applicable shipment is being attempted. Do not deobligate funds or delete due-in. Advice of final action will be furnished in subsequent status transactions.

[1] Submit a new requisition using a new document number with a current Julian date.

[2] If requisition via submission of a new document number, submit cancellation request prior to fund deobligation to ensure against potential duplicate shipment.

(b) *Rejection codes.* All inter-service rejections shall contain "C" in column 65 followed by an alphabetic or numeric character in column 66 which shall furnish the appropriate "reason for rejection". Items rejected, if still required, shall be rerequisitioned using new document numbers. To preclude similar rejection, the requisitioner shall consider the reason for the previous rejection and correct or adequately elaborate on the new requisition. Rejection codes are as follows:

Columns 65	66	
C	A	Rejected. (1) Initial provisions of this status will be by narrative message. The message will also state the reasons for rejection. (2) When provided in response to a followup, this status will be sent via AUTODIN and no response for rejection will be included. When received in response to a followup, authorized status recipients may request the reasons for rejection offline (by mail, message, or telephone) if the initial narrative message containing the reasons for rejection cannot be located.
C	B	Rejected. Initial requisition requested rejection of that quantity not available for immediate release or not available by the SDD or RDD. Quantity field indicates quantity not filled.
C	C	Rejected. Applies only to requisitions containing National Stock Numbers (NSNs) for items within FSCs 5510 and 5530. One of the following reasons applies: (1) End-use application as indicated by unique wood products advice code is not compatible with the item ordered. (2) Advice code field contains other than a unique wood products advice code or is blank. Review NSN requisitioned to determine correct item required which is compatible with the intended end-use application and submit a new requisition. If it is determined that the original NSN requisition is correct and no unique wood product advice code applies, submit a new requisition using DD Form 1348 or SF 344 with DI Code A05 or AOE identifying species/grade required and/or end-use application.
C	D	Rejected. Unable to process because of errors in the quantity, date, serial number and/or signal code fields. (1) If received in response to a requisition and the materiel is still required, submit a new requisition with correct data field entries. (2) If received in response to a cancellation request and materiel is not required, submit a new cancellation request with a valid quantity entry.
C	E	Rejected. Unit of issue stated in original requisition, which is reflected in card columns 23-24 of this status document, does not agree with ICP unit of issue and cannot be converted. If still required, submit a new requisition with correct unit of issue and quantity.
C	G	Rejected. Unable to identify requested items. Submit a new requisition and furnish correct National Stock Number or part number. If correct NSN or part number is unknown or if part number is correct, submit a new requisition on DD Form 1348-6 furnishing as much data as is available. SF 344 may be submitted by authorized activities.
C	H	Rejected. Requisition submitted to incorrect single-manager/technical service/distribution depot or Management Control Activity (MCA) and correct source/MCA cannot be determined. Research for correct source/MCA and submit a new requisition.
C	J	Rejected. (1) Item coded (or being coded) "obsolete" or "inactivated". Item in stock number field, if different from item requisitioned, can be furnished as a substitute. Unit pack of the substitute item is in 74-80. (2) If offered substitute is desired, submit a new requisition with substitute item stock number. (3) If only original item is desired, submit a new requisition for procurement on DD Form 1348-6. SF 344 may be submitted by authorized activities. (See Appendix A of DoD Manual 4140.17-M.) Cite advice code 2B. Furnish technical data, e.g., end item usage, component, make, model, series, serial number, drawing, piece and/or part number, manual reference, applicable publication. (4) Rejected. DoD MILSTRAP DTA Asset Support Request submitted for obsolete/inactive NSN which cannot be supported. (Applies to DoD MILSTRAP DZG Transaction Rejects only.)
C	K	Rejected. Unable to procure. No substitute/interchangeable item is available. Returned for supply by local issue of next higher assembly, kit, or components. Suggest fabrication or cannibalization. If not available, submit a new requisition for next higher assembly, kit, or components.
C	L	Rejected. Contractor requisition containing an "M" in cc 40 is to be processed initially by a Management Control Activity (MCA). Requisition entries indicate direct submission. Research for correct MCA and submit a new requisition.
C	M	Rejected. Fund obligation not cited and/or item is not or no longer free issue. Submit new funded requisition.
C	P	Rejected. Source of supply is local manufacturer, fabrication, procurement, or direct ordering from Federal Supply Schedule. If no available locally, or activity lacks procurement authority, submit a new requisition with Advice Code 2A.
C	R	Rejected. (1) Item requested is command or service regulated or controlled. Submit a new requisition through appropriate channels. (2) Requisition is for a controlled substance/item and "Ship To" address is not authorized recipient as designated by parent Service/Agency headquarters. (3) Requisition is for Government-Furnished Materiel (CFM) and— (A) Item is not authorized by terms of contract; (B) Contractor is not authorized to requisition GFM; (C) Contract identified in requisition is not registered at MCA.
C	S	Rejected. Quantity requisitioned is suspect of error or indicates excessive quantity. Partial quantity being supplied. Quantity field in this transaction reflects quantity rejected. If requirement still exists, submit a new requisition for the required quantity using Advice Code 2L.
C	V	Rejected. Item prematurely requisitioned. The effective date for requisitioning is contained in Card Columns 70-73.
C	W	Rejected. Item not available or is a nonmailable item whose transportation costs are uneconomical. Local procurement is authorized for this requisition only. If item cannot be locally procured, submit new requisition using Advice Code 2A.
C	X	Rejected. Unable to identify the "bill to" and/or "ship to" address as designated by the signal code or the signal code is invalid. If still required, submit a new requisition with valid data field entries.
C	Z	Rejected. Subsistence item not available for resale. Reserved for troop issue only.
C	1	For subsistence only. Rejected. Requested item is not available nationally. Do not requisition this item until advised by the activity identified in card column 4-6.
C	2	Rejected. International Logistics Program funds are not available to process this requisition. (This code will be used between ILCO and requisitions only.)

Columns 65	66	
C	3	Rejected. Applies to subsistence only. Vendor cannot make delivery during shipping period.
C	4	Rejected. Applies only to subsistence. Item is seasonal and not available for delivery during current shipping period.
C	5	Rejected. Requisitioner, upon inspection of materiel located in the DPDO activity, rejected acceptance due to condition of materiel/unacceptable substitute and/or materiel incorrectly identified. This status code is generated by the DPDO and furnished to the appropriate status recipients.
C	6	Rejected. Requisition is for commercial type item which is not authorized for supply under the Foreign Military Sales program. If unable to obtain desired item from commercial sources, submit a new requisition containing Advice Code 3B.
C	7	Rejected. Document identifier code indicates this is a remarks/exception data document. Supply source has no record of receipt of remarks/exception data. If still required, submit a new requisition.
C	8	Rejected. Vendor will not accept order for quantity less than the quantity indicated in cc 76–80. If requirement still exists, submit a new requisition for a quantity that is not less than that reflected in cc 76–80.
C	9	Rejected. Applies only to subsistence. Quantity in cc 25–29 cancelled due to nonavailability during shipping period. If required in subsequent shipping period, submit a new requisition.
D	2	Rejected. Item requested is brand name resale and is in short supply.
D	3	Rejected. Activity did not respond to supply source request for additional information.
D	4	Cancelled. Applies only to subsistence items. Quantity in cc 25–29 cancelled. Your requisition quantity, together with all other requisitions received this cycle for the specified port or depot, does not meet the contractor's minimum order quantity.

(c) Air force Transactions only.

Columns 65	66	
F	A	Obligation authority for base procurement (used to indicate that the requisitioning activity is authorized to make local procurement of items for which Air Force Logistics Command has procurement responsibility). Central procurement funds will be made available to the requisitioning activity on an obligation authority. Not applicable from CONUS to overseas activities.
F	B	Back order cancelled. Report of serviceable excess received for item currently on back order.
F	C	Passing action (materiel release order or redistribution order) issued over 60 days ago. Air Logistics Center followup action has not resulted in shipment confirmation or denial. If item is still required, requisition using new document number.
F	D	Rejected. Contractor's requisitioning authorizations has been totally suspended or suspended for the specific contract number cited on the requisition document. To be used when the dollar requisitioning authorization on a specific contract or contracts has been or is about to be exceeded. Excludes valid, MICAP Mission Capable requisitions from contractors.
F	E	Rejected. Contractor's requisition (EZ in columns 30–31) containing "R" in column 53 (fund code) does not contain contract number identification or vaild "EZ" stock record account number other than the requisitioner in the supplemental address field (columns 45–50); or does not contain valid ALC code in column 52; or does not contain signal code "C" or "L" in column 51. Rerequisition using new document number, and citing valid data in columns 45–50, and columns 51–53.
F	F	Rejected. Item is stock listed as nonpub and not authorized for requisition, stockage, or issue. If a need exists for the specific items only, manually rerequisition, providing full justification for reactivation of the item and anticipated usage data.
F	G	Rejected. Item is not authorized for requisitioning by AF activities in any published or computer disseminated stock number list. Research for keypunch or transmission errors. If the stock number is correct and the need for the item still exists, manually rerequisition providing data concerning source of the stock number and full anticipated usage data.
F	K	Cancelled. Requisitioning activity failed to reply to request and subsequent followup for additional information necessary for processing requisition.
F	L	Rejected. Insurance item. Not authorized for stock. If required, rerequisition giving complete justification.
F	M	Rejected. Depot overhaul item. If required, rerequisition giving complete justification. Mechanically assigned to an unauthorized activity requisition for depot overhaul item (maintenance code "3").
F	N	Replacement type item. Review for appropriate authorization. If EAID requirement exists, rerequisition using appropriate advice code.
F	O	Incomplete or invaild technical order figure and index number (rerequisition "A02/B" or "A05/E" as required) or end item identification.
F	P	Item requested is used on end item—Command supported.
F	Q	Change in fund and/or signal code. Requisition routed as necessary to correct SOS. Requisitions which are corrected and rerouted by DAAS will be identified by D/I "AE9". Status passed by the ALC will reflect D/I "AE1", "AE2". Where both a fund code change and passing action is indicated by an ALC and NSS has been found on which the Air Force is not a recorded user. The NSN found has been screened for technical adequacy for AF applications and may be used on future requisitions in lieu of the part number originally submitted. Action is being initiated to record the Air Force as a user on the NSN. Appropriate changes have been made in columns 51, 52–53, and 67–69. Update all records accordingly; applicable only to fund codes "6H" and "6C".
F	R	Cancelled. Invalid MICAP requirement. Not reported in RCS: HAF-LEY(AR)7113, Aerospace Vehicles and Selected Items of Equipment MICAP.
F	U	Rejected. Item not procured for stock (applied to items with provisioning source code U, X, X1, X1D, 2X2, or X2d). If the item assigned provisioning source code (PSC) entered in cc 67–69 is believed to be in error, resubmit requisition (DD Form 1348–6) with justification for change of PSC code. If PSC is correct, requisition next higher assembly, if not available. NOTE: Definitions and actions for provisioning source codes are in chapter 17, attachment P–2A of DoD Manual 4140.17–M. (REX code 1 assigned.) Refer to MGT F452.
F	W	Report as work stoppage with Appendix B (DoD Manual 4140.17–M) (reparable contractor only).
F	X	Parts required to make assembly are listed in technical orders. If component parts are not available, rerequisition required parts accordingly.
F	Y	Reference number requisitioned has been related to another reference number with assigned NSN not AF used. AFLC IM has initiated adopt action, taken action to update CRL–1, and revise DAAS routing identifier. If support is still required, rerequisition using NSN reflected in columns 8–22.

Note.—Alternate for status code "FX".

H–608 Supplementary address entries.

(Columns 45 through 50)

H–608.1 General.

The supplementary address is a two-part field to indicate:

(a) Service (column 45), and

(b) Activity address code (columns 46 through 50).

Example:

Service	Activity address code				
45	46	47	48	49	50

H–608.2 Entries.

(a) The entry in column 45 (service) shall always be the appropriate character from H–601 that indicates the service or other Government element ownership or sponsorship. Specific alphabetic characters are prescribed for normal requisitioning and shipping and for contractor's use.

(b) Entries in columns 46 through 50 indicate the specific activity address code for the purpose of receiving material or receiving documentation. The activity address code will be established and disseminated in the DoD Activity Address Directory. Each activity address code so established will contain the address(es) in detail to permit shipping or material, billing for material, and mailing of documentation.

(c) When the originator of the document desires to utilize columns 46 through 50 for other data, the entry will not be significant to other than the originator. In these cases, an alpha "Y" shall be entered in column 45. The alpha "Y" indicates that the contents of the field (columns 46 through 50) are not significant to the MILSTRIP system and shall not be disseminated, but will be perpetuated and shown on subsequent document generated therefrom.

H–609 Julian day calendar.

JULIAN DAY CALENDAR

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	32	60	91	121	152	182	213	244	274	305	335
2	33	61	92	122	153	183	214	245	275	306	336
3	34	62	93	123	154	184	215	246	276	307	337
4	35	63	94	124	155	185	216	247	277	308	338
5	36	64	95	125	156	186	217	248	278	309	339
6	37	65	96	126	157	187	218	249	279	310	340
7	38	66	97	127	158	188	219	250	280	311	341
8	39	67	98	128	159	189	220	251	281	312	342
9	40	68	99	129	160	190	221	252	282	313	343

JULIAN DAY CALENDAR—Continued

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
10	41	69	100	130	161	191	222	253	283	314	344
11	42	70	101	131	162	192	223	254	284	315	345
12	43	71	102	132	163	193	224	255	285	316	346
13	44	72	103	133	164	194	225	256	286	317	347
14	45	73	104	134	165	195	226	257	287	318	348
15	46	74	105	135	166	196	227	258	288	319	349
16	47	75	106	136	167	197	228	259	289	320	350
17	48	76	107	137	168	198	229	260	290	321	351
18	49	77	108	138	169	199	230	261	291	322	352
19	50	78	109	139	170	200	231	262	292	323	353
20	51	79	110	140	171	201	232	263	293	324	354
21	52	80	111	141	172	202	233	264	294	325	355
22	53	81	112	142	173	203	234	265	295	326	356
23	54	82	113	143	174	204	235	266	296	327	357
24	55	83	114	144	175	205	236	267	297	328	358
25	56	84	115	145	176	206	237	268	298	329	359
26	57	85	116	146	177	207	238	269	299	330	360
27	58	86	117	147	178	208	239	270	300	331	361
28	59	87	118	148	179	209	240	271	301	332	362
29		88	119	149	180	210	241	272	302	333	363
30		89	120	150	181	211	242	273	303	334	364
31		90		151		212	243		304		365

For leap year, add one to each date after 28 February.

H-610 Mode/method of shipment codes.

Code	Description
A	Motor, truckload.
B	Motor, less than truckload.
C	Van (unpacked, uncrated personal or Government property).
D	Driveaway, truckaway, towaway.
E	Bus.
F	Military Airlift Command (MAC) (Channel and Special Assignment Airlift Mission).
G	Surface parcel post.
H	Air parcel post.
I	Government trucks, for shipment outside local delivery area.
J	Air, small package carrier.
K	Rail, carload.[1]
L	Rail, less than carload.[1]
M	Surface, freight forwarder.
N	LOGAIR.
O	Organic military air (including aircraft of foreign governments).
P	Through Government Bill of Lading (TGBL).
Q	Commercial air freight (includes regular and expedited service provided by major airlines; charters and air taxis).
R	Reserved for future use.
S	Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service).
T	Air freight forwarder.
U	QUICKTRANS.
V	SEAVAN.
W	Water, river, lake, coastal (commercial).
X	Bearer, walk-thru (customer pickup of materiel).
Y	Military Intratheater Airlift Service.
Z	Military Sealift Command (MSC) (controlled contract or arranged space).
2	Government watercraft, barge, lighter.
3	Roll On/Roll Off (RORO) service.
4	Armed Forces Courier Service (ARFCOS).
5	Surface, small package carrier.
6	Military official mail (MOM).
7	Express mail.
8	Pipeline.
9	Local delivery by government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers' tariffs which are filed and approved by regulatory authorities.

[1] Includes trailer/container-on-flat-car (excluding SEAVAN).

H-611 Supply status card entries.

The supply status card is used to furnish exception status and 100% supply status as follows:

Field/Legend	Columns	Explanation of Entries
Document identifier	1-3	The appropriate code applicable to supply status, to include the recipient of the status. (See H-602.)
Routing identifier	4-6	The appropriate code of the supply source furnishing the supply status.
Media and status	7	The code as shown on the requisition.
Stock or part number	8-22	The stock or part number to which status is applicable. (See H-607.3 for status codes applicable to changed or substituted numbers.)
Unit of issue	23-24	The unit of issue applicable to the stock or part number. (See H-607.3 for status code applicable to changed unit of issue.)
Quantity	25-29	The quantity applicable to the item being supplied. (See H-607.3 for status code applicable to quantity change and/or relating to a unit of issue change.)
Document number	30-43	The document number as shown on the requisition.
Suffix	44	The suffix code when the requisitioned quantity is divided into separate supply actions. When the requisition quantity is not divided, this field shall be left blank.
Supplementary address	45-50)	
Signal	51)	
Fund	52-53)	The codes as shown on the requisition.
Distribution	54-56)	
Project	57-59)	
Priority	60-61)	
Transaction date	62-64	The Julian Date that corresponds to the date of this reply.
Status	65-66	The appropriate status code to convey the information regarding the status of the requisition. (See H-607.3.)
Routing identifier	67-69	The "last known source" to which authorized followup action will be directed.
Estimated shipping date	70-73	When designated by the status code, enter the year and Julian day that it is estimated the materiel will be shipped.
Unit price	74-80	The unit price of the stock or part number shown in columns 8-22. When the supply status contains a status code relating to an erroneously routed requisition, this field will be left blank. (See H-607.)

H-612 Shipment status card entries.

The shipment status card is the document by which specific shipping information is furnished in reply to a followup. Entries are as follows:

Field/Legend	Columns	Explanation of Entries
Document identifier	1-3	The code applicable to shipment status. (See H-602.)
Routing identifier	4-6	The code of the supply source from which the MRO was received.
Media and status	7	The code as shown on the applicable MRO.
Stock or part number	8-22	The stock or part number of the item supplied.
Unit of issue	23-24	The unit of issue for the item supplied.
Quantity	25-29	The quantity of the item supplied.
Doucment number	30-43	The document number as shown on the requisition.
Suffix	44	The suffix code, when requisitioned quantity is divided into separate supply actions. When the requisition quantity is not divided, this field shall be left blank.
Supplementary address	45-50	The coded address as shown on the requisition.
Hold code	51	Type of hold code, when applicable. Left blank in response to followup when shipment has not occurred.
Fund code	52-53	The code shown on the original requisition.
Distribution	54-56	The code as shown on the requisition.
Estimated shipping date or date shipped.	57-59	The date delivered to carrier. When used in response to a followup and shipment has not occurred, will contain estimated shipping date.
Priority	60-61	The code shown on the requisition.

Field/Legend	Columns	Explanation of Entries
Transaction Control Number (TCN) or Other Shipment Unit Number (Service Assignment Code of the requisitioner will be omitted when the TCN is used).	62-76	The TCN for overseas shipments and unregistered parcel post shipments; the consignor, letter B and GBL number for CONUS shipments; the consignor, letter C, and certified mail number for shipments forwarded by certified mail; the consignor, letter R and registration number on registered parcel post; the consignor, letter I and insured number on insured parcel post. Left blank in response to followup when shipment has not occurred.
Mode of Shipment	77	The appropriate code identifying the mode of shipment. (See H-610.)
Date available for shipment or port of embarkation (POE).	78-80	a. CONUS. Date available for shipment if shipment has not occurred. b. OVERSEA. Enter POE except on parcel post or shipments to a SEAVAN Cargo Assembly Point. On shipments to a SEAVAN Cargo Assembly Point, enter the SEAVAN Cargo Assembly Point Designator (see DoD 4500.32-R, MILSTAMP). Leave blank in response to followup when shipment has not occurred. (See H-616.)

H-613 Reply to followup.

The reply to a followup will contain the most current information available regarding the status of a requisition and may be as follows:

(a) A supply status card which may contain a change in the estimated shipping date. The transaction date will correspond to the date of reply. (See H-611 for entries.)

(b) A shipment status card, identified as such in the document identifier. (See H-612 for entries.)

H-614 Replies to cancellation requests.

The reply to a cancellation request may be as follows:

(a) A supply status card prepared as shown in H-611. The supply status code in Card Column 65-66 will indicate the status of cancellation action.

(b) If the materiel has already been shipped, a reply identified by the document identifier as a reply to cancellation request-shipment status, card except for the document identifier. (See H-612 for entries.)

H-615 Management codes.

H-615.1 General.

The appropriate management code is entered in Column 72 of requisitions and turn-ins when specified by the contracting Military Department or Agency.

H-615.2 Air Force entry of management code (Column 72).

(a) *General.* Air Force maintenance, production, and research and development contractors when requesting GFM from or returning GFM to Air Force activities shall enter, in Column 72, the appropriate alphabetic character as listed herein.

Code	Indentification of Operation
C	On all returns to Air Force activities of end items (other than those excluded in (b) below) from maintenance contracts for modification and modernization.
F	On all requisitions and returns to Air Force activities of GFM including modification kits furnished in support of maintenance, production, and including return of contractor acquired property (CAP).
H	On all returns to Air Force activities of end items (other than those excluded in (b) below) from maintenance contracts for repair and testing.
J	On all requisitions and returns to Air Force activities of Government-furnished aeronautical equipment (GFAE).
K	On all returns of unserviceable components removed from end items and shipped to an Air Force Specialized Repair Activity (SRA).
L	On all requisitions and returns to Air Force activities of Government-furnished equipment (GFE) under loan agreements, for maintenance contracts and bailed items under production, and research and development contracts.

(b) *Exclusions.* Air Force transactions involving the following end items are excluded from the provisions of H-615.2(a) above:

(1) Complete aircraft and missiles;

(2) Complete vehicles;

(3) Propulsion units;

(4) Industrial plant equipment controlled by the Defense Industrial Plant Equipment Center, Memphis, Tennessee;

(5) COMSEC (Communications Security) and SIGINT (Signals Intelligence) equipment, COMSEC aids (Keying Material);

(6) Forms and publications;

(7) Bulk petroleum and packaged fuel products; and

(8) Perishable subsistence items and brand-name resale subsistence items.

H-616 CONUS consolidation and containerization point (CCP) codes.

The CCP code is used in lieu of the POE code in MILSTRIP Shipment Status or similar shipping advice to identify cargo shipped to CONUS SEAVAN consolidation points for onward movement by SEAVAN. The first position of the code identifies the MTMC area command and a combination of the second and third positions identifies the CCP within the area. Tracing actions citing the CCP in the POE field will be sent to the appropriate MTMC area command.

Eastern Area CCP

101 New Cumberland Army Depot
102 Letterkenny Army Depot (Alternate)
103 Defense Depot Mechanicsburg, PA
104 Air Force Consolidation and Containerization Point (AFCCP) (WRALC) Robins AFB, Georgia
201 Red River Army Depot (Anniston Army Depot as an alternate for Red River Army Depot)

Western Area CCP

301 Sharpe Army Depot
302 Sacramento Army Depot (Alternate)
303 Defense Depot Tracy, CA

Appendix I—Material Inspection and Receiving Report

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Part 1—Introduction

I-101 General.

(a) This appendix sets forth 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 Procurement Quality Assurance (PQA).

(b) MIRRs are used to document Procurement 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:

(i) Shipments by subcontractors where direct shipment is not made to the Government; or

(ii) Shipment of contract inventory.

(c) The contractor shall prepare the MIRR with the exception of those entries required

to be completed by the authorized Government representative.

(d) To preclude delays in shipments, payments, and avoid multiple corrections, contractors are encouraged to consult with the cognizant Government representing regarding implementation of this appendix.

(e) Standard abbreviations may be used.

(f) Where optional methods are permitted in this appendix, the exercise of the opinion shall be at the discretion of the contractor.

I–102 Applicability.

(a) The provisions of this appendix are applicable to supplies or services procured by the Department of Defense (DoD) when the Material Inspection and Receiving Report clause (see 7–104.62) is included in the contract. If the contract contains the fast payment procedure (see 7–104.84), the contractor may elect not to prepare a DD Form 250 and include additional information on his invoice.

(b) When the Department of Defense provides PQA and/or Acceptance services for non-DoD activities, the MIRR shall be prepared in accordance with the instructions of this appendix unless otherwise specified in the contract.

I–103 Use.

(a) the DD Form 250 is a multi-purpose report used for:

(i) PQA—to provide evidence of PQA at origin or destination;

(ii) Acceptance—to provide evidence of acceptance at origin or destination;

(iii) Packing List;

(iv) Receiving;

(v) Shipping;

(vi) Contractor Invoice;

(vii) Contractor Commercial Invoice Support; and

(viii) Contractor Internal Use.

(b) The DD Form 250–1 is used when bulk movements of petroleum products are made by tanker or barge to cover:

(i) Origin acceptance of cargo;

(ii) Shipment of Government-owned product;

Note: This Form may also be used to transmit quality data to the point of acceptance in the case of origin inspection on FOB destination deliveries or preinspection at product source. When so used, it shall be annotated "INSPECTED FOR QUALITY ONLY."

(iii) Destination acceptance of cargo;

(iv) Receipt of Government-owned product.

I–104 Application.

(a) *DD Form 250:*

(1) The DD Form 250 shall be used for delivery of contract line, subline, exhibit line or exhibit subline items, except for those exhibit line or exhibit subline items on a DD Form 1423 that indicate no DD Form 250 is required.

(2) If the "Shipped To," "Marked For," "Shipped From," "Mode of Shipment," "PQA" and "Acceptance" data are the same for more than one shipment made on the same day under the same contract, one MIRR may be prepared to cover all such shipments.

(3) If the volume of the shipment precludes the use of a single car, truck or other vehicle, a separate MIRR shall be provided for the contents of each vehicle.

(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one Federal Supply Class or Materiel Management Code (MMC), a separate DD Form 250 shall be prepared for items of each of the Federal Supply Classes or MMC included in the shipment. However, the cognizant Government representative may authorize a single DD Form 250 listing each of the Federal Supply Classes or MMC included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the National Stock Number (NSN) applicable to the item.

(5) Consolidation of Petroleum Shipments on a single MIRR—

(i) *Continental United States:* Multiple car or truck load shipments of petroleum made on the same day, to the same destination, against the same contract line item, may be consolidated on one MIRR. To permit verification of motor deliveries, each load shall be assigned a load number which can be identified to the shipment number in Block 2 of the DD Form 250. Individual loads shall be accompanied by a shipping document (commercial or Government) showing as a minimum, the shipper, shipping point, consignee, contract and line item number, product identification, gross gallons (bulk only), loading temperature (bulk only), API gravity (bulk only), identification of carrier's equipment, serial number of all seals applied, and signature of supplier's representative. When acceptance is at destination, the receiving activity shall retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (ref: I–401, Table I) prior to signing Block 21B.

(ii) *Overseas:* The same criteria as for continental United States applies except the consolidation period may be extended to a time frame acceptable to the receiving activity, shipping activity, Government finance office and the authorized Government Representative having cognizance at the contractor's facility. In addition, more than one contract line item may be included provided the "Shipped To," "Marked For," "Shipped From," "Mode of Shipment," "PQA" and "Acceptance" data are the same for all.

(6) Consolidation of Coal Shipments on a single MIRR-Multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line item, may be consolidated on one MIRR. To permit verification of truck deliveries, each load shall be assigned a load number which can be identified to the shipment number in block 2 of the DD Form 250 and the attached analytical test report. Individual truck loads shall be accompanied by a commercial shipping document showing as a minimum the shipper, the name or names, location and shipping point of the mine or mines from which the coal originates, the contract number, the exact size of the coal shipped, and a certified weighmaster's certificate of weight for the truckload. Rail shipments will be accompanied by a waybill showing the identical information. To permit verification of rail deliveries, each railcar number comprising the shipment shall be identified to the shipment number in block 2 of the DD Form 250 and the attached analytical test report. When acceptance is at destination, the receiving activity shall retain the shipping docment(s) to verify the entries on the consignee copy of the DD Form 21B.

(b) *DD Form 250–1:*

(1) A separate form shall be used for each tanker or barge cargo loaded. More than one barge in the same tow may be reported on a single form if on the same contract and consigned to the same destination. When liftings involve more than one contract, separate forms shall be prepared to cover the portion of cargo loaded on each contract. A separate form shall be prepared for each product or grade of product loaded.

(2) A separate document shall be used for each tanker or barge cargo and each grade of product discharged. More than one barge in the same tow may be reported on a single form if from the same loading source.

I–105 Forms.

(a) Contractors may obtain from the Contract Administration Office, upon request, and at no cost, MIRR forms required for use in connection with Government contracts.

(b) Contractors may print forms provided that the format and dimensions (*DD Forms 250 and 250c; 8½ inches x 11 inches, DD Form 250–1; 8½ inches x 14 inches*) are identical to the MIRR forms printed by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250, and 61 lines vertically border to border for the DD Form 250c.

I–106 Reproduction.

This appendix may be reproduced in whole or in part.

Part 2—PQA on Shipments Between Contractors

I–201 Instructions.

The supplier's commercial shipping document/packing list shall be used to indicate performance or required PQA actions at subcontract level. The following entries shall be made on the supplier's commercial shipping document/packing list.

Required PQA of listed items has been performed.

—.....

(Signature of Authorized Govt. Rep. or DoD Stamp)

(Date).....

(Typed Name and Office).....

Distribution for Government purposes shall be one copy:

(i) With shipment;

(ii) For the Government representative at consignee (via mail); and

(iii) For the Government representative at consignor.

Part 3—Preparation of the DD Form 250 and DD Form 250c

I–301 Preparation Instructions.

DD Form 250 (MIRR) and DD Form 250c (Continuation Sheet) shall be prepared as follows:

(a) *General:* (i) The date, where required, shall utilize seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 71AUG07, 71SEP24;

(ii) The address, where required, shall consist of the name, street address / P.O. Box, city, state and ZIP Code;

(iii) The Handbook of non-Government Organizations for MILSCAP (H8–1 / H8–2) code, Department of Defense Activity Address Directory (DODAAD) code or Military Assistance Program Address Directory (MAPAD) code (MAPAC and TAC) in accordance with DoD 5105.38–D when contained in the contract, shall be entered to the right of and on the same line as the word "CODE" in Blocks 9 through 12 and in Block 14. The DODAAD code, or MILSCAP (H8–1 / H8–2) code shall be entered in Block 13;

(iv) When the DD Form 250c is used, the data entered in the blocks at the top of the form shall be identical to the comparable entries as shown in Blocks 1, 2, 3 and 6 of the DD Form 250;

(v) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with appropriate block cross reference. Additional DD Form 250c sheets, solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

(b) *Classified Information.* Classified information shall not be included in or appear on the MIRR, nor shall the MIRR be classified.

Block 1—PROC INSTRUMENT IDEN (CONTRACT).

(a) Enter the 13 position alpha-numeric basic Procurement Instrument Identification (PII) number of the contract. When applicable, enter the four alpha-numeric call/order serial number which is supplementary to the 13 position basic PII number, *i.e.*, delivery orders under indefinite delivery type contracts, orders under basic ordering agreements and calls under blanket purchase agreements. This number shall be entered as shown in the examples below. Except as indicated in (b) below, do not enter supplementary numbers used in conjunction with basic PII numbers to identify (i) modifications of contracts and agreements or (ii) modifications to calls/orders or (iii) document numbers representing contracts written between contractors.

1. PROC INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.
DABE01–66–C–0001	

1. PROC INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.
DABE01–67–A–0001–0001	

(b) When shipping instructions are furnished by telephone/TWX message and shipment is made prior to receipt of the confirming contract modification (SF 30), the contract modification six digit number or the two digit call/order number which is provided in accordance with 19–204 will be entered immediately following the PIIN or call/order four digit SPIIN.

1. PROC INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.
DABE01–66–C–0001–PV0001	

1. PROC INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.
DABE01–67–A–0001–0001AA	

(c) For DoD delivery orders on non-DoD contracts, enter the non-DoD ontract number immediately below the PII number.

1. PROC INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.
DSA400–68–F–1684	
GS–000S–61917	

(d) When a contract number other than PII number is used, enter that contract number.

Block 2—SHIPMENT NO.

(a) The shipment number is composed of a three alpha character prefix and a four numeric or alpha-numeric serial number.

(1) The shipment number prefix shall be controlled and assigned by the prime contractor and shall consist of three alphabetic characters for each "Shipped From" address (Block 11). The shipment number prefix shall be different for each "Shipped From" address and shall remain constant throughout the life of the contract. Separate prefixes may be assigned when shipments are made from different locations within a facility identified by one "Shipped From" address.

(2) The first shipment made under the contract or contract and order number shown in Block 1 from each "Shipped From" address, or shipping location within the "Shipped From" address, shall be numbered 0001. All subsequent shipments with the identification shipment number prefix shall be consecutively numbered.

a. Alpha-numeric serial numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with the alpha in the first position (the letters I and O shall not be used) followed by the three position numeric serial number. The following alpha-numeric sequence shall be used:

A000 through A999 (10,000 through 10,999)
B000 through B999 (11,000 through 11,999)
Z000 through Z999 (34,000 through 34,999)

b. When this series is completely used, numbering shall revert to 0001.

(b) The shipment number of the initial shipment shall be reassigned where a "Replacement Shipment" is involved (Block 16(c)(6)).

(c) The prime contractor shall control deliveries and on the final shipment of the contract shall suffix the shipment number with a "Z". Where the final shipment is from other than the prime contractor's plant, the prime contractor may elect either to: (i) Direct the subcontractor making the final shipment to suffix that shipment number with a "Z", or (ii) Upon determination that all subcontractors have completed their shipments, to correct the DD Form 250 (see I–305) covering the final shipment made from the prime contractor's plant by addition of a "Z" to that shipment number.

(d) When commercial invoices are used, see I–306.

Block 3—DATE SHIPPED. Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of PQA and/or Acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

Block 4—B/L TCN. When applicable, enter:

(a) The commercial or Government bill of lading number "B/L";

(b) The Transportation Control Number after "TCN" (When a TCN is assigned for each line item on the DD Form 250 in accordance with Block 16 instructions, insert "See Block 16."); and

(c) The initial (line haul) mode of shipment code in the lower right corner of the block (I–302).

Block 5—DISCOUNT TERMS. The discount, in terms of percentages and corresponding days allowed, shall be entered as described below:

(a) The contractor may, at his option, enter the discount terms on all copies of the MIRR.

(b) When the MIRR is used as an invoice, see I–306.

Block 6—INVOICE NO./DATE. Enter the invoice number and date as described below:

(a) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the MIRR. When the date is estimated, enter an "E" after the date. MIRRs other than invoice copies shall not be corrected to reflect the actual date of invoice submission.

(b) When the MIRR is used as an invoice, see I–306.

Block 7—PAGE/OF. Consecutively number the pages comprising the MIRR. On each page enter the total number of pages of the MIRR.

Block 8—ACCEPTANCE POINT. Enter an "S" for Origin or "D" for Destination.

Block 9—PRIME CONTRACTOR/CODE. Enter the code and address.

Block 10—ADMINISTERED BY/CODE. Enter the code and address of the Contract Administration Office (CAO) cited in the contract.

Block 11—SHIPPED FROM/CODE/FOB.

(a) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(b) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter "See Block 9."

(c) Enter on the same line and to the right of "FOB" an "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination. *NOTE:* For destination or origin acceptance shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate the information in the "Code" box in these blocks.

Block 12—PAYMENT WILL BE MADE BY/CODE. Enter the code and address of the payment office cited in the contract. See NOTE under Block 11 above.

Block 13.—SHIPPED TO/CODE. Enter the code and address as contained in the contractor shipping instructions.

Block 14—MARKED FOR/CODE. Enter the "Mark For" code and address contained in the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by "Proj"; do not enter in the code block.

Block 15—ITEM NO. Enter the contract line item, subline line, exhibit line or exhibit subline identification as set forth in the contract. If four or less digits are used, they will be positioned immediately to the left of the vertical dashed line and prefixed with zeros, if applicable to achieve four digits. Where a six digit identification containing alpha digits in the final two positions is used, enter the last two digits to the right of the vertical dashed line. Do not make an entry on the DD Form 250 for sublines/exhibit sublines which are included in and identified by numeries in the last two positions. Line item identifications not in accordance with the Uniform Contract Line Item Number System, Section XX, will be entered without regard to positioning.

Block 16—STOCK/PART No./DESCRIPTION.

(a) Enter, as applicable, for each line item, using single or double spacing between each line item when there are less than four line items, or double spacing when there are four or more line items:

(1) The National Stock Number (NSN) or noncatalog number and if applicable, prefix or suffix; when a number is not provided or it is necessary to supplement the number, include other identification, *e.g.*, manufacturer's name or Federal Supply Code, as published in Cataloging Handbook H4–1, and part number, additional part numbers may be shown in parentheses or slashes; the descriptive noun of the item nomenclature and if provided, the Government assigned management/material control code. The following technique may be used in the case of equal kind supply items; the first entry shall be the description without regard to kind. For example, "Shoe-Low Quarter-Black," "Resistor," "Vacuum Tube," etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(2) On the next printing line if required by the contract for control purposes enter: the make, model, serial number, lot, batch, hazard indicator and/or similar description.

(3) On the next printing lines: The MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) when provided in the contract, or shipping instructions followed on the same line, when more than one requisition is entered, by the unit for payment and the quantity shipped against each requisition.

Example:

V0469601850750XY19059A—EA 5
N0018801776038XY3211BA—EA 200
AT650803050051AAT6391J—EA 1000

(4) When a TCN is assigned for each line item, enter on the next line the Transportation Control Number prefixed by "TCN".

(b) When acceptance of a service line item (as differentiating from supplies) is involved, enter the word "SERVICE" followed by as specific a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4, 13 and 14 when shipment of materiel is not involved in the service.

(c) For all contracts administered by Defense Contract Administration Services, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. ———.

State weight in pounds only.

(d) In addition to entries required above, starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries are applicable to more than one line item in the MIRR, such data may be entered only once after the last line item entry referencing applicable line item numbers:

(1) Enter in capital letters any special handling instructions/limits for material environmental control, *e.g.*, temperature, humidity, aging, freezing, shock, etc.

(2) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, Bureau Control Number (BCN), and Authorization Accounting Activity (AAA) Number (*e.g.*, 17X4911–14003–104).

(3) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T".

(4) When an NSN is required by but not cited in a contract and has not been furnished by the Government, shipment may be made without such NSN at the direction of the contracting officer. Enter the authority for such shipment.

(5) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP".

(6) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See I–301, Block 17, for replacement indicators).

(7) On shipments of Government Furnished Aeronautical Equipment (GFAE) under Air Force contracts, the assignment AERNO control number will be entered, *e.g.*, "AERNO 60–6354."

(8) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): NSN or comparable Identification ———, Quantity ———, Estimated Value ———, Authority ———."

(9) When shipment is made of components which were short on a prior shipment, enter and complete the following: "These components were listed as shortages on shipment number ———, date shipped ———."

(10) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: "Return to ———, Quantity ———, Item ———, Ownership (*Government/contractor*)."

(11) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(12) On Foreign Military Sales (FMS) or Military Assistance Program (MAP) (Grant Aid) shipments, enter the special markings, the applicable FMS country and case identifier or MAP Record Control/Program/Directive Number identifier as provided in the contract, and the gross weight.

(13) Reserved.

(14) Reserved.

(15) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the ACO/PCO: "Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results." The ACO/PCO shall advise (a) the consignee of the results (approval/disapproval) and (b) the contractor to withhold invoicing pending attachment to

his invoice of the approved test/evaluation results.

(16) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: Enter "PAYMENT COPY" in approximately one-half inch outline type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(17) For Clothing and Textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(18) When the initial unit incorporating an approved Value Engineering Change Proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. ———, Contract Modification No. ———, dated ———.

Block 17—QUALITY SHIPPED/RECEIVED.

(a) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(b) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a "Z" below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to: (i) Direct the subcontractor making the final shipment to enter a "Z" below the quantity, or (ii) upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see I-305) covering the final shipment of the line item from the prime contractor's plant by addition of a "Z" below the quantity. The "Z" shall not be used on deliveries which equal or exceed the contract line item quantity.

(c) If a replacement shipment is involved, enter below the last digit of the quantity, the letter "A" to designate first replacement, "B" for second replacement, etc. The final shipment indicator "Z" on underrun deliveries shall not be used when a final line item shipment is replaced.

17. QUANTITY
SHIP/REC'D
1000
(10)
Z

(d) If the quantity received is the same quantity shipped and all items are in apparent good condition, indicate by a check mark. If different, enter actual quantity recieved in apparent good condition below quantity shipped and encircle. The receiving activity shall annotate the DD Form 250 stating the reason for the difference.

Block 18—UNIT. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129 (Marking for Shipment and Storage). For example: LB for pound; SH for sheet.

18. UNIT
LB
(SH)

Block 19—UNIT PRICE. The contractor shall enter unit prices on all MIRR copies. Line items shall be priced using actual prices or, if not available, estimated prices. When the price is estimated, enter an "E" after the price.

(a) When the MIRR is used as an invoice, see I-306.

(b) For Clothing and Textile contracts containing a bailment clause, enter the cited Government Furnished Property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(c) For Clothing and Textile contracts containing a bailment clause, enter the cited Government Furnished Property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(d) All copies of DD 250s for FMS shipments shall be priced using actual, or if not available, estimated prices. When the price is estimated, enter an "E" after the price.

Block 20—AMOUNT. Enter the extended amount when the unit price is entered in Block 19.

Block 21—PROCUREMENT QUALITY ASSURANCE.

(a) The words "conform to contract" contained in the printing statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with appropriate block cross reference.

(b) When a shipment is authorized under Alternative Release Procedure, the appropriate contractor signed certificate shall be attached to or included on the top copy of the DD Form 250 copies distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by DCAS.

(c) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter "Certificate of Conformance" in Block 21A on the next line following the PQA and Acceptance statements. The appropriate contractor signed certificate shall be attached to or included on the top copy of the DD Form 250 copies distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by DCAS. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the MIRR sent with shipment.

"A. ORIGIN"

(1) The authorized Government representative shall:

a. Place an "X" when applicable in the appropriate PQA and/or Acceptance box(es) to evidence origin Procurement Quality Assurance and/or Acceptance. When the contract requires PQA at destination in addition to origin PQA, an asterisk shall be entered at the end of the statement and an explanatory note entered in Block 16;

b. Enter the date of signature;

c. Sign; and

d. Enter the typed, stamped, or printed name and office DODAAD code.

(2) When Alternative Releases Procedures apply, the contractor or subcontractor shall complete the entries required under (1) a and d above and enter in capital letters "ALTERNATIVE RELEASE PROCEDURE" on the next line following the printed PQA/Acceptance statement. When acceptance is at origin and Contract Administration is performed by an office other than DCAS, the contractor shall furnish the four payment office copies of the MIRR to the Authorized Government Representative for dating and signing of one copy and forwarding of all copies to the payment office. When acceptance is at origin and contract administration is performed by DCAS, the Contract Administration Office copy of the MIRR shall be furnished to the Authorized Government Representative for dating and signing and forwarding to the Contract Administration Office (see I-401, Table 1).

(3) When Fast Pay procedures apply, the contractor or subcontractor shall enter in capital letters "FAST PAY" on the next line following the printed PQA/Acceptance statement. When PQA is required, the authorized Government representative shall execute the block as required by (1) above.

(4) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall make entries required by "A. ORIGIN" (1)*a* and *d* above. For contracts administered by an office other than DCAS, furnish the four payment office copies of the MIRR to the Authorized Government Representative for dating and signing of one copy, and forwarding of all copies to the payment office. For contracts administered by DCAS, the Contract Administration Office copy of the MIRR shall be furnished to the Authorized Government Representative for dating and signing and forwarding to the Contract Administration Office. (See I-401, Table 1.) When acceptance is at destination, no entry shall be made other than "CERTIFICATE OF CONFORMANCE."

"B. DESTINATION"

(1) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(2) When PQA and Acceptance or Acceptance is at destination, the authorized Government representative shall:

a. Place an "X" in the appropriate box(es).

b. Enter the date of signature;

c. Sign; and

d. Enter typed, stamped, or printed name and title.

(3) When "ALTERNATIVE RELEASE PROCEDURE" is entered in Block 21A and acceptance is at destination, the authorized Government representative shall complete the entries required by B(2) above.

(4) The executed payment copy or MILSCAP Format Identifier PKN or PKP shall be forwarded to the payment office cited in Block 12 within four work days (*five days when MILSCAP Format is used*) after delivery and acceptance of the shipment by the receiving activity. One executed copy of the final DD Form 250 shall be forwarded to the contract administration office cited in Block 10 for implementing contract closeout procedures, except where a DCASR is cited as the payment office in Block 12.

(5) When "FAST PAY" is entered in Block 21A, no entries shall be made in this block.

Block 22—RECEIVER'S USE. This block shall be used by the receiving activity (Government or contractor) to denote receipt, quantity and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

Block 23—CONTRACTOR USE ONLY. This block is provided and reserved for Contractor use.

I–302 MODE/METHOD OF SHIPMENT CODES

Code	Description
A	Motor, truckload.
B	Motor, less than truckload.
C	Van (unpacked, uncrated personal or Government property).
D	Driveaway, truckaway, towaway.
E	Bus.
F	Military Airlift Command (Channel and Special Assignment Airlift Mission).
G	Surface parcel post.
H	Air parcel post.
I	Government trucks, for shipment outside local delivery area.
J	Air, small package carrier.
K	Rail, carload. [1]
L	Rail, less than carload. [1]
M	Surface, freight forwarder.
N	LOGAIR.
O	Organic military air (including aircraft of foreign governments).
P	Through Government Bill of Lading (TGBL).
Q	Commercial air freight (includes regular and expedited service provided by major airlines; charters and air taxis).

I–302 MODE/METHOD OF SHIPMENT CODES—Continued

Code	Description
R	Reserved for future use.
S	Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service).
T	Air freight forwarder.
U	QUICKTRANS.
V	SEAVAN.
W	Water, river, lake, cosstal (commercial).
X	Bearer, walk-thru (customer pickup of material).
Y	Military Intratheater Airlift Service.
Z	Military Sealift Command (MSC) (controlled contract or arranged space).
2	Government watercraft, barge, lighter.
3	Roll On Roll Off (RORO) Service.
4	Armed Forces Courier Service (ARFCOS).
5	Surface, small package carrier.
6	Military official mail (MOM).
7	Express mail.
8	Pipeline.
9	Local delivery by government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers' tariffs which are filed and approved by regulatory authorities.

[1] Includes Trailer/Container-On-Flat-Car (Excluding SEAVAN).

I–303 Consolidated Shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of Procurement Quality Assurance or Acceptance prior to the time of actual shipment. (See Block 3.)

I–304 Multiple Consignee Instructions.

When the identical line item(s) of a contract is to be shipped to more than one consignee, with the same or varying quantities, and requires origin acceptance, one MIRR may be prepared. Preparation shall be as prescribed in this appendix with the following changes:

(i) Blocks 2, 4, 13 and, if applicable, 14—Enter "See Attached Distribution List."

(ii) Block 15—Item numbers may be grouped for identical stock/part number and description.

(iii) Block 17—Enter the "total" quantity shipped by line item or, if applicable, grouped identical line items.

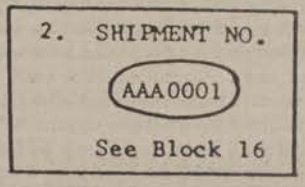
(iv) The DD Form 250c shall be used to list each individual "Shipped To" and "Marked For" with code(s) and complete shipping address and a sequential shipment number for each; line item number(s); quantity; MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) and quantity for each when provided in the contract or shipping instructions; and if applicable, Bill of Lading number, TCN, and Mode of Shipment Code.

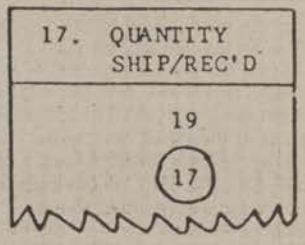
(v) Pages of DD Form 250c comprising the distribution list that are not applicable to the individual consignee may be omitted from the MIRR furnished that consignee. A complete MIRR shall be provided for all other distribution.

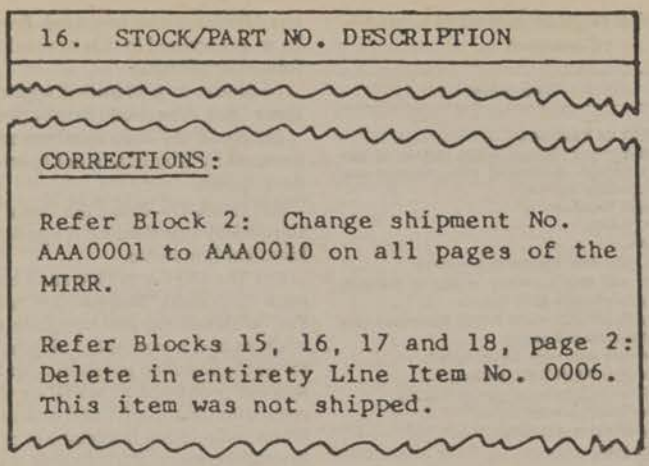
I–305 Correction Instructions.

When, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made, a revised or new MIRR shall be effected by correcting the original master or preparing a new MIRR containing the identical data of the original MIRR and distributing the corrected form. MIRRs shall not be corrected for Block 19 and 20 entries. The corrections shall be made as follows:

(i) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block.







(ii) When corrections have been made to entries for line items (Block 15) or quantity (Block 17) the words "CORRECTIONS HAVE BEEN VERIFIED" shall be entered on page 1. The authorized Government representative shall date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(iii) Pages of the MIRR requiring correction shall be clearly marked "CORRECTED COPY", avoiding obliteration of any other entries. Where correctiosn are made only on continuation sheets, page number 1 shall also be marked "CORRECTED COPY."

(iv) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

I–306 Invoice Instructions.

Contractors are encouraged to use copies of the MIRR as an invoice, in lieu of a commercial form, but are not required to do so. If commercial forms are used, the related MIRR shipment number(s) shall be identified thereon. Copies of the MIRR used as an invoice are in addition to the standard distribution (I–401). The four invoice copies shall be prepared and forwarded to the payment office as follows:

(i) Complete Blocks 5, 6, 19 and 20. Column 20 shall be totalized.

(ii) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE"; three copies: "INVOICE COPY".

(iii) Forward the four copies to the payment office (Block 12 Address), except when acceptance is at destination and a Navy Finance Office will make payment, forward to destination.

(iv) The invoice and the four "Payment Office" (Part 4, Table 1) copies of the MIRR shall not be fastened together.

I–307 Packing List Instructions.

Copies of the MIRR may be used as a packing list. When they are used, the packing list copies shall be in addition to the copies of the MIRR required for standard distribution (I–401) and shall be marked "PACKING LIST."

I–308 Receiving Instructions.

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If PQA and Acceptance or Acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

Part 4—Distribution of DD Form 250 and DD Form 250c

I–401 Distribution.

(a) The contractor is responsible for distribution, including mailing and payment of postage, of DD Form 250 in accordance with Tables 1 and 2.

(b) Distribution of MIRRs shall be in accordance with and limited to the distribution and the quantities as provided in Tables 1 and 2. Air mail shall be used whenever it is faster than regular mail.

(c) Distribution of MIRRs on non-DoD contracts shall be in accordance with this Part as amended by the contract.

(d) Distribution shall be made promptly, but no later than the close of business of the work day following:

(i) Signing of the DD Form 250 (Block 21A) by the authorized Government representative, or

(ii) Shipment when authorized under terms of Alternative Release; Certificate of Conformance; or Fast Pay procedure, or shipment when PQA and Acceptance are to be performed at destination.

(e) The consignee copies (via mail) on overseas shipments shall *not* be sent to Port of Embarkation (POE). The copies shall be sent to consignee at APO/FPO address.

(f) Copies of the MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

TABLE 1.—STANDARD DISTRIBUTION

With Shipment*	4
Consignee (*via mail*)	2
(*For Navy procurement, copies will be priced*). (For Grant Aid/Foreign Military Sales, consignee copies are not required).	
Contract Administration Office	1
(Forward direct to address in Block 10 except when addressee is a DCASR, DCASD, or DCASO, and a Certificate of Conformance (see I–301, Block 21(c)A(4)) or the Alternate Release Procedures (see I–301, Block 21(c)A(2)) is involved, and acceptance is at origin; then, forward through the Authorized Government Representative.)	
Purchasing Office	1
Payment Office**	4
(Forward direct to addressee in Block 12 except (i) when addressee in Block 10 is a DCASR, DCASD, or DCASO and Payment Office in Block 12 is a DCASR do not make distribution; (ii) when addressee in Block 12 is HQ AFCMD attach only one copy to the required number of copies of the contractor's invoice; (iii) when acceptance is at destination and a Navy Finance Office will make payment, forward to destination; and (iv) when a Certificate of Conformance (see I–301, Block 21(c)A(4)) or the Alternative Release Procedures (see I–301, Block 21(c)A(2)) is involved and acceptance is at origin, forward the copies through the Authorized Government Representative.)	
ADP Point for CAO (*Applicable to Air Force only*)	1
(When an AFPRO is specified as the administering activity in Block 10, or HQ AFCMD is cited as Payment Office in Block 12, send *one* copy to HQ AFCMD immediately upon signature. If submission of delivery data is being made by mechanical means, distribution of this hard copy need not be made to HQ AFCMD.)	

* Attach as follows:

Type of Shipment	Location
Carload or truckload	Affix to the shipment where it will be readily visible and available upon receipt.
Less-than-carload or truckload.	Affix to container number one, or container bearing lowest number.
Mail, including parcel post	Attach to outside or include in the package. Include a copy in each additional package of multipackage shipments.
Pipeline or tank car: Railroad cars for coal movements.	Forward with consignee copies.

** Payment by DCASRs will be based on the source acceptance copies of DD Forms 250 forwarded to the Contract Administration Office except in those rare instances where distribution will be made to DCASR Payment Offices in accordance with the above distribution schedule.

TABLE 2.—SPECIAL DISTRIBUTION

As required	Address	Number of copies
Each: Navy Status Control Activity, Army, Air Force, DSA Inventory Control Manager.	Address specified in the contract.	1
Quality Assurance Representative.	Address specified by the assigned Quality Assurance Representative.	1
Transportation Office issuing GBL (attach to GBL memorandum copy).	CAO address unless otherwise specified in the contract.	1
Purchasing Office other than office issuing contract.	Address specified in the contract.	1
Foreign Military Sales Representative.	Address specified in the contract.	8
Military Assistance Advisory Group (Grant Aid Shipments).	U.S. Military Advisory Group, Military Attache, Mission, or other designated agency address as specified in the contract.	1

TABLE 2.—SPECIAL DISTRIBUTION—Continued

As required	Address	Number of copies
Army: Foreign Military Sales/Military Assistance Program (Grant Aid).	Commander, US Army Security Assistance Center, Attn: DRSAC-OP, 3rd Street and "M" Avenue, Bldg 54, New Cumberland Army Depot, New Cumberland, PA 17070.	1
Air Force:		
On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.	Air Force Logistics Command, Aerospace Vehicle Distribution Office (MCNAPV), Wright-Patterson AFB, Ohio 45433.	1
When above items are delivered to aircraft modification centers.	A.F. Plant, Representative Office.	1
Foreign Military Sales/Military Assistance Program (Grant Aid) shipments to Canada.	National Defence Headquarters, Ottawa, Ontario, Canada K1A OK4, Attn: DPSUPS3.	1
Other Than Canada.....	Address specified in the contract.	1
When consignee is an Air National Guard Activity.	Consignee address (Block 13), ATTN: Property Officer.	3
Navy:		
Navy Foreign Military Sales/Military Assistance Program (Grant Aid).	US Navy International Logistics, Control Office (NAVILCO) 700 Robins Avenue, Philadelphia, PA 19111.	2
When typed code (TC) 2T or 7T is shown in Block 16.	Aviation Supply Office (ASO) 700 Robins Avenue, Philadelphia, PA 19111 (Code MFA) for aviation-type material.	2
or		
When shipment is consigned to another contractor's plant for a Government representative	and	
or		
When Block 16 indicates the shipment includes GFP.	Ships Parts Control Center (SPCC) (Code 7231) for all other material, Mechanicsburg, PA 17055.	2
Marine Corps:		
All shipments consigned to a Marine Corps Activity (excluding aeronautical spares).	Commandant of the Marine Corps Headquarters, USMC Washington, DC 20380.	1
	Commanding General, Marine Corps Logistics Base Albany, GA 31704.	3
Bulk Petroleum Shipments.	Cognizant Defense Fuel Region (see Table 4).	1

[1] Each addressee.

Part 5—Preparation of the DD Form 250-1 (Loading Report)

1-501 Instructions.

The DD Form 250-1 shall be prepared in accordance with the following instructions when applied to a tanker or barge cargo lifting. Abbreviations may be used where space is limited. The block numbers correspond to those on the form.

Block 1—TANKER/BARGE. Line out "TANKER" or "BARGE" as appropriate and place "X" to indicate loading report.

Block 2—INSPECTION OFFICE. Enter the name and location of the Government office conducting inspection.

Block 3—REPORT NO. Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. In case shipment is made from more than one location against the same contract, follow this numbering system at each location.

Block 4—AGENCY PLACING ORDER ON SHIPPER, CITY, STATE, AND/OR LOCAL ADDRESS (loading). Indicate the applicable Government activity.

Block 5—DEPARTMENT. Indicate Military Department owning product being shipped.

Block 6—PRIME CONTRACT OR P.O. NO. Enter the contract or purchase order number.

Block 7—NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (Loading). Enter the name and address of the contractor as shown in the contract.

Block 8—STORAGE CONTRACT. Enter storage contract number if applicable.

Block 9—TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS. Enter the name and location of the contractor facility from which shipment is made. Also indicate delivery point in this space as either "FOB Origin" of "FOB Destination."

Block 10—ORDER NO. ON SUPPLIER. Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

Block 11—SHIPPED TO: (Receiving Activity, City, State and/or Local Address). Enter the name and geographical address of the consignee as shown on the shipping order.

Block 12—B/L NUMBER. Where applicable, enter the initials and number of the bill of lading. If commercial bill of lading later to be converted to a Government bill of lading is authorized, show "Com. B/L to GB/L."

Block 13—REQN. OR REQUEST NO. Enter number and date if cited in the shipping instructions.

Block 14—CARGO NO. Enter the cargo number furnished by the ordering office.

Block 15—VESSEL. Enter the name of tanker or barge.

Block 16—DRAFT ARRIVAL. Enter the vessel's draft on arrival.

Block 17—DRAFT SAILING. Enter the vessel's draft on completion of loading.

Block 18—PREVIOUS TWO CARGOES. Enter the type of product constituting previous two cargoes.

Block 19—PRIOR INSPECTION. Leave blank.

Block 20—CONDITION OF SHORE PIPELINE. Indicate condition of line (full or empty) before and after loading.

Block 21—APPROPRIATION (Loading). Indicated the appropriation number shown on the contract, purchase order or distribution plan. If the shipment is made from departmentally owned stock, show "Army, Navy or Air Force (as appropriate) owned Stock."

Block 22—CONTRACT ITEM NO. Enter the contract item number applicable to the shipment.

Block 23—PRODUCT. Enter the product nomenclature and grade as shown in the contract or specification, the stock or class number, and the NATO symbol.

Block 24—SPECIFICATIONS. Enter the specification and amendment number shown in the contract.

Block 25—STATEMENT OF QUANTITY. Enter in the "LOADED" column, the net barrels, net gallons and long tons for the cargo loaded. NOTE: If more than ½ of 1% difference exists between the ship and shore quantity figures an investigation shall be made immediately to determine the cause of such difference. If necessary, corrected documents shall be prepared; otherwise, a statement shall be palced in Block 28 as to the probable or actual cause of the difference.

Block 26—STATEMENT OF QUALITY.

(a) Under the heading "TESTS" list all inspection acceptance tests of the specification and any other quality requirements of the contract.

(b) Under the heading "SPECIFICATION LIMITS" list the limits or requirements as stated in the specification or contract directly opposite each entry in the "TESTS" column. Applicable waivers to technical requirements shall be listed.

(c) Under the heading "TEST RESULTS" list the test results applicable to the storage tank or tanks from which the cargo was lifted. If more than one storage tank is involved, list the tests applicable to each tank in separate columns headed by the tank number, the date the product in the tank was approved, and the quantity loaded from the tank. Each column shall also list such product characteristics as amount the type of corrosion inhibitor, etc.

Block 27—TIME STATEMENT. Line out "DISCHARGE" and "DISCHARGING." Complete all applicable entries of the time statement using local time. These dates and times shall be taken from either the vessel or shore facility log. The Government representative shall assure that the logs are in agreement on those entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reasons in Block 28—REMARKS. Date and time vessel left berth shall not be entered on documents placed aboard the vessel but shall appear on all other copies. All dates shall be expressed in sequence of day, month, and year with the month spelled out or abbreviated (*e.g.*, 10 Sept. 67). The term FINISHED BALLAST DISCHARGE is meant to include all times needed to complete deballasting and mopping/drying of ship's tanks. The inspection of ship's tanks for loading is normally performed immediately upon completion of drying tanks.

Block 28—REMARKS. Use this space for reporting:

(a) All delays, their case and responsible party (vessel, shore facility, Government representative, or other).

(b) Details of loading abnormalities such as product losses due to overflow leaks, delivery of product from low level in shore tanks, etc.

(c) In the case of multiple consignees, enter each consignee, the amount consigned to each, and if applicable, the storage contract numbers appearing on the delivery order.

(d) When product title is vested in the U.S. Government, insert in capital letters "U.S. GOVERNMENT OWNED CARGO." If title to the product remains with the contractor and inspection is preformed at source with acceptance at destination, insert in capital letters "CONTRACTOR OWNED CARGO."

(e) If the form covers shipments for Military Assistance Program support, enter in this space "FY-(the year)—MAP" in half-inch letters. Also indicate the MAP reference number—*i.e.* program directive number or MAP cause number if known.

(f) Seal number and location of seals. If space is not adequate, place this information on the ullage report or an attached supplemental sheet.

Block 29—COMPANY OR RECEIVING TERMINAL. Line out "OR RECEIVING TERMINAL" and secure the signature of the supplier's representative. The signature shall be applied to the master ditto or all copies of the form.

Block 30—CERTIFICATION BY GOVERNMENT REPRESENTATIVE. Line out "DISCHARGED." The Government representative shall date and sign the completed master ditto or all copies of the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing this certification, as well as the names applied in Blocks 29 and 31 shall be typed or hand lettered on the master or all copies of the document. The signature in Block 30 must agree with the typed or lettered named to be acceptable to the paying office.

Block 31—CERTIFICATION BY MASTER OR AGENT. Obtain the signature of the master of the vessel or its agent. The signature shall be applied to the master ditto or all copies of the form.

Part 6—Preparation of the DD Form 250—1 (DISCHARGED REPORT)

I—601 Instructions.

The DD Form 250—1 shall be prepared in accordance with the following instructions when applied to tanker or barge discharge. Abbreviations may be used where space is limited. The block numbers correspond to those on the form.

Block 1—TANKER/BARGE. Line out "TANKER" or "BARGE" as applicable and place "X" to indicate discharge report.

Block 2—INSPECTION OFFICE. Indicate Government activity performing inspection on the cargo received.

Block 3—REPORT NO. Leave blank.

Block 4—AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (loading). Indicate Government agency shown on loading report.

Block 5—DEPARTMENT. Indicate Department owning product being received.

Block 6—PRIME CONTRACT OR P.O. NO. Indicate the contract or purchase order number shown on the loading report.

Block 7—NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (Loading). Indicate name and location of contractor who loaded the cargo.

Block 8—STORAGE CONTRACT. Enter the number of the contract under which material is placed in commercial storage where applicable.

Block 9—TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS. Indicate source of cargo.

Block 10—ORDER NO. ON SUPPLIER. Make sure entry appearing on loading report.

Block 11—SHIPPED TO: (Receiving Activity, City, State and/or Local Address). Enter receiving activity's name and location.

Block 12—B/L NUMBER. Enter as appears on loading report.

Block 13—REQN. OR REQUEST NO. Leave blank.

Block 14—CARGO NO. Enter cargo number shown on loading report.

Block 15—VESSEL. Enter name of tanker or barge discharging cargo.

Block 16—DRAFT ARRIVAL. Enter draft of vessel upon arrival at dock.

Block 17—DRAFT SAILING. Enter draft of vessel after discharging.

Block 18—PREVIOUS TWO CARGOES. Leave blank.

Block 19—PRIOR INSPECTION. Enter the name and location of the Government office which inspected the cargo loading.

Block 20—CONDITION OF SHORE PIPELINE. Indicate condition of line (full or empty) before and after discharging.

Block 21—APPROPRIATION (Loading). Leave blank.

Block 22—CONTRACT ITEM NO. Enter the item number shown on the loading report.

Block 23—PRODUCT. Enter information appearing in Block 23 of the loading report.

Block 24—SPECIFICATIONS. Enter information appearing in Block 24 of the loading report.

Block 25—STATEMENT OF QUANTITY. Enter applicable data in proper columns.

(a) "LOADED" figures shall be taken from the loading report.

(b) Quantities discharged shall be determined from shore tank gauges at destination.

(c) If a grade of product is discharged at more than one point, the loss or gain for that product shall be calculated by the final discharge point. Amounts previously discharged shall be as reported on discharge reports prepared by the previous discharge points. Volume figures shall be transmitted by routine message to the final discharge point in advance of mailed documents to expedite the loss or gain calculation and provide proration data when more than one department is involved.

(d) The loss of gain percentage shall be entered in the "PERCENT" column followed by "LOSS" or "GAIN" as applicable.

(e) On destination acceptance shipments, accomplish the "DISCHARGED" column only, unless instructed to the contrary.

Block 26—STATEMENT OF QUALITY.

(a) Under the heading "TESTS" enter the verification tests performed on the cargo preparatory to discharge.

(b) Under "SPECIFICATION LIMITS" enter the limits, including authorized departures (if any) appearing on the loading report, for the tests performed.

(c) Enter the results of tests performed under the heading "TEST RESULTS."

Block 27—TIME STATEMENT. Line out "LOAD" and "LOADING." Complete all applicable entries of the time statement using local time. The dates and times shall be taken from either the vessel or shore facility log. The Government representative shall assure that these logs are in agreement with entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reason(s) in Block 28—REMARKS. Date and time vessel left berth shall not be entered on documents placed aboard the vessel but shall appear on all other copies. All dates shall be expressed in the sequence of day, month and year with the month spelled out or abbreviated (e.g., Sept. 10, 1967).

Block 28—REMARKS. Use this space for reporting important facts such as:

(a) Delays, their cause and responsible party (vessel, shore facility, Government representative, or other).

(b) Abnormal individual losses contributing to the total loss. The cause of such losses shall be indicated as well as actual or estimated volumes involved. Such losses shall include, but not be restricted to, product remaining aboard (indicate tanks in which contained), spillages, line breaks etc. Where gravity group change of receiving tank contents results in a fictitious loss or gain, such fact shall be noted. Irregularities oberved on comparing vessel ullages obtained at loading point with those at the discharge point shall be noted if indicative of an abnormal transportation loss or contamination.

Block 29—COMPANY OR RECEIVING TERMINAL. Line out "COMPANY OR." Secure the signature of a representative of the receiving terminal. The signature shall be applied to the master ditto or all copies of the form.

Block 30—Certification by Government Representative. Line out "LOADED." The Government representative shall date and sign the completed master ditto or all copies of the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31 shall be typed or hand lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

Block 31—Certification by Master or Agent. Obtain the signature of the master of the vessel or the vessel's agent. The signature shall be applied to the master ditto or all copies of the form.

Part 7—Distribution of the DD Form 250–1

I–70 Distribution.

(a) The completed DD Form 250–1 shall be distributed by the Government representative in accordance with Table 3 of this Appendic as may be amended by the provisions of the contract or shipping order.

(b) The contractor shall furnish the Government representative sufficient copies of the completed form to permit the required distribution.

(c) Distribution of the form shall be made as soon as possible but not later than 24 hours following completion of the form.

[See Table 3 on following pages]

1-702 Corrected DD Form 250-1.

When errors are made in entries on the form which would affect payment or accountability, corrected copies shall be made. Entries corrected shall be encircled on all copies and the form plainly identified as a "CORRECTED COPY." The statement "Corrections Have Been Verified" shall be entered in Block 26 with the authorized Government representative's dated signature directly below. Distribution of the certified corrected copy shall be made to all recipients of the original distribution.

TABLE 3.—DD FORM 250-1 DISTRIBUTION

Type of shipment	Recipient of DD Form 250-1	Number of Copies			
		Loading		Discharge	
		Tanker	Barge: Prepared by Shipper/ Govt. Representative	Tanker	Barge: Prepared by Receiving Activity
On all overseas shipments provide for a minimum of 4 consignees. Place 1 copy (attached to ullage report) in each of 4 envelopes and mark envelopes "Consignee-First Destination," "Consignee-Second Destination," etc., for delivery via the tanker.	Each Consignee: By mail (CONUS shipments only); With Shipment.	2, 1	1, 1	(1)	(1)
	Master of Vessel	1	1	1	1
	Tanker or Barge Agent	2	2	2	2
	Contractor	(1)	(1)	(1)	(1)
	Cognizant Inspection Office	1	1	1	1
	Government Representative at each Destination Responsible for Quality.	1	1	1	1
	Government Representative at Cargo Loading Point	1	1	*1	*1
On all USNS tankers and all MSC chartered tankers and MSC chartered barges.	Military Sealift Command, Code 331, Washington, DC 20390	2	2	2	2
See contract or shipping order for finance documentation and any supplemental requirements for Government-owned product shipments and receipts.	Payment Office: If this is DASC-F, send copies to Defense Fuel Supply Center, ATTN: DFSC-CDX, Cameron Station Bldg. 5, Alexandria, VA 22314 (Do not send copies to DASC-F).	2	2	2	2
For shipments and receipts of DFSC financed cargos for which DFSC-F is not the Paying Office.	Accounting Office, DFSC, ATTN: DFSC-CD, Cameron Station, Alexandria, VA 22314.	1	1	1	1
For shipments on all USNS tankers, MSC chartered tankers and barges, and FOB destination tankers with copy of ullage report.	DFSC-OC, Cameron Station Alexandria, VA 22314	1	1	**1	1
On Army ILP shipments	US Army International Logistics Center, New Cumberland Army Depot, New Cumberland, PA 17070.	2	2	2	2
Navy:					
On all shipments to Navy-Operated Terminals	Navy Fuel Petroleum Office, Cameron Station, Alexandria, VA 22314.	2	1	2	1
On all shipments to AF bases	Directorate of Energy Mgmt, SA ALC (SFQ), Kelly AFB, TX	1	1	1	1
On all CONUS loadings	DFSC Fuel Region(s) cognizant of Shipping	1	1	1	1
On all shipments to CONUS Destinations	DFSC Fuel Region(s) cognizant of Shipping and Receiving Point***.	1	1	0	0
For all discharges of cargoes originating at DFSPs and discharging at activities not a Defense Fuel Support Point.	Accounting Office, DFSC, ATTN: DFSC-CD, Cameron Station Alexandria, VA 22314.			***1	***1

[1] As required.
* With copy of ullage report.
** Dry tank certificate to accompany DD Form 250-1 and ullage report.
*** The copies of DD Form 250-1, forwarded by bases, will include the following in Block 11: Shipped to: Supplementary Address, if applicable; Signal Code; and Fund Code.
**** See Table 4.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY

a. DFR Northeast	Defense Fuel Region Northeast, McGuire AFB, Bldg. 19-01, NJ 08641.
Areal of Responsibility: (Region 1).	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.
b. DFR Southeast	Defense Fuel Region Southeast, P.O. Box TT, Tyndall AFB, FL 32403.
Area of Responsibility: (Region 2).	Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Kentucky.
c. DFR Central	Defense Fuel Region Central, 8900 S. Broadway, Bldg. 2, St. Louis, MO 63125.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY—Continued

Area of Responsibility: (Region 3).	Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, South Dakota, Utah, Wisconsin, and Wyoming.
d. DFR Southwest	Defense Fuel Region Southwest, Room 7017, 515 Rusk Avenue, Houston, TX 77002.
Area of Responsibility: (Region 4).	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
e. DFR West	Defense Fuel Region West, 3171 N. Gaffney Street, San Pedro, CA 90731.
Area of Responsibility: (Region 5).	Arizona, California, Idaho, Nevada, Oregon, and Washington.
f. DFR Alaska	Defense Fuel Region Alaska, Elmendorf AFB, Alaska 99506.
Area of Responsibility	Alaska and Aleutians.
g. DFR Europe	Defense Fuel Region Europe, HQ USEUCOM (J4), APO New York 09128.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY—Continued

Area of Responsibility	Central Europe, British Isles and Scandinavia, Mediterranean Region plus Jordan and Iraq, Africa, to include the Canary Islands and Seychelles Islands; and the Azores.
h. DFR Pacific	Defense Fuel Region, Pacific, Camp H. M. Smith, Honolulu, HI 96861.
Area of Responsibility	PACOM.
i. DFR Caribbean	Defense Fuel Region, Caribbean Naval Station, Box 3399, FPO Miami, FL 34051.
Area of Responsibility	Caribbean Area (includes Puerto Rico, West Indies, and Mexico, but excludes Panama and the Bahamas).

BILLING CODE 3810-01-M

MATERIAL INSPECTION AND RECEIVING REPORT

1. PROC. INSTRUMENT IDEN. (CONTRACT)	(ORDER) NO.	6. INVOICE	7. PAGE / OF
			8. ACCEPTANCE POINT

2. SHIPMENT NO.	3. DATE SHIPPED	4. B/L / TCN	5. DISCOUNT TERMS

9. PRIME CONTRACTOR / CODE	10. ADMINISTERED BY / CODE

11. SHIPPED FROM (If other than 9) / CODE / FOB	12. PAYMENT WILL BE MADE BY / CODE

13. SHIPPED TO / CODE	14. MARKED FOR / CODE

15. ITEM NO.	16. STOCK/PART NO. DESCRIPTION (Indicate number of shipping containers - type of container - container number)	17. QUANTITY SHIP/REC'D *	18. UNIT	19. UNIT PRICE	20. AMOUNT

21. PROCUREMENT QUALITY ASSURANCE

A. ORIGIN

☐ PQA ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.

DATE / SIGNATURE OF AUTH GOVT REP

TYPED NAME AND OFFICE

B. DESTINATION

☐ PQA ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.

DATE / SIGNATURE OF AUTH GOVT REP

TYPED NAME AND TITLE

22. RECEIVER'S USE

Quantities shown in column 17 were received in apparent good condition except as noted.

DATE RECEIVED / SIGNATURE OF AUTH GOVT REP

TYPED NAME AND OFFICE

*If quantity received by the Government is the same as quantity shipped, indicate by (✓) mark, if different, enter actual quantity received below quantity shipped and encircle.

23. CONTRACTOR USE ONLY

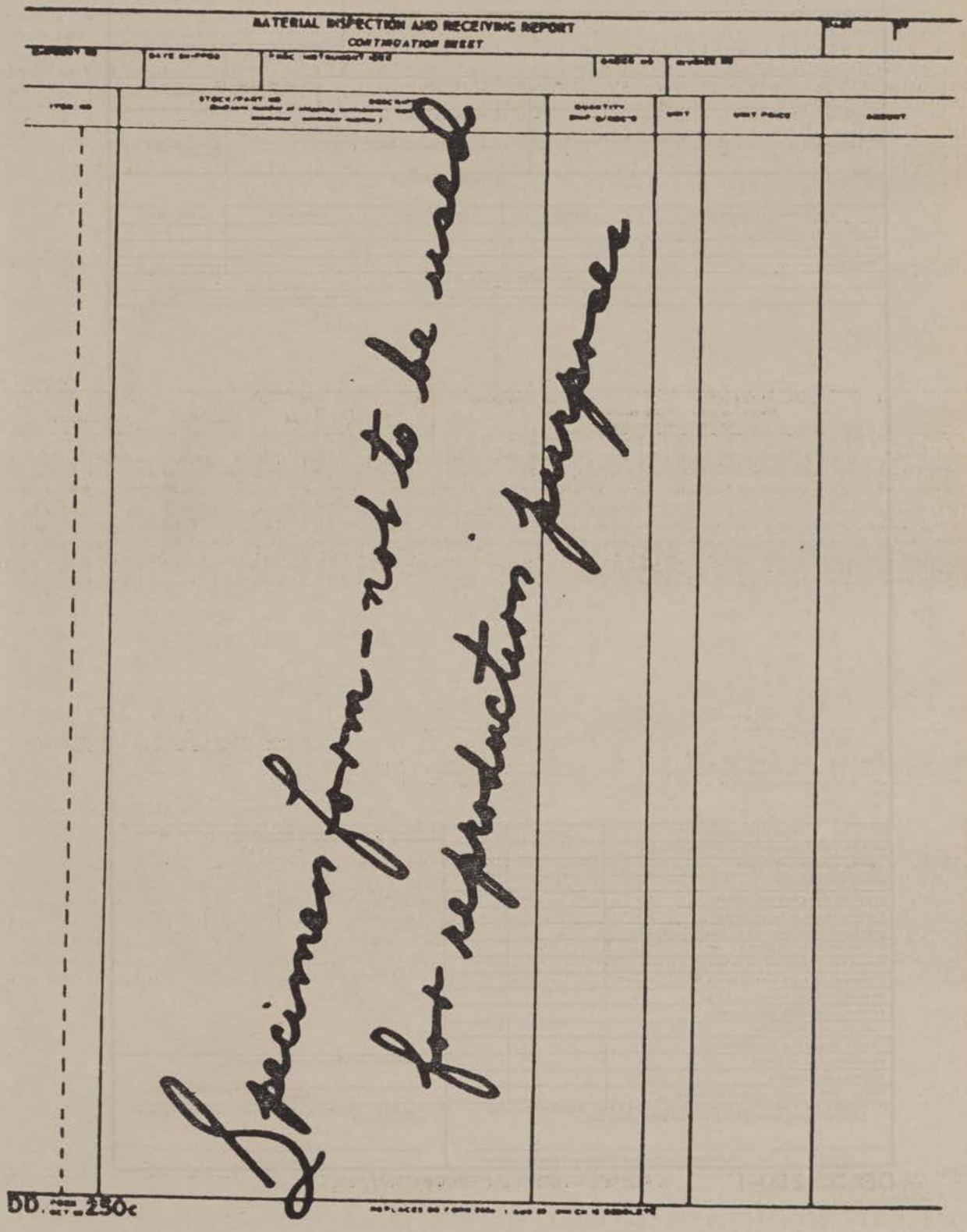
DD FORM 1 NOV 68 250

REPLACES EDITION OF 1 AUG 67 WHICH MAY BE USED

MATERIAL INSPECTION AND RECEIVING REPORT

I–802 DD Form 250c: Material Inspection and Receiving Report

Continuation Sheet



TANKER/BARGE MATERIAL INSPECTION AND RECEIVING REPORT	1. TANKER/BARGE ☐ LOADING REPORT ☐ DISCHARGE REPORT	2. INSPECTION OFFICE	3. REPORT NUMBER
4. AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS *(Loading)*		5. DEPARTMENT	6. PRIME CONTRACT OR P.O. NUMBER
7. NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS *(Loading)*			8. STORAGE CONTRACT
9. TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS			10. ORDER NUMBER ON SUPPLIER
11. SHIPPED TO: *(Receiving Activity, City, State and/or Local Address)*			12. B/L NUMBER
			13. REQN. OR REQUEST NUMBER / 14. CARGO NUMBER
15. VESSEL		16. DRAFT ARRIVAL FORE AFT	17. DRAFT SAILING FORE AFT
18. PREVIOUS TWO CARGOES FIRST LAST		19. PRIOR INSPECTION	
20. CONDITION OF SHORE PIPELINE		21. APPROPRIATION *(Loading)*	22. CONTRACT ITEM NUMBER
23. PRODUCT		24. SPECIFICATIONS	

25. STATEMENT OF QUANTITY	LOADED	DISCHARGED	LOSS/GAIN	PER CENT
BARRELS (42 Gals) (Net)				
GALLONS (Net)				
TONS (Long)				

26. STATEMENT OF QUALITY		
TESTS	SPECIFICATION LIMITS	TEST RESULTS

27. TIME STATEMENT	DATE	TIME
NOTICE OF READINESS TO LOAD DISCHARGE		
VESSEL ARRIVED IN ROADS		
MOORED ALONGSIDE		
STARTED BALLAST DISCHARGE		
FINISHED BALLAST DISCHARGE		
INSPECTED AND READY TO LOAD DISCHARGE		
CARGO HOSES CONNECTED		
COMMENCED LOADING DISCHARGE		
STOPPED LOADING DISCHARGING		
RESUMED LOADING DISCHARGING		
FINISHED LOADING DISCHARGING		
CARGO HOSES REMOVED		
VESSEL RELEASED BY INSPECTON		
COMMENCED BUNKERING		
FINISHED BUNKERING		
VESSEL LEFT BERTH *(Actual/Estimated)*		

28. REMARKS *(Note in detail cause of delays such as repairs, breakdown, slow operation, stoppages, etc.)*

29. COMPANY OR RECEIVING TERMINAL

(Signature)

30. I CERTIFY THAT THE CARGO WAS INSPECTED, ACCEPTED AND LOADED/DISCHARGED AS INDICATED HEREON.

(Date) *(Signature of Authorized Government Representative)*

31. I HEREBY CERTIFY THAT THIS TIME STATEMENT IS CORRECT.

(Master or Agent)

DD FORM 1 MAR 88 250-1

REPLACES DD FORM 250-1, 1 JUL 68, WHICH MAY BE USED.

Appendix L—DoD Freedom of Information Act Program

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Appendix L—Department of Defense Directive 5400.7 of March 24, 1980.

Subject: DoD Freedom of Information Act Program

DEPARTMENT OF DEFENSE DIRECTIVE 5400.7

REPRINT - Changes 1, 2, and 3 have been incorporated.

March 24, 1980#
NUMBER 5400.7

ASD(PA)

Department of Defense Directive

SUBJECT: DoD Freedom of Information Act Program

References: (a) DoD Directive 5400.7, "Availability to the Public of Department of Defense Information," February 14, 1975 (hereby canceled)
(b) Title 5, United States Code, Section 552
(c) DoD Directive 5025.1, "Department of Defense Directives System," October 16, 1980 ***
(d) Public Law 86-36, "National Security Information Exemption"
(e) through (g), see enclosure 1

A. REISSUANCE AND PURPOSE

1. This Directive reissues reference (a); establishes policies and procedures for the implementation of the DoD Freedom of Information Act (FOIA) Program under reference (b); and delegates authorities and responsibilities for the effective administration of the program.

2. This Directive also authorizes, in accordance with reference (c), the publication of DoD 5400.7-R, the single DoD regulation on the FOIA Program.

B. APPLICABILITY AND SCOPE

1. The provisions of this Directive apply to the Office of the Secretary of Defense (OSD) and their administrative support agencies, the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Communications Agency (DCA), Defense Contract Audit Agency (DCAA), Defense Intelligence Agency (DIA), Defense Investigative Service (DIS), Defense Logistics Agency (DLA), Defense Mapping Agency (DMA), and the Defense Nuclear Agency (DNA). For the purpose of this Directive, OSD, OJCS, the Unified Commands, and OSD administrative support agencies are considered one "DoD Component." The other DoD Components referred herein are the Military Departments, DCA, DCAA, DIA, DIS, DLA, DMA, and DNA. * **

2. The National Security Agency records are subject to the provisions of this Directive, unless the records are exempt under reference (d).

#First amendment (Ch 1, 4/11/80)
#Second amendment (Ch 2, 4/24/80)
#Third amendment (Ch 3, 12/3/80)

C. Definitions

***The terms used in the directive are defined in DoD 5400.7-R, December 1980.

D. Policy

It is the policy of the Department of Defense to:

1. Promote public trust by making the maximum amount of information available to the public on the operation and activities of the Department of Defense, consistent with DoD's responsibility to ensure national security.

2. Allow a requester to obtain records from the Department of Defense that are available through other public information services without invoking the FOA.

***3. Make available, under the procedures established by Chapter IV, V, and VI of DoD 5400.7-R, those records that are requested by a member of the general public who cities the FOIA.

***4. Answer promptly all other requests for information, records, objects, and articles under established procedures and practices.

***5. Release records to the public, unless those records are exempt from mandatory disclosure as outlined in Chapter III of DoD 5400.7-R.

6. Process requests by individuals for access to records about themselves under the Privacy Act procedures as implemented by DoD Directive 5400.11 (reference (e)) or procedures outlined in this Directive when they are more advantageous to the requester.

E. Responsibilities

1. The *Assistant Secretary of Defense (Public Affairs) (ASD(PA))* shall:

a. Direct and administer the DoD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

b. Issue a DoD FOA regulation and other discretionary instructions and guidance to ensure timely and reasonably uniform implementation of the FOA in the Department of Defense.

c. Administer internally the FOA Program for the OSD, the OJCA and, as an exception to DoD Directive 5100.3 (reference (f)), the Unified Commards (the Sepcified Commands remain under the Military Departments for FOA matters).

d. As the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities identified in ASD(PA) supplementing instructions.

2. The *General Counsel of the Department of Defense* shall provide uniformity in the legal interpretation of this Directive.

3. *Heads of DoD Components* shall:

a. Publish in the **Federal Register** any instructions necessary for the internal administration of this Directive within a DoD Component that are not prescribed by this Directive or by other issuances of the ASD(PA). For the guidance of the public, the information specified in 5 U.S.C. 552(a)(1) (reference (b)) will be published in accordance with DoD Directive 5400.9 (reference (g)).

b. Conduct training on the provisions of this Directive for officials and employees who implement the FOA.

***c. Submit the reports prescribed in Chapter VII of DoD 5400.7-R.

d. Make available for public inspection and copying in an appropriate facility or facilities, in accordance with rules and published in the **Federal Register**, the records specified in 5 U.S.C. 552(a)(2) (reference (b)) unless such records are published and copies are offered for sale.

e. Maintain and make available for public inspection and copying current indices of these records.

F. Information Requirements

***The reporting requirements in Chapter VII of DoD 5400.7-R have been assigned Report Control Symbol DD-PA(TRA&A) 1365.

G. Effective Date and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the Office of the Assistant Secretary of Defense (Public Affairs) within 120 days.

W. Graham Claytor, Jr.,

Deputy Secretary of Defense

**Enclosure—1, References.

(e) DoD Directive 5400.11, "Personal Privacy and Rights of Individuals Regarding their Personal Records," August 4, 1975.

(f) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Joint Commands," March 17, 1980.

(g) DoD Directive 5400.9, "Publication of Proposed and Adopted Regulations Affecting the Public," December 23, 1974.

Appendix L—Department of Defense Regulation 5400.7-R

DOD Freedom of Information Act Program

DEPARTMENT OF DEFENSE REGULATION 5400.7-R

Assistant Secretary of Defense

Washington, D.C. 20301

November 3, 1980

FOREWORD

This regulation is issued under the authority of DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980.

It is effective immediately and is mandatory for use by all DoD Components listed at enclosure 2. Heads of DoD Components may elect to issue instructions deemed essential to the accommodation of perceived requirements peculiar to respective Components. Any such instruction may not conflict with the provisions of this regulation.

This regulation incorporates the provisions of enclosures 2 through 7 of DoD Directive 5400.7, March 24, 1980.

Recommendations for amendments shall be forwarded through appropriate channels to Director, Freedom of Information and Security Review, who is authorized to approve and issue amendments to this regulation. Recommendations should be addressed to: Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301.

Thomas B. Ross,

Assistant Secretary.

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DoD FREEDOM OF INFORMATION ACT PROGRAM

CHAPTER I—GENERAL PROVISIONS

Section 1—REFERENCES

1–100 References

(a) Title 5, United States Code, Section 552
(b) DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980
(c) Public Law 86–36, "National Security Information Exemption"
(d) DoD Directive 5400.11, "Personal Privacy and Rights of Individuals Regarding Their Personal Records," August 4, 1975
(e) through (u), see enclosure 1

Section 2—PURPOSE AND APPLICABILITY

1–200 Purpose

The purpose of this Regulation is to provide policies and procedures for the DoD implementation of the Freedom of Information Act (reference (a)) and reference (b) and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program. This Regulation incorporates and amplifies enclosures 2 through 7 of DoD Directive 5400.7 (reference (b)).

1–201 Applicability

a. This Regulation applies to the Office of the Secretary of Defense (OSD) (which includes for the purpose of this Regulation the Organization of the Joint Chiefs of Staff, Unified Commands and OSD administrative support agencies), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at enclosure 2.

b. The National Security Agency records are subject to the provisions of this Regulation, only to the extent the records are not exempt under Public Law 86–36 (reference (c)).

Section 3—DoD PUBLIC INFORMATION

1–300 Public Information

The public has a right to information concerning the activities of its government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA and denial would serve a significant, legitimate government purpose. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

1–301 Control System

A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this Regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation or under the Privacy Act, when the request is from the subject of the records requested.

Section 4—Definitions

1–400 Definitions

As used in this Regulation, the following terms and meanings shall be applicable.

1–401 FOIA Request

A written request for DoD records, made by a member of the public, that either explicity or implicitly invokes the FOIA, DoD Directive 5400.7, this Regulation, or DoD Component supplementing regulations or instructions.

1–402 Agency Record

a. The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public

business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

b. The following are not included within the definition of the word "record":

1. Library and museum material made, acquired, and preserved solely for reference or exhibition.

2. Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

3. Commercially exploitable resources, including but not limited to, formulae, designs, drawings, maps and charts, map compilation manuscripts and map research materials, research data, computer programs, and technical data packages that were not created and are not utilized as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

4. Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

5. Anything that is not a tangible or documentary record, such as, an individual's memory or oral communication.

6. Personal notes of an individual not made available to other persons in an agency and not filed with agency records.

7. Information stored within a computer for which there is no existing computer program or printout.

c. A record must exist and be in the possession or control of Department of Defense at the time of the request to be considered subject to this Regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

1-403 DoD Component

An element of the Department of Defense, as defined in 1-201, authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or authorities and its own appellate authority.

1-404 Initial Denial Authority

An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

1-405 Appellate Authority

The head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

1-406 Administrative Appeal

A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

Section 5— Policy

1-500 Compliance with the Freedom of Information Act

DoD personnel are expected to comply with the provisions of the FOIA and this Regulation in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

1-501 Openness with the Public

The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

1-502 Avoidance of Procedural Obstacles

DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Regulation and any supplemental regulations published by the DoD Components.

1-503 Prompt Action of Requests

When a member of the public complies with the procedures established in this Regulation for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched with in 10 working days, unless a delay is authorized. Requests by individuals for access to records about themselves shall be processed under the Privacy Act procedures, as implemented by DoD Directive 5400.11 (reference (d)), outlined in this Regulation, providd such records are contained in a system of records and are retrievable by reference to the requester's name or other personal identifier. Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

1-504 Use of Exemptions

Records that may be withheld under the exemptions outlined in Chapter III of this Regulation shall be made available to the public when no significant, legitimate Government purpose is served by withholding them. Determination of significant and legitimate Government purpose is within the sole discretion of the Component, consistent with statutory requirements, security classification requirements, or other requirements of law.

1-505 Public Domain

Nonexempt records released under the authority of this Regulation is considered to be in the public domain. Exempt records released pursuant to this Regulation or other statutory or regulatory authority however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Regulation apply if the same individual seeks the records in a private or personal capacity.

1-506 Creating a Record

A record must exist and be in the possession or control of the Department of Defense at the time of the request to be considered subject to this Regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. A DoD Component, however, may compile or create a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is less than the fee which would be charged for providing the existing record. Fee assessment for direct search and duplication associated with the request shall be in accordance with paragraph 6-101.

1-507 Description of Requested Record

a. Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect.

* The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined below in paragraph 1-507b of this regulation. Components are not obligated to act on the request until the requester responds to the specificity letter.

When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

b. The following guidelines are provided to deal with "fishing expedition" requests are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

1. Category I is file-related and includes information such as type of record—memorandum, title, index citation, subject area, date the record was created and orginator.

2. Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

c. Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the Component's filing

arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

d. The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers only are provided in connection with a request for records concerning the requester, only records retrievable by pesonal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

e. The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

1–508 Referrals

a. A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. If the DoD Component that is consulted determines that the existence or nonexistence of any record of the DoD Component responsive to the request is in itself classified, the requester will be so notified. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

b. Whenever a record, or a portion of a record, is, after prior consultation, referred to another DoD Component or to a government agency outside of the Department of Defense for a release determination and direct response, the requester shall be given a description of the record referred, as furnished by the DoD Component that was consulted. Referred records shall only be identified to the extent consistent with security requirements.

c. A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency or if the classification is derivative. Telephonic coordination with the DoD Component or outside agency shall be made prior to the referral.

d. A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component of agency. The DoD Component or agency for which the record was created may have as significant and as legitimate an interest in withholding the record that the DoD Component that created the record would have. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

e. Within DoD, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. Then, the requester shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

f. DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this Regulation. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

g. Agencies outside the Department of Defense that are subject to the FOIA:

1. A Component may refer an FOIA request for any record that originated in an agency outside the Department of Defense or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA and if the requester does not object. Otherwise the component must respond to the request.

2. A DoD Component shall not honor any FOIA request for investigative, intelligence or any type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

h. To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

1–509 Fee Assessment

a. Fees may not be used to discourage requests, and to this end FOIA fees are limited to standard charges for direct document search and duplication. Documents may be furnished without charge or at a reduced charge when the agency determines that waiver or reduction of the fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Based on this guidance, the Department of Defense has established a liberal fee schedule, that is outlined in Chapter VI of this Regulation.

b. In order to be as responsive as possible to FOIA requests, while minimizing unwarranted costs to the taxpayer, DoD Components shall adhere to the following procedures:

1. If the requester declares an unwillingness to pay fees and does not substantiate a request for waiver and if it appears that the direct search and reproduction costs associated with the request shall exceed the automatic waiver threshold, the request need not be processed and the requester shall be so informed.

2. If the requester declares a willingness to pay fees up to a specified amount and does not substantiate a request for waiver, then the specified amount or the automatic waiver threshold, whichever is greater, shall not be exceeded without the consent of the requester.

3. If the requester makes no declaration concerning fees and does not substantiate a request for waiver, and if it appears that the direct search and reproduction fees to be assessed shall exceed the automatic waiver threshold, the request shall not be processed until the requester is advised of anticipated charges and agrees to pay them.

4. Components may require payment of all or a portion of estimated fees before processing a request.

5. Subsequent requests from persons who fail to discharge fee obligations need not be processed until previous obligations have been discharged or waived.

1–510 Authentication

Records provided under this Regulation shall be authenticated with an appropriate seal whenever necessary to fulfill an official Government or other legal function. This service, however, is in addition to that required under FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $3.00 for each authentication.

1–511 Unified and Specified Commands

a. The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (reference (e)); it authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and this Regulation. The Unified Commands shall forward directly to the Office of the Assistant Secretary of Defense (Public Affairs), OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in Appendix A.

b. The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

1–512 Records Management

FOIA records shall be maintained and disposed of in accordance with DoD Component disposition instructions and schedules.

Chapter II—FOIA Reading Rooms

Section 1—Requirements

2–100 Reading Room

Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly

inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of Chapter VI of this Regulation.

2-101 Material Availability

The FOIA requires that so-called "(a)(2)" material shall be made available in the FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion may be fully explained in writing. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

a. Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (f)), that may be cited, used, or relied upon as precedents in future adjudications.

b. Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

c. Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

1. Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

2. Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

Section 2—Indexes

2-200 "(a)(2)" Materials

a. Each DoD Component shall maintain in each facility prescribed in paragraph 2-100 an index of materials described in paragraph 2-101 that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this Regulation.

b. Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in Chapter VI of this Regulation.

c. Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

2-201 Other Materials

a. Any available index of DoD Component material published in the **Federal Register**, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

b. Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Chapter III—Exemptions

Section 1—General Provisions

3-100 General

Records that meet the exemption criteria in Section 2 of this Chapter may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

3-101 Significant and Legitimate Government Purpose

An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no significant and legitimate government purpose would be served by withholding it under an applicable exemption. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this Regulation, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record.

Section 2—Exemptions

3-200 FOIA Exemptions

The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law.

Number 1. Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoDD 5200.1-R (reference (g)). Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoDD 5200.1-R, Section 2-204f apply.

Number 2. Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

a. Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

b. Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

Number 3. Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

a. National Security Agency Information Exemption, P.L. 86-36, Section 6 (reference (c)).

b. Patent Secrecy, 35 U.S.C. 181-188 (reference (h)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

c. Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (reference (i)).

d. Communication Intelligence, 18 U.S.C. 798 (reference (j)).

Number 4. Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

a. Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence

or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

b. Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

c. Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

d. Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate employees within the Department of Defense.

e. Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

Number 5. Except as provided in subsections b. through e., below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) (reference (a)) or within or among DoD Components.

a. Examples include:

1. The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

2. Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

3. Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

4. Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

5. Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the government's negotiating position or other commercial interests.

6. Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

7. Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

b. If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this Regulation.

c. Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

d. A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

e. An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

Number 6. Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

a. Examples of other files containing personal information similar to that contained in personnel and medical files include:

1. Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

2. Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

b. In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

c. Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 (reference (d)).

d. A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

Number 7. Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

a. This exemption applies, however, only to the extent that release of a record or portion of a record would:

1. Interfere with enforcement proceedings.

2. Deprive a person of the right to a fair trial or to an impartial adjudication.

3. Constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

4. Disclose the identity of a confidential source.

5. Disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

6. Disclose investigative techniques and procedures not already in the public domain and requiring protection against public disclosure to ensure their continued effectiveness.

7. Endanger the life, physical safety, or well-being of law enforcement personnel or their families.

b. Examples include:

1. Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proeedings.

2. The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

3. Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence

investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

c. The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500, reference k)) is not diminished.

d. When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (reference (d)).

Number 8. Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial instructions.

Number 9. Those containing geological and geophysical information and data (including maps) concerning wells.

Chapter IV—For Official Use Only

Section 1—General Provisions

4-100 General

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. *No other material shall be considered or marked "For Official Use Only"* (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

4-101 Prior FOUO Application

The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply and whether a significant and legitimate government purpose is served by withholding the record or portions of it.

4-102 Historical Papers

Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (reference (a)).

4-103 Time to Mark Records

The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

4-104 Distribution Statement

Information in a technical document that requires a distribution statement pursuant to DoD Directive 5200.20 (reference (l)) shall bear that statement and shall not be marked FOUO.

Section 2—Markings

4-200 Location of Markings

a. An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

b. Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

c. Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

d. Other records such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

e. FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions— apply.

Section 3—Dissemination and Transmission

4-300 Release and Transmission Procedures

Until FOUO status is terminated, the release and transmission instructions that follow apply:

a. FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

b. DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked. "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

c. Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 (reference (m)). Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1 (reference (n)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

4-301 Transporting FOUO Information

Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

4-302 Electrically Transmitted Messages

Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP-121 (US Supp 1) (reference (o)) for FOUO information.

Section 4—Safeguarding FOUO Information

4-400 During Duty Hours

During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to nongovernmental personnel.

4-401 During Nonduty Hours

At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of P.L. 86-36 (reference (c)) shall meet the safeguards outlined in any system notice for that group of records.

Section 5—Termination, Disposal and Unauthorized Disclosures

4-500 Termination

The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

4–501 Disposal

a. Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

b. Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. CH 33 (reference (p)), as implemented by DoD Component instructions concerning records disposal.

4–502 Unauthorized Disclosure

The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Chapter V—Release and Processing Procedures

Section 1—General Provisions

5–100 Public Information

a. Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities written requests for a DoD record made under the FOIA may be denied only when:

1. The record is subject to one or more of the exemptions in Chapter III of this Regulation, and a significant and legitimate government purpose is served by withholidng it.

2. The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

3. The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

b. Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B.

5–101 Requests From Private Citizens

The provisions of the FOIA are reserved for persons which private interests as opposed to governments seeking information. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in paragraph 1–505.

5–102 Requests From Government Officials

Requests from officials of federal, state, or local governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

5–103 Privileged Release to Officials

a. Subject to the provisions of DoD Regulation 5200.1–R (reference (g)), applicable to classified information, DoD Directive 5400.11 (reference (d)), applicable to personal privacy, or other applicable law, records exempt from release under Chapter III of this Regulatory may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, state or federal government bodies, whether legislative, executive, administrative, or judicial, as follows:

1. To Congress, in accordance with DoD Directive 5400.4 (reference (m)).

2. To the federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

3. To other federal agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

4. To state and local officials, as determined by the head of a DoD Component or designee.

b. DoD Components shall inform officials receiving records under the provisions of paragraph 5–103a that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

Section 2—Initial Determinations

5–200 Initial Denial Authority

a. Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

b. The initial determination of whether to make a record available upon requests may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this Regulation is applicable and should be invoked.

c. The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

5–201 Reasons for Not Releasing a Record

There are six reasons provided by the FOIA for not complying with a request for a record. They are:

a. The information requested is not a record within the meaning of the FOIA and this Regulation.

b. A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

c. The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this Regulation or DoD Component supplementing regulations.

d. The DoD Component determines through knowledge of its files and reasonable search efforts that it does not hold the requested record. (A "no record" determination is not considered a denial; therefore, an appeal is not appropriate.)

e. The DoD Component determines that the request should be handled under the provisions of the Privacy Act.

f. The record is denied in accordance with Procedures set forth in the FOIA and this Regulation.

5–202 Denial Tests

To deny a requested record that has been located, a DoD Component must determine that the denial meets the following tests:

a. The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in Chapter III of this Regulation.

b. A significant and legitimate government purpose is served by withholding the record.

5–203 Reasonably Segregable Portions

Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not possible to reasonably segregate meaningful portions of the record for release.

5–204 Response to Requester

a. Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 workings days after receipt of the request by the official designated to respond.

b. When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied wih preliminary procedural requirements.

c. When a request for a record is denied in whole or in part, the official designated to

respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based and the significant and legitimate government purpose served by withholding the record. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

d. The response to the requester should contain information concerning the fee status of the request. Generally, the information shall reflect one or more of the following conditions:

1. All fees due have been received.

2. Fees have been waived because they fall below the automatic fee waiver threshold.

3. A request for waiver has been denied.

4. Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

5. Fees due in a specified amount have not been received.

e. The explanation of the substantive basis for a denial shall include both specific citation of the statutory exemption applied under provisions of this Regulation and a discussion of the significant and legitimate government purpose served by invoking an exemption. Merely referring to a classification or, to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

f. When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

5–205 Extension of Time

a. In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

1. The requested record is located in whole or in part at places other than the office processing the request.

2. The request requires the collection and evaluation of a substantial number of records.

3. Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this Regulation or should be released as a matter of discretion.

b. The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component or in accordance with regulations of the DoD Component or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted.

c. In these unusual cases where the statutory time limits cannot be met, and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester, with notification that he may treat the delay as an initial denial with a right to appeal, or that the requester may agree to a wait a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made.

d. As an alternative to the taking of formal extensions of time as described in subsections a, b and c above, the negotiation by the cognizant, FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

5–206 Misdirected Requests

Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

5–207 Records of Non-U.S. Government Source

When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information, clearly identified as having been provided by a non-U.S. Government source, the source of the record or information normally shall be notified promptly of that request and afforded reasonable time to present any objections concerning the release unless it is clear that there can be no valid bases for objection. If for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known.

5–208 File of Initial Denials

Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

5–209 Special Mail Services

DoD Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

5–210 Receipt Accounts

The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts except receipts for industrially funded activities. Industrially funded activity FOIA receipts shall be deposited to the applicable industrial fund.

a. *Receipt Account 2252, Sale of Publications and Reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms, that meet the Receipt Account Series 2250 description found in Federal Account Symbols and Titles.

b. *Receipt Account 2419.3, Fees and Other Charges for Services, Freedom of Information Act.* This account is used to deposit search fees and fees for duplicating records to satisfy requests that could not be filled with existing publications or forms.

Section 3—Appeals

5–300 General

If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt and its withholding justified for a significant and legitimate government purpose, that decision may be appealed by the requester in writing to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. In addition, the DoD Component may impose a reasonable time limit, which may not be more than 45 days, for the requester to file an appeal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

5–301 Time of Receipt

FOI appeal has been received by a DoD Component when it reaches the office of the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

5–302 Time Limits

a. The requester must file an appeal so that it reaches the appellate authority no later than 45 working days after the requester receives notification of an initial denial. At the conclusion of this period, the case may be

considered closed. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

b. Final determinations on appeals normally shall be made within 20 working days after receipt.

5–303 Delay in Responding to an Appeal

a. If additional time is needed due to the unusual circumstances described in paragraph 5–205, the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request.

b. If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester in writing the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph 5–205, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filling of a complaint shall be forwarded to the Department of Justice.

5–304 Response to the Requester

a. When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

b. Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, as a minimum, shall include the following:

1. The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption invoked under provisions of this Regulation and the significant and legitimate government purpose served by its withholding.

2. When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing executive order and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

3. The final denial shall include the name and title or position of the official responsible for the denial.

4. The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

5. The response shall advise the requester of the right to judicial review.

5–305 Consultation

a. Final refusal involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

b. Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be brought to the attention of the Freedom of Information Committee of the Department of Justice through the Office of Information Law and Policy.

Section 4—Judicial Actions

5–400 General

a. This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind DoD to particular judicial interpretations or procedures.

b. A requester may seek an order from a United States District court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and set forth in this Regulation.

5–401 Jurisdiction

The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

5–402 Burden of Proof

The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

5–403 Actions by the Court

a. When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

b. If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

c. When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

d. The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

5–404 Non-United States Government Source Information

A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

5–405 Litigation Status Sheet

Freedom of Information managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Director for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs). A revised Litigation Status Sheet shall be provided at each stage of the litigation.

CHAPTER VI—Fee Schedule

Section 1—General Provisions

6–100 Application

The fees described in this chapter apply to FOIA requests. They reflect direct search and duplication costs, collection of which are permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 (reference (q)).

6–101 Fee Assessment

a. Minimum fees shall not be charged.

b. When direct search and duplication costs for a single FOIA request total less than 30.00, fees should be waived automatically. The DoD Components, however, may set aside the automatic waiver provision when, on the basis of good evidence, the Component can demonstrate that waiver of fees is not in the public interest.

c. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall

be made on a case-by-case basis. The following circumstances, however, describe the most common circumstances in which waiver or reduction of fees are most likely to be warranted.

1. No record is located or all records are denied. However, fee charges are appropriate if the requester insists upon a search and agrees to such fees after being informed that the search is likely to be nonproductive or that the records are all likely to be exempt from release.

2. A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records including additional information not requested.

3. The records are to be made available in response to a news media requester whose requests under this regulation are reasonable in scope and frequency. Fee charges are appropriate for news media requesters and may be assessed when:

(a) The fee charges exceed the fee waiver threshold of $30.00; and

(b) Either the requested record does not contain information that can be considered as primarily benefiting the general public, or the search for the requested record requires an inordinate amount of DoD Component personnel time, and impacts adversely on the DoD Component concerned in accomplishing its primary functional missions.

4. When news media requests are broad in scope and are considered unreasonable by the Head of the Component, a specificity letter, as outlined in paragraph 5–107a of this regulation, should be dispatched. An estimate of fee charges may be included in the specificity letter, if practicable, or provided after receiving a reframed request.

5. The record is for a nonprofit public interest group and the subject of the requested record is known to be of wide public interest, and furnishing the information can be considered as primarily benefiting the general public.

6. A previous denial is reversed in whole or in part and the search and reproduction costs involved are not substantial.

6–102 Computation of Fees

The fee schedule contained in this chapter is used to compute the search and duplication costs associated with processing a given FOIA request. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

Section 2—Collection of Fees and Fee Rates

6–200 Collection of Fees

Collection of charges and fees need not be made in advance of rendering the service unless the costs are expected to exceed the fee waiver threshold and the requester has not indicated a willingness in writing to pay. It frequently is more practical to collect charges and fees at the time of providing the service or property to the recipient when the requester specifically states that the cost involved shall be acceptable or acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement only when the requester has not agreed in writing to pay the anticipated fee or has not honored previous commitments to pay fees that were owed an agency or component.

6–201 Search Fees

a. Manual Search:

Type	Grade	Hourly rate
Clerical	E9/GS8 and below	$8
Professional	01–06/GS9–GS–15	16
Executive	07/GS16/ES1 and above	26

b. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

c. Actual cost of transporting records or personnel to the search site may be included.

6–202 Duplication Fees

Type	Cost per page (cents)
Printed Material	01
Office Copy	10
Microfiche	25

6–203 Audiovisual Documentary Materials

Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

6–204 Other Records

Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

Chapter VII—Reports

Section 1—Reports Control

7–100 General

The reporting requirement outlined in this chapter is assigned Report Control Symbol DD–PA(TRA&A) 1365.

Section 2—Annual Report

7–200 Reporting Time

Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (reference (r)). The standard data elements are contained in DoD 5000.12–M (reference (s)).

7–201 Annual Report Content

a. The annual report shall contain the following:

1. *Item. 1.* Report the number of public requests (a single FOIA request) completed. Report the number of reportable requests, the number in which a statutory exemption was invoked, and the number in which some other authority resulted in the denial of the request.

Note.— A reportable request is that portion of an FOIA request resulting in a single record or group of records pertaining to one general subject area being acted upon by one IDA who concludes that a single type of determination applies. Example: A single public request that requires the action of three IDAs in determining if a record under their jurisdiction is to be released would be counted as three reportable requests, but one public request. Records released by two IDAs in response to one public request would be counted as two reportable requests.

2. *Item 2.* Provide statistics on the specific authorities—statutory exemptions, status, and categories of other reasons used in the totals above.

(a) *Item 2(a).* Show the number of times each of the nine statutory exemptions was invoked (the total may not agree with Item 1 because of situations where two or more exemptions were cited for one record).

(b) *Item 2(b).* List the statutes cited when invoking Exemption 3 and the number of times each was cited.

(c) *Item 2(c).* Show the number of times each category of other reasons was cited in response to the public. Five such reportable categories have been established in Appendix E to this Regulation (the total will equal the number reported in Item 1).

3. *Item 3.* Provide the number of IDAs authorized. Then list the names and titles or positions of persons cited as IDAs, followed thereafter in two subcolumns by the number of times each person cited exemptions or other authority categories (the vertical columnar totals must match Item 1).

4. *Item 4.* Provide the number of appeals that, upon review, were granted in part, or denied, followed by a total of those three numbers.

5. *Item 5.* Repeat the three statistical requirements of Item 2 for the appeals that were granted in part or denied.

6. *Item 6.* Repeat item 3 for appellate authorities including both subcolumnar statistics.

7. *Item 7.* When a court determines that DoD Component records were improperly withheld and issues a finding raising questions on the actions of DoD Component personnel, provide a copy of each such court opinion or order; a copy of the Office of Personnel Management finding and recommendation on each such proceeding; and a report of any disciplinary action taken against the person who was primarily responsible for improperly withholding records or an explantion of why disciplinary action was not taken.

8. *Item 8.* List changes or revisions of DoD Component rules or regulations affecting the implementation of FOIA followed by the **Federal Register** reference (number, date, and page) that announced the change or revision to the public. Append a copy of each such change or revised rule or regulation.

9. *Item 9.* The amount of fees collected from the public will be reported triannually to OASD(PA); thus, duplicate annual reporting by DoD Components is not required.

10. *Item 10.* the following subitems have been established by Congressional request as indicative of DoD Component efforts to administer FOIA.

(a) *Item 10(a).* List all new categories of records now being released in whole or in part under FOIA.

(b) *Item 10(b).* The costs of administering the FOIA Program shall be reported triannually to OASD(PA); thus, duplicate annual reporting by Components is not required. The triannual reports shall be used by the OASD(PA) to portray annual DoD Component and DoD-wide totals.

(c) *Item 10(c).* Report the number of times unusual circumstances required an extension of normal processing time limits, and break down that total by circumstances and by court action. Append a copy of each court opinion or order involving the question of time limits for processing.

(d) *Item 10(d).* Append a copy of all unpublished (not announced in the **Federal Register**) instructions to DoD Component personnel, memoranda, or other issuances that address procedures, definitions, or interpretations of the FOIA promulgated during the year at Major Command level or the DoD Component. Report the number of documents published and whether or not they are publicly available, together with the legal basis for nondisclosure, should that be the case.

(e) *Item 10(e).* Any other information, opinion, or recommendations considered pertinent by the DoD Component.

11. *Item 11.* Report descriptions of FOI instructional and educational efforts undertaken by the DoD Component directed toward DoD Component personnel or the public.

12. Statistical data required by the item listed above shall be prepared in the format shown in Appendix D.

Section 3—Triannual Report

7–300 General

A portion of the annual reporting requirements has been selected for more frequent reporting to provide management date at intermediate DoD Components and DoD levels. The data selected fall into three areas: (1) costs attendant to administration of the FOIA program, (2) the amount collected from the public, and (3) the number of reportable requests and appeals.

7–301 Time of Report

Each DoD Component shall prepare statistics triannually (Jan-Apr, May-Aug, Sep-Dec.) and, using the outline provided below, report these data to the ASD(PA) on or before 30 days after the close of each 4-month period. The use of DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost," to maintain a record of the cost of each FOIA case shall provide the data needed for compiling the data in this report.

7–302 Triannual Report Outline

a. The Triannual Report shall include the following:
Reporting Activity:
Period of Report:
1. Cost of Routine Requests Processed:
No. of reportable requests × (Cost factor per request) ..... $——
2. Personnel Costs (Civilian and Military):
(a) Direct costs of personnel assigned FOI duties based upon estimated payroll manyers by grade:
——— Cost: $——
(b) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:
(1) Search Time Costs... ——
(2) Review and Excising..... ——
(3) Coordination and Approval/Denial Decision Costs ..... ——
(4) Correspondence and Form Preparation.. ——
(5) Other Activity Costs ..... ——
Total Manhour Costs ..... $——
(c) Application of Overhead:
(Subtotal a) + (Subtotal b) × (overhead rate) ..... $——
Total of Direct Personnel Costs and Overhead..... $——
3. Other Case Related Costs:
(a) Computer..... $——
(b) Office Copy Reproduction... $——
(c) Microfiche Reproduction... $——
(d) Cost of Printed Records..... $——
Total of Other Costs..... $——
4. Other Operating Costs:
(a) Reporting Costs [1]
(1) Operational.. ——
(2) User..... ——
(3) Overhead ... ——
{(1) + (2) × (overhead rate)}..... ——
$——
(b) Other costs are directed or as can be reasonably ascertained. Itemize each expense category and cost ..... $——
(Subtotal a) + (Subtotal b)..... $——
5. Summary:
(a) Total Costs of Sections 1 through 4, above..... $——
(b) Amount Collected from Requesters this Reporting Period:
Search——Copy——Total: $——
(c) No. of Requests Processed During this Reporting Period:
Reportable Requests——
Appeals——Total:——
b. A copy of DD Form 2086, "Record of Freedom of Information (FOI) Processing Costs," is at Appendix F.
c. Format and instructions for the Triannual report are at Appendix G.

[1] See DoD Instruction 5000.22 (reference (t)). In the report for the last 4-month period (Sep-Dec) of each year, include the costs attributable to the Annual Report.

Chapter VIII—Education and Training

Section 1—Responsibility and Purpose

8–100 Responsibility

The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this Regulation. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, developing a thorough understanding of the procedures outlined in this Regulation.

8–101 Purpose

The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

8–102 Scope and Principles

Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this Regulation. The program should be designed to accomplish the following objectives:

a. Familiarize personnel with the requirements of the FOIA and its implementation by this Regulation.

b. Instruct personnel, who act in FOI matters, concerning the provisions of this Regulation, advising them of legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

c. Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

d. Advise personnel of the penalties for noncompliance with the FOIA.

8-103 Implementation

To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD (Public Affairs).

8-104 Uniformity of Legal Interpretation

In accordance with DoD Directive 5400.7 (reference (b)) the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

Appendix A—Unified Commands—Processing Procedures for FOI Appeals

1. General

a. In accordance with DoD Directive 5400.7 (reference (b)) and this Regulation, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3 (reference (e)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and to forward directly to the Office of the Assistant Secretary of Defense (Public Affairs) all correspondence associated with the appeal of an initial denial for information under the provisions of the Freedom of Information Act (FOIA).

2. Processing Procedures

A request for a record under the FOIA may be denied only upon determination that:

(a) The record is subject to one or more of the exemptions set forth in Chapter III of this Regulation and a significant and legitimate government purpose is served by the withholding.

(b) The record cannot be found because it has not been described with sufficient particularity to enable a responsible authority to locate it with a reasonable amount of effort.

(c) The requester has unreasonably failed to comply with the procedural requirements imposed by this regulation.

3. Responsibilities of Commands

Unified Commanders in Chief shall:

(a) Designate the officials authorized to deny initial FOI requests for records.

(b) Designate an office as the point-of-contact for FOI matters.

(c) Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

(d) Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of Department of Defense, if required, is authorized.

(e) Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

(f) Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

(g) Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

(h) State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the ASD(PA) the Pentagon, Washington, D.C. 20301.

(i) Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

4. Fees for FOI Requests

The fees charged for requested records shall be in accordance with Chapter VI of this Regulation.

5. Communications

Excellent communication capabilities currently exist between the Office of the ASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

6. Reporting Requirements

a. The Unified Commands shall submit to the ASD(PA) triannual reports and an annual report. The instructions for these two reports are outlined in Chapter VII of this Regulation.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD-PA(TRA&A) 1365.

c. The triannual reports for the periods January–April, May–August, September–December are required within 30 days after the close of the reporting period. The first report is due for the period May–August 1980, arriving at the Office of the ASD(PA) not later than September 30, 1980. This reporting requirement is assigned Report Control Symbol DD-PA (TRA&A) 1365.

Appendix B—Addressing FOIA Requests

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, the Military Departments, the Unified and Specified Commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements.

b. The Department of Defense does not have a central repository for DoD records. FOI requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOI requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOI Requests

a. *Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff.* This Component includes the Office of the Secretary of Defense, Office of the Deputy Secretary of Defense, Organization of the Joint Chiefs of Staff, Under Secretary of Defense for Policy, Under Secretary of Defense for Research and Engineering, Assistant Secretaries of Defense, General Counsel of the Department of Defense, Deputy Under Secretary of Defense (Policy Planning), Deputy Under Secretary of Defense (Policy Review), Assistant to the Secretary of Defense (Atomic Energy), Assistant to the Secretary of Defense (Legal Affairs), Director of Defense Advanced Research Projects Agency, Director of Defense Audit Service, Director of Defense Audiovisual Agency, Director of Defense Security Assistance Agency, Director of Net Assessment, Director of Office of Civilian Health and Medical Program of the Uniformed Services, Director of Office of Dependents Schools (including Overseas Schools), Deputy Advisor on NATO Affairs, Inspector General for Defense Intelligence, President of the Uniformed Services University of the Health Sciences, President of National Defense University (including the National War College and the Industrial College of the Armed Forces), Commandant of the Defense Systems Management College, Commandant of Armed Forces Staff College. All Freedom of Information requests concerning records of these activities should be sent to: Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301.

b. *Department of the Army.* Army records may be requested from those Army officials who are listed in 32 CFR 518.17. Send requests to HQDA (DAAG-AMR-S), Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20314, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records desired.

c. *Department of the Navy.* Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the commanding officer and clearly indicating that it is a FOI request. Send requests to Chief of Naval Records Management Division (OP-09B1), Room 5E-613, Pentagon, Washington, D.C. 20350, for records of the Headquarters, Department of the Navy, or if there is uncertainty as to which Navy or Marine Corps activity may have records sought.

d. *Department of the Air Force.* Air Force records may be requested from the Commander (ATTENTION: DADF) of any Air Force installation, major command, or separate operating agency, or from the Headquarters, United States Air Force. Requesters should send FOI requests to HQ USAF/DADF, Washington, D.C. 20330, for Air

Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records desired.

e. *Defense Communications Agency (DCA).* DCA records may be requested from any DCA field activity or from its headquarters. FOI requests may be addressed to Headquarters, Defense Communications Agency (Code 105), Washington, D.C. 20305.

f. *Defense Contract Audit Agency (DCAA).* DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, Cameron Station, Alexandria, Va. 22314, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

g. *Defense Intelligence Agency (DIA).* FOI requests for DIA records may be addressed to Defense Intelligence Agency (RTS–2A), Washington, D.C. 20301.

h. *Defense Investigative Service (DIS).* All FOI requests for DIS records should be sent to the Office of Information and Legal Affairs Defense Investigative Service (DOO20), 1900 Half St., S.W., Washington, D.C. 20314.

i. *Defense Logistics Agency (DLA).* DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency (DLA–XA), Cameron Station, Alexandria Virginia 22314, for records of its headquarters or DLA field activities if the record is known to be at the field location.

j. *Defense Mapping Agency (DMA).* FOI requests for DMA records may be sent to the Defense Mapping Agency, Naval Observatory, Building 56, 34 Massachusetts Avenue, N.W., Washington, D.C. 20305.

k. *Defense Nuclear Agency (DNA).* FOI requests for DNA records may be sent to Defense Nuclear Agency, Public Affairs Office, Washington, D.C. 20305.

l. *National Security Agency (NSA).* FOI requests for NSA records may be sent to the National Security Agency, ATTN: Freedom of Information Office, Fort George G. Meade, MD 20755.

3. Other Addresses

a. *Office of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).* FOI requests for CHAMPUS records may be sent to the Director, OCHAMPUS, Denver, Colorado 80240.

b. *National Guard Bureau.* FOI requests for National Guard Federal records may be sent to any State Guard unit or to the National Guard Bureau (NGS–DA), Room 2C–362, Pentagon, Washington, D.C. 20301.

c. *Miscellaneous.* If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301.

Appendix C—Litigation Status Sheet

1. Case Number*
2. Requester
3. Document Title or Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number*
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
   a. Court's Finding
   b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
   a. Date Complaint Filed
   b. Court
   c. Case File Number*
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

*Number used by component for reference purposes.

Appendix D—Annual Report Format

Item 1

Initial Determinations Resulting in not Providing all or a Portion of Record Requested

Total Demands	*Reporting * Activity*	*Completed Public Requests*	*Completed Reportable Requests*	Reasons	*Statutory Exemption + Other = Total*

Item 2(a)

Exemptions Invoked on Initial Determinations

EXEMPTION BY NUMBER (552(b))

Reporting * Activity	1	2	3	4	5	6	7	8	9	Total

Item 2(b)

Statutes Invoked on Initial Determinations

Reporting * Activity	Statute	Number of Times

Item 2(c)

Other Reasons

Reporting * Activity	Category *					Total
	1	*2*	*3*	*4*	*5*	

Item 3

Initial Denial Officials by Participation

A. Total IDAs authorized:———

B. IDAs involved in adverse determinations

Name *	Title	No. of Instances of Participation	
		Exemptions	*Other*

Item 4

Number of Appeals and Results

Reporting * Activity	Number of Appeals			Total
	Granted	*Granted in Part*	*Denied*	

Item 5(a)

Exemptions Invoked on Appeal Determinations

EXEMPTIONS BY NUMBER (522(b))

Reporting * Activity	1	2	3	4	5	6	7	8	9	Total

Item 5(b)

Statutes Invoked on Appeal Determinations

Reporting * Activity	Statute	Number of Times

Item 5(c)

Other Reasons Cited on Appeal Determinations

Reporting * Activity	Category *					Total
	1	2	3	4	5	

Item 6

Participation of Appellate Authorities (those responsible for denials in whole or in part

Name *	Title	No. of Instances of Participation	
		Exemptions	*Other*

Item 7

Court Opinions and Action Taken

Item 8

FOIA Implementation Rules or Regulations

Reporting * Activity	Document Identification	FEDERAL REGISTER Ref.

Item 10A

Availability of Records (New categories of segregable portions of records now being released)

Item 10C

Time Limit Extensions by Activity

Reporting * Activity	Location	I		II & III	
		Unusual Circumstances		Court Involvement	Total
		Volume	Consultation		

Item 10D

Internal Memoranda (Including Directives not Published in **Federal Register**)

Reporting * Activity	No. of Memoranda	No. Available to Public

Item 10E (Optional)

Other information (opinions) or recommendations on administering FOIA

Item 11

FOIA Instructional and Educational Efforts

Note.—Items marked with an asterisk (*) have been registered in the DoD data element program.

Appendix E—Other Reason Categories

1. Transferred Requests

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one DoD Component to another.

2. Lack of Records

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record

This category is specifically based on Section 552(a)(3)(a) of the FOIA (reference (a)).

4. Other Failures by Requesters To Comply With Published Rules or Directives

This category is based on Section 552(a)(3)(b) of the FOIA (reference (a)) and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request Withdrawn by Requester

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE REGULATION 5400.7-R

APPENDIX F

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST — *SEE INSTRUCTIONS ON BACK OF PAGE*

1. REQUEST NO.	2. TYPE OF REQUEST ☐ INITIAL ☐ APPEAL	3. DATE COMPLETED (yr., mo., day)

4. CLERICAL HOURS (E-9/GS-8 AND BELOW)	TOTAL HOURS		HOURLY RATE		COST
SEARCH				*	
REVIEW/EXCISING		X	$ 8.00	=	
CORRESPONDENCE AND FORMS PREPARATION					
OTHER ACTIVITY					

5. PROFESSIONAL HOURS	TOTAL HOURS		HOURLY RATE		COST
SEARCH				*	
REVIEW/EXCISING		X	$ 16.00	=	
COORDINATION/APPROVAL/DENIAL					
OTHER ACTIVITY					

6. EXECUTIVE HOURS (O-7/GS-16 AND ABOVE)	TOTAL HOURS		HOURLY RATE		COST
REVIEW/EXCISING		X	$ 26.00	=	
COORDINATION/APPROVAL/DENIAL					

7. COMPUTER SEARCH	TOTAL HOURS		HOURLY RATE		COST
MACHINE HOURS		X		= *	

8. OFFICE COPY REPRODUCTION	NUMBER		RATE		COST
PAGES REPRODUCED		X	.10	= *	

9. MICROFICHE REPRODUCTION	NUMBER		RATE		COST
MICROFICHE REPRODUCED		X	.25	= *	

10. PRINTED RECORDS	TOTAL PAGES		RATE		COST
FORMS				*	
PUBLICATIONS		X	.01	= *	
REPORTS				*	

11. *For FOI Office Use Only*

a. SEARCH FEES PAID		e. TOTAL COLLECTABLE COSTS *	
b. COPY FEES PAID		f. TOTAL PROCESSING COSTS	
c. TOTAL PAID		g. TOTAL CHARGED	
d. DATE PAID (yr., mo., day) *		h. FEES WAIVED/REDUCED	Y / N

* *Chargeable to the Requester.*

DD FORM 1 JAN 80 2086

Instructions

PURPOSE: This form is used to record costs associated with the processing of a Freedom of Information request.

1. Request Number—First two digits will express CY followed by dash (–) and Component's request number, i.e., 79–001.

*2. Type of Request—Check the appropriate block to indicate initial request or appeal of a denial.

*3. Date Completed—Enter year, month and day, i.e., 79/06/21.

*4. Clerical Hours—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search—Time spent in locating from the files the requested information.

Review/Excising—Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence & Forms Preparation—Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity—Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester. Further discussion of chargeable fees is found in Enclosure 6, DoD Directive 5400.7.

*5. Professional Hours—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising, and Other Activity—See explanation above.

Coordination/Approval/Denial—Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester.

*6. Executive Hours—For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising and Coordination/Approval/Denial—See explanation above.

—Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category.

*7. Computer Search—Enter the time to the nearest 15 minutes in the total hours column.

—Multiply the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only if the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

*8. Office Copy Reproduction—Enter the number of pages reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*9. Microfiche Reproduction—Enter the number of microfiche copies reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*10. Printed Records—Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms)*

Publications *(Include any type of bound document, such as directives, regulations studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

—Multiply the total number of pages in each category by the rate per page and enter cost figures. The entire cost of each category is chargeable to the requester.

11. For FOI Office Use Only—

a. Search Fees Paid—Enter total search fees paid by the requester.

b. Copy Fees Paid—Enter the total of copy fees paid by the requester.

c. Total Paid—Add search fees paid and copy fees paid. Enter total in the total paid block.

**d.* Date Paid—Enter year, month and day, i.e., 79/10/24, the fee payment was received.

e. Total Collectable Costs—Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester.

f. Total Processing Costs—Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

g. Total Charged—Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

**h.* Fees Waived/Reduced—Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Y" block for Yes or an "X" in the "N" block for No.

Note.—All items marked with an asterisk: (*) have been registered in the DoD Data Element Standardization Program (DoD Manual 5000.12M). Items 4, 5 and 6 were registered under data element "Type of FOI Manpower Category". The entries Search Review/Excising, Correspondence & Forms Preparation, Coordination/Approval/Denial, and Other Activity have been registered under the data element "FOI Manpower Activity Category."

Appendix G—Format for Triannual Report

Reporting Activity:*

Period of Report:

A. Cost of Routine Requests Processed: No. of Reportable Requests × (cost factor per request)—$———.

B. Personnel Costs (Civilian and Military):

(1) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade: ——— Cost: $———.

(2) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:

(a) Search Time Costs: ———.

(b) Review and Excising: ———.

(c) Coordination and Approval/Denial Decision Costs: ———.

(d) Correspondence and Form Preparation Costs: ———

(e) Other Activity Costs: ———.

Total Manhour Costs: ———.

(3) Application of Overhead: (Sub-total A)+(Sub-total B)×(overhead rate): ———.

Total of Direct Personnel Costs and Overhead: ———.

C. Other Case Related Costs:

(1) Computer* $———.

(2) Office Copy Reproduction* $———.

(3) Microfiche Reproduction* $———.

(4) Cost of Printed Records* $———.

Total of Other Costs: $———.

D. Other Operating Costs:

(1) Reporting Costs: [1]

(a) Operational ———.

(b) User ———.

(c) Overhead ((a)+(b)×(overhead rate)) ——— $———.

(2) Other costs as directed or as can be reasonable ascertained. Itemize each expense category and cost. $———.

(Sub-total (1))+(Sub-total (2)) $———.

E. Summary:

(1) Total Costs of Sections A through D above $———.

(2) Amount Collected from Requesters this Reporting Period:

Search ——— Copy ——— Total: $———.

(3) No. Requests Processed During this Reporting Period:

Reportable Requests ——— Appeals ——— Total: ———.

[1] See DoD Instruction 5000.22 (reference (t)). In the report for the last four-month period (Sept-Dec) of each year, include the costs attributable to the Annual Report.

Note.—Items marked with an asterisk (*) have been registered in the DoD Data Element Program.

Instructions for Triannual FOI Report

1. General

a. To accomplish FOI cost reporting, each reporting activity must, first, determine whether sufficient repetitive requests are available to develop an average cost factor for these requests; second, establish which employees devote a sufficient percentage of their time to FOI duties to calculate their involvement in manyears; third, accumulate data on time (manhours) and costs involved in each case processed; and fourth, keep track of operating costs of the FOI Program. DD Form 2086 (Appendix F) should be used to accumulate case data.

b. Only those requests processed under the FOI Act shall be costed and reported. The provision to the public of unclassified information, documents, and forms as part of normal service, in accordance with previously established criteria or the Privacy Act, is excluded from this reporting requirement.

2. Section A

Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests

rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised that costs are comprehensive, to include overhead, yet not duplicated elsewhere in the report.

3. Section B

a. Personnel costs are reported in two ways. Section B. (1) uses a manyear/wage type of costing by grade that relieves individuals primarily those involved in planning, program management, or administrative handling from accounting for their time by manhours.

SAMPLE COMPUTATION [1]

[Air Force]

Grade/Step	No.	X	1/3 Annual Wage	X	% of Time	=	Cost
O-4	1		$7,697		25		$1,924
O-3	1		6,459		50		3,230
GS-9(5)	1		4,844		100		4,844
GS-4(3)	1		2,701		25(2)		1,350
					225		$11,348
Manyears = 225 100 - 3 = 75							

[1] (a) Military Grades—use DoD Accounting Guidance Handbook (DoD) 7220.9-H, Sec. 252 (reference (u)).
(b) Civilian Grades—use Office of Personnel Management Salary Table.

b. Use of one-third the annual wage and dividing manyears by three is required in this triannual report. Delete the computation.

c. Section B.(2) accounts for all other personnel involvement by manhours in particular activities associated in request processing as captured on DD Form 2086 (Appendix F). At the end of the reporting period, determine the total hourly data for each activity from all forms for the 4-month period and add totals into the five areas. It is suggested that hours and fractions thereof be added rather than dollar amounts. The use of standard fee schedule rates for each activity simplifies mathematical calculations and also allows these data to be compared to amounts collected. Executive manhours will likely be restricted to (2) (b) and (c) of Section B. (2)

Example Computation:

Clerical Search hours
2071.75x$8.00 = $16,574.00
Professional Search hours
910.20x$16.00 = $14,563.20
(1) Search time costs
= $31,137.20

d. Section B.(3) applies overhead to the direct manyear/manhour costs previously totaled above. The overhead rate includes the costs of supervision, space, and administrative support. Some reporting activities may have their own overhead rate (or will choose to develop one) based on cost experience. In the event that no such rate is available, an overhead rate of 25 percent may be used to produce an estimate of overhead costs. Include the rate used in the report.

4. Section C

Add the dollar amounts for each type of cost as recorded on DD Form 2086 (Appendix F) for the period and enter the total for each of these costs.

5. Section D

Use of this section recognizes reporting costs as part of total costs. It also provides for those other costs that are easily identifiable by each reporting activity. This section allows each DoD Component, as well as other levels of command, to amplify reporting requirements for subordinate levels. Use can vary, but items such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), and use of indicia apply.

6. Section E

The summary data provide a total best estimate cost figure for administering the FOI Program during the reporting period, a recap of fees collected, and the workload that generated these costs and collections.

References

(e) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Joint Commands," March 17, 1980.

(f) Title 5, United States Code, Section 551, "Administrative Procedures Act".

(g) DoD 5200.1-R, "DoD Information Security Program Regulation," October 1980, authorized by DoD Directive 5200.1, November 29, 1978.

(h) Title 35, United States Code, Section 181-188, "Patent Secrecy".

(i) Title 43, United States Code, Section 2162, "Restricted Data and Formerly Restricted Data".

(j) Title 18, United States Code, Section 798, "Communication Intelligence".

(k) Title 18, United States Code, Section 3500, "The Jencks Act".

(l) DoD Directive 5200.20, "Distribution Statements on Technical Documents," September 24, 1970.

(m) DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978.

(n) DoD Directive 7650.1, "General Accounting Office Comprehensive Audits," July 9, 1958.

(o) ACP-121 (United States Supplement 1).

(p) Title 44, United States Code, Chapter 33, "Disposal of Records".

(q) DoD Instruction 7230.7, "User Charges," June 12, 1979.

(r) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964.

(s) DoD 5000.12-M, "DoD Manual for Standard Date Elements," December 1979, authorized By DoD Directive 5000.12, April 27, 1965.

(t) DoD Instruction 5000.22, "Guide to Estimating Costs of Information Requirements," October 17, 1974.

(u) DoD Handbook 7220.9-H, "DoD Accounting Guidance Handbook," February 1, 1978, authorized by DoD Instruction 7220.9, July 12, 1971.

DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/ Organization of the Joint Chiefs of Staff/ Unified Commands and Other Agencies Assigned to OSD for Administrative Support

Department of the Army
Department of the Navy
Department of the Air Force
Defense Communications Agency
Defense Contract Audit Agency
Defense Intelligence Agency
Defense Investigative Service
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency

Appendix M—[Reserved]

Appendix N—Activity Address Numbers

Activity Address Numbers are for use in conjunction with the Procurement Instrument Identification Numbering System as prescribed in subpart 4.70 of the DoD FAR Supplement. The six-digit number is used in the first six positions of the Procurement Instrument Identification Number (PIIN). The two-digit number is used in the first two positions of the Call/Order Serial Number.

For further information, see subpart 4.70 of the DoD FAR Supplement.

Activities numbering procurement instruments shall use only those unique and significant numbers assigned by their respective Department/Agency Activity Address Monitor(s). When required, activities shall also be assigned a two-digit number. (Newly assigned numbers will be listed in future revisions to Appendix N.) Activity Address Monitors are as follows:

Army

HQDA (JDHQ-SV-W-P), Chief, Procurement Statistics Division, Washington, DC 20310

Navy

Navy Accounting and Finance Center, (NAFC-3113), Washington, DC 20390, *(Six-digit Unit Identification Number only)

Air Force

Hq USAF (RDCL), Directorate, Contracting and Manufacturing Policy, Washington, DC 20330

Defense Logistics Agency

Chief, Policy Branch (DLA-PPR), Procurement Division, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100

Marine Corps

Commandant of the Marine Corps, Headquarters, U.S. Marine Corps (CHS-2) (Code LBO), Washington, DC 20380-0001, *(Six-digit Unit Identification Number only)

Defense Mapping Agency

Deputy Director for Programs, Production and Operations, Defense Mapping Agency, Washington, DC 20305-3000

Defense Nuclear Agency

Chief, Contract Division, Defense Nuclear Agency, Washington, DC 20305

Defense Communications Agency

Chief, Logistics Management Office, Code 202, Defense Communications Agency, Washington, DC 20305

* The Navy and Marine Corps Activity Address Monitor for assignment of two-digit "alpha-numeric call/serial numbers" is:

Office of Naval Acquisition Support (0212), Washington, DC 20360.

Department of the Army

DAAA03, B1—Pine Bluff Arsenal, Pine Bluff, AR 71601
DAAA05, B2—USA Rocky Mountain Arsenal, Denver, CO 80240
DAAA08, B7—USA Rock Island Arsenal, Rock Island, IL 61299
DAAA09, BA—USA Armament Materiel Readiness Command, Rock Island, IL 61299
DAAA11—Iowa Army Ammunition Plant, Burlington, IA 52601
DAAA19, B4—Lake City Army Ammunition Plant, Independence, MO 64056
DAAA22, BV—USA Watervliet Arsenal, Watervliet, NY 12189
DAAA27—Radford Army Ammunition Plant, Radford, VA 24141
DAAA29, FV—USA Ammunition Plant, Hawthorne, NV 89415
DAAA31, GJ—USA Ammunition Plant, McAlester, OK 74501
DAAB07, BG—USA Communications and Electonics, Materiel Readiness Command, Procurement Directorate, Fort Monmouth, NJ 07703
DAAB08—USA Communications and Electronics Command, Base Operations Procurement Branch, DRSEL-TC-C-BO, Fort Monmouth, NJ 07703
DAAD01, B5—Yuma Proving Ground, Yuma, AZ 85364
DAAD03, B6—Jefferson Proving Ground, Madison, IN 47250
DAAD05, BM—Aberdeen Proving Ground, MD 21005
DAAD07, BN—White Sands Missile Range, NM 88002
DAAD09, BP—Dugway Proving Ground, Procurement Office, PO Box 545, Dugway, UT 84022
DAAD10—HDQTRS, USA Test and Evaluation Command, Aberdeen Proving Ground, MD 21005
DAAE07, BR—USA Tank-Automotive Command, Warren, MI 48090
DAAG02, BH—Anniston Army Depot, Anniston, AL 36201
DAAG06, ZR—Sierra Army Depot, ATTN: SDSSA-PMD-A, Herlong, CA 96113
DAAG08, ZR—Sacramento Army Depot, Sacramento, CA 95813
DAAG10, ZM—Sharpe Army Depot, Lathrop, CA 95331
DAAG29, G2—USA Research Office, PO Box 12211, Research Triangle Park, NC 27709
DAAG34, ZN—Letterkenny Army Depot, Chambersburg, PA 17201
DAAG36, D2—New Cumberland Army Depot, New Cumberland, PA 17070
DAAG38, ZS—Tobyhanna Army Depot, Tobyhanna, PA 18466
DAAG46, D6—USA Materials and Mechanics Research Center, Arsenal Street, Watertown, MA 02172
DAAG47, D7—Red River Army Depot, Texarkana, TX 75501
DAAG48, BJ—USA Depot, Corpus Christi, TX 78419
DAAG49, BK—Tooele Army Depot, Building 9, Tooele, UT 84074
DAAG54, ZP—USA Electronics Materiel Readiness Activity, Vint Hill Farms Station, Warrenton, VA 22186
DAAG60, G8—U.S. Army Military Academy, West Point, NY 10996
DAAG99, USA Project Manager, SANG, APO New York 09038
DAAH01, CC—HDQTRS, US Army Missile Command, Redstone Arsenal, AL 35809
DAAH03, D8—P&C Division, USA Missile Command, Redstone Arsenal, AL 35809
DAAJ04, C6—USA St. Louis Area Support Center, Granite City, IL 62040
DAAJ09, BS, YY, ZQ—USA Troop Support and Aviation, Materiel Readiness Command, 4300 Goodfellow Blvd., St. Louis, MO 63120
DAAK10, 2T—USA Armament R&D Command, Procurement Directorate, Dover, NJ 07801
DAAK11, 2U—USA Armament R&D Command, Chemical/Ballistics Procurement Division, Edgewood Arsenal, Aberdeen Proving Ground, MD 21010-5423
DAAK20, 1Y—USA Electronics R&D Command, Fort Monmouth Procurement Office, Fort Monmouth, NJ 07703
DAAK21, D3—Harry Diamond Laboratories, 2800 Powder Mill Road, Adelphi, MD 20783
DAAK50, 1W—USA Aviation R&D Command, PO Box 209, St. Louis, MO 63120
DAAK51, D9—Applied Technology Laboratory, USA Research and Technology Laboratories, AVRADCOM, Fort Eustis, VA 23604
DAAK60, C5—USA Natick R&D Command, Natick, MA 01760
DAAK70, E1—USA Mobility Equipment R&D Command, Fort Belvoir, VA 22060
DAAK80, 2V—USA Communications R&D Command, Procurement Directorate, DRDCO-PC, Fort Monmouth, NJ 07703
DABT01, F6—US Army Aviation Center & Fort Rucker, ATTN: ATZQ-DI-PC, Fort Rucker, AL 36362
DABT02, 2A—US Army Military Policy/Chemical Schools/Training Center & Fort McClellan, ATTN: ATZN-DIP, Fort McClellan, AL 36205
DABT10, 2B—USA Infantry Center & Fort Benning, ATTN: ATZC-DIP, Columbus, GA 31905
DABT11, 2C—US Army Signal Center & Fort Gordon, ATTN: ATZH-DIP, Fort Gordon, GA 30905
DABT15, F9—US Army Soldier Support Center & Fort Benjamin Harrison, ATTN: ATZI-DI-P, Fort Benjamin Harrison, IN 46216
DABT19, 2D—US Army Combined Arms Center & Fort Leavenworth, ATTN: ATZL-DIP, Fort Leavenworth, KS 66027
DABT23, 2E—US Army Armor Center & Fort Knox, ATTN: ATZK-DI-P, Fort Knox, KY 40121
DABT31, 2F—US Army Training Center (Engineer) & Fort Leonard Wood, ATTN: ATZT-DI-PC, Fort Leonard Wood, MO 65473
DABT35, 2G—US Army Training Center & Fort Dix, ATTN: ATZDGD-G, Burlington, NJ 08640
DABT39, 2H—USA Field Artillery Center & Fort Sill, ATTN: ATZR-DIPC, Fort Sill, OK 73503
DABT43, 2J—Procurement Division, Bldg. 46, ATZE-DI-P, Carlisle Barracks, PA 17013
DABT47, 2K—US Army Training Center & Fort Jackson, ATTN: ATZJ-DIP, Fort Jackson, SC 29207
DABT51, 2L—Fort Bliss, PO Box 6078, ATZA-DIP, El Paso, TX 79906
DABT56, 2M—USA Engineer Center & Fort Belvoir, ATZA-DIP, Fort Belvoir, VA 22060
DABT57, 2N—US Army Transportation Center & Fort Eustis, ATTN: ATZF-DIO-CD, Fort Eustis, VA 23604
DABT58, 2P—Fort Monroe, ATTN: ATZG-DIC, Fort Monroe, VA 23651
DABT59, 2Q—US Army Quartermaster Center & Fort Lee, ATTN: ATZL-DIP, Fort Lee, VA 23081
DABT60—USA Training Support Center & Fort Eustis, ATTN: ATIC-LOC, Fort Eustis, VA 23604
DABT61—The Judge Advocate Generals School, USA, University of Virginia, Charlottesville, VA 22901
*DACA01, **DACW01, CK—USA Engineer District, Mobile, PO Box 2288, Mobile, AL 36628
*CA—Military; **CW—Civil Works
DACA03, DACW03, CL—USA Engineer District, Little Rock, PO Box 867, Little Rock, AR 72203
DACA05, DACW05, CM—USA Engineer District, Sacramento, 650 Capitol Mall, Sacramento, CA 95814
DACA06, DACW06, CN—USA Engineer Division, South Pacific, 630 Sansome Street, Room 1216, San Francisco, CA 94111
DACA07, DACW07, CP—USA Engineer District, San Francisco, 211 Main Street, San Francisco, CA 94105
DACA09, DACW09, CQ—USA Engineer District, Los Angeles, PO Box 2711, Los Angeles, CA 90053
DACA17, DACW17, CS—USA Engineer District, Jacksonville, PO Box 4970, Jacksonville, FL 32201
DACA19, DACW19, CU—USA Engineer Division, South Atlantic, 510 Title Bldg., 30 Pryor Street, S.W., Atlanta, GA 30303
DACA21, DACW21, CV—USA Engineer District, Savannah, 200 East Saint Julian Street, Savannah, GA 31401
DACA22, DACW22, CW—USA Engineer Division, North Central, 536 South Clark Street, Chicago, IL 60605
DACA23, DACW23, CX—USA Engineer District, Chicago, 219 South Dearborn Street, Chicago, IL 60604
DACA25, DACW25, CD—USA Engineer District, Rock Island, Clock Tower Building, Rock Island, IL 61201
DACA27, DACW27, CY—USA Engineer District, Louisville, PO Box 59, Louisville, KY 40201
DACA29, DACW29, CZ—USA Engineer District, New Orleans, PO Box 60267, New Orleans, LA 70160
DACA31, DACW31, DA—USA Engineer District, Baltimore, PO Box 1715, Baltimore, MD 21203
DACA33, DACW33, DB—USA Engineer District, New England, 424 Trapelo Road, Waltham, MA 02154
DACA35, DACW35, DC—USA Engineer District, Detroit, 150 Michigan Avenue, PO Box 1027, Detroit, MI 48231
DACA37, DACW37, DD—USA Engineer District, St. Paul, 1210 USPO & Customs House, St. Paul, MN 55101

DACA38, DACW38, DE—USA Engineer District, Vicksburg, PO Box 60, Vicksburg, MS 39181
DACA39, DACW39, DF—USA Engineer Water-Ways Experiment Station, PO Box 631, Vicksburg, MS 39181
DACA40, DACW40, DG—USA Engineer Division, Lower Mississippi Valley, PO Box 80, Vicksburg, MS 39181
DACA41, DACW41, DH—USA Engineer District, Kansas City, 700 Federal Bldg., 601 East 12th Street, Kansas City, MO 64106
DACA43, DACW43, DJ—USA Engineer District, St. Louis, 210 North 12th Street, St. Louis, MO 63101
DACA45 DACW45, DK—USA Engineer District, Omaha, 6014 USPO and Courthouse, Omaha, NE 68102
DACA46, DACW46, DL—USA Engineer Division, Missouri River, PO Box 103, Downtown Station, Omaha, NE 68101
DACA47, DACW47, DM—USA Engineer District, Albuquerque, PO Box 1580, Albuquerque, NM 87103
DACA49, DACW49, DN—USA Engineer District, Buffalo, Foot of Bridge Street, Buffalo, NY 14207
DACA51, DACW51, CE—USA Engineer District, New York, 26 Federal Plaza, New York, NY 10007
DACA52, DACW52, DP—USA Engineer Division, North Atlantic, 90 Church Street, New York, NY 10007
DACA54, DACW54, DQ—USA Engineer District, Wilmington, 308 Custom House, Wilmington, NC 28402
DACA55, DACW55, DR—USA Engineer Division, Ohio River, PO Box 1159, Cincinnati, OH 45201
DACA56, DACW56, DS—USA Engineer District, Tulsa, 224 South Boulder, Tulsa, OK 74102
DACA57, DACW57, DT—USA Engineer District, Portland, PO Box 2496, Portland, OR 97208
DACA58, DACW58, DU—USA Engineer Division, North Pacific, 210 Custom House, Portland, OR 97209
DACA59, DACW59, DV—USA Engineer District, Pittsburgh, Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222
DACA60, DACW60, DW—USA Engineer District, Charleston, PO Box 905, Charleston, SC 29402
DACA61, DACW61, CF—USA Engineer District, Philadelphia, Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106
DACA62, DACW62, DX—USA Engineer District, Nashville, PO Box 1070, Nashville, TN 37202
DACA63, DACW63, DY—USA Engineer District, Fort Worth, PO Box 17300, Fort Worth, TX 76102
DACA64, DACW64, DZ—USA Engineer District, Galveston, PO Box 1229, Galveston, TX 77551
DACA65, DACW65, EA—USA Engineer District, Norfolk, 803 Front Street, Norfolk, VA 23510
DACA66, DACW66, EB—USA Engineer District, Memphis, 668 Federal Office Building, Memphis, TN 38103
DACA67, DACW67, EC—USA Engineer District, Seattle, PO Box C-3755, Seattle, WA 98124
DACA68, DACW68, YW—USA Engineer District, Walla Walla, Building 602, City-County Airport, Walla Walla, WA 99362
DACA69, DACW69, CG—USA Engineer District, Huntington, 502 Eighth Street, Huntington, WV 25721
DACA70, DACW70, YX—USA Engineer Division, Southwestern, Main Tower Building, 1114 Commerce Street Dallas, TX 75242
DACA72, DACW72, ZA—USA Coastal Engineering Research Center, Kingman Building, Fort Belvoir, VA 22060
DACA73, DACW73, CH—Office, Chief of Engineers (DAEN-ECP-C), Washington, DC 20314
DACA74, DACW74, ZB—Rivers and Harbors, Board of Engineers, TEMPO "C" Building, Second & O Streets, SW., Washington, DC 20315
DACA75, DACW75, ZC—USA Engineer Division, Middle East, APO New York, NY 09038
DACA76, DACW76, ZD—USA Engineer Topographic Laboratories, Fort Belvoir, VA 22060
DACA78, DACW78—Rear Headquarters, USA Engineer Division, Middle East, PO Box 2250, Winchester, VA 22601
DACA79, DACW79—US Army Engineer District, Japan, APO San Francisco, CA 96343
DACA81, DACW81—US Army Engineer District, Far East, APO San Francisco, CA 96301
DACA84, DACW84, ZH-USA Engineer Division, Pacific Ocean, Building 230, Fort Shafter, HI 96858
DACA85, DACW85, ZJ—USA Engineer District, Alaska, PO Box 7002, Anchorage, AK 99510
DAC86, DACW86—USA Engineer District, Riyadh, APO New York, NY 09038
DACA87, DACW87, ZW—USA Engineer Division, Huntsville, PO Box 1600 West Station, Huntsville, AL 35807
DACA88, DACW88-USA Construction Engineering, Research Laboratory, PO Box 4005, Champaign, IL 61820
DACA89, DACW89, 1Z—USA Cold Regions Research, and Engineering Laboratory, PO Box 282, Hanover, NH 03755
DACA90, DACW90—USA Engineer Division, Europe, EUDPS-C, APO New York, NY 09757
DACA91, DACW91—Engineer Logistics Command, USA Engineer Division, Middle East, APO New York 09038
DACA93, DACW93—USA Engineer District, Al Batin, APO New York 09038
DACA94, DACW94—MX Program Agency (CEMXPA), Norton AFB, CA 92409
DACA95, DACW95—Commander, Near East Project Office, APO New York 09672
DADA01—Letterman Army Medical Center, ATTN: HSHH-LCP, Presidio of San Francisco, CA 94129
DADA03—Fitzsimons Army Medical Center, ATTN: HSHG-DIO-C, Aurora, CO 80045
DADA09—William Beaumont Army Medical Center, ATTN: HSHM-LOC-CO, El Paso, TX 79920
DADA11—Brooke Army Medical Center, ATTN: HSHE-LO-PC, Fort Sam Houston, TX 78234
DADA13—Madigan Army Medical Center, ATTN: HSHJ-LOC, Tacoma, WA 98431
DADA15—Walter Reed Army Medical Center, ATTN: HSHL-LP, Washington, DC 20012
DADA16—Tripler Army Medical Center, ATTN: HSHK-LD-PC, Tripler AMC, HI 96859
DAEA08, E4—HQ Fort Ritchie, CCNJ-DIO-PC, Fort Ritchie, MD 21719
DAEA16, E7—5th Signal Command, DCSLOG, Attn: CCE-LGC, APO New York, NY 09056
DAEA18, BL—USAAC, Purchasing and Contracting Office, Attn: CCL, PO Box 748, Ft. Huachuca, AZ 85613
DAEA20, E8—1st Signal Brigade, USACC, Contract Administration Branch S4, APO San Francisco, CA 96301
DAHA01, 9B—USP&FO for Alabama, PO Box 3715, Montgomery, AL 36193
DAHA02—USP&FO for Arizona, 1815 North 52nd Street, Phoenix, AZ 85008
DAHA03, 9D—USP&FO for Arkansas, PO Box 677, North Little Rock, AR 72115
DAHA04, 9N—USP&FO for California, PO Box G, Camp San Luis Obispo, CA 93406
DAHA05—USP&FO for Colorado, Camp George West, Golden, CO 80401
DAHA06—USP&FO for Connecticut, National Guard Armory, Hartford, CT 06115
DAHA07, 9A—USP&FO for Delaware, Grier Building, 1161 River Road, New Castle, DE 19720
DAHA08—USP&FO for Florida, State Arsenal, St. Augustine, FL 32084,
DAHA09—USP&FO for Georgia, PO Box 17882, Atlanta, GA 30316
DAHA10—USP&FO for Idaho, PO Box 1098, Boise, ID 83701
DAHA11, 9E—USP&FO for Illinois, Camp Lincoln, 1301 North McArthur Blvd., Springfield, IL 62702
DAHA12—USP&FO for Indiana, PO Box 41346, Indianapolis, IN 46241
DAHA13, 9L—USP&FO for Iowa, Camp Dodge RR #1, Grimes, IA 50111
DAHA14—USP&FO for Kansas, Kansas State Arsenal, 27th and Kansas Avenue, Topeka, KS 66601
DAHA15—USP&FO for Kentucky, Boone National Guard Center, Frankfort, KY 40601
DAHA16—USP&FO for Louisiana, HQ Building, Jackson Barracks, New Orleans, LA 70146
DAHA17—USP&FO for Maine, Camp Keyes, Augusta, ME 04330
DAHA18—USP&FO for Maryland, State Military Reservation, PO Box 206, Havre de Grace, MD 21078
DAHA19—USP&FO for Massachusetts, NG Supply Depot, 143 Speen Street, Natick, MA 01760
DAHA20, 9F—USP&FO for Michigan, PO Box 958, Lansing, MI 48904
DAHA21, 9K—USP&FO for Minnesota, Camp Ripley, Little Falls, MN 56345
DAHA22—USP&FO for Mississippi, PO Box 4447, Fondren Station, Jackson, MS 39216
DAHA23, 9H—USP&FO for Missouri, 1715 Industrial Avenue, Jefferson City, MO 65101
DAHA24, 9P—USP&FO for Montana, State Arsenal Building, PO Box 1157, Helena, MT 59601

DAHA25—USP&FO for Nebraska, 1234 Military Road, Lincoln, NE 68508
DAHA26—USP&FO for Nevada, 2601 South Carson Street, Carson City, NV 89701
DAHA27—USP&FO for New Hampshire, State Military Reservation, Concord, NH 03301
DAHA28—USP&FO for New Jersey, PO Box 2000, Trenton, NJ 08607
DAHA29—USP&FO for New Mexico, PO Box 4277, Santa Fe, NM 87501
DAHA30—USP&FO for New York, Building 4, State Campus, Albany, NY 12226
DAHA31—USP&FO for North Carolina, PO Box 26328, Raleigh, NC 27611
DAHA32—USP&FO for North Dakota, PO Box 1817, Bismarck, ND 58501
DAHA33, 9M—USP&FO for Ohio, 2811 W. Granville Rd., Attn: AGOH-PF-PC, Worthington, OH 43085
DAHA34, 9J—USP&FO for Oklahoma, 3501 Military Circle, NE, Oklahoma City, OK 73511
DAHA35—USP&FO for Oregon, 2150 Fairgrounds Road, N.E., Salem, OR 97310
DAHA36—USP&FO for Pennsylvania, c/o Dept. of Military Affairs, IGMR, Annville, PA 17003
DAHA37—USP&FO for Rhode Island, 51 Stenton Avenue, Providence, RI 02906
DAHA38—USP&FO for South Carolina, PO Box 1090, Columbia, SC 29202
DAHA39—USP&FO for South Dakota, Camp Rapid, Rapid City, SD 57701
DAHA40—USP&FO for Tennessee, PO Box 40748, Nashville, TN 37204
DAHA41, 9C—USP&FO for Texas, PO Box 5218 WAS, Austin, TX 78763
DAHA42—USP&FO for Utah, PO Box 8000, Salt Lake City, UT 84108
DAHA43—USP&FO for Vermont, Camp Johnson, Bldg. 1, Winooski, VT 05404
DAHA44—USP&FO for Virginia, 401 East Main Street, Richmond, VA 23219
DAHA45—USP&FO for Washington, Camp Murray, Tacoma, WA 98430
DAHA46—USP&FO for West Virginia, Buckhannon, WV 26201
DAHA47, 9G—USP&FO for Wisconsin, Camp Douglas, WI 54618
DAHA48—USP&FO for Wyoming, PO Box 1709, Cheyenne, WY 82001
DAHA49—USP&FO for District of Columbia, 2001 East Capitol Street, Washington, DC 20003
DAHA50—USP&FO for Hawaii, Fort Ruger, Honolulu, HI 96816
DAHA51—USP&FO for Alaska, PO Drawer 8989, Anchorage, AK 99508
DAHA70—USP&FO for Puerto Rico, PO Box 3786, San Juan, PR 00904
DAHA72—USP&FO for Virgin Islands, PO Box 1050, Christiansted, St. Croix, VI 00820
DAHA74—USP&FO for Guam, Dept. of Military Affairs, PO Box GC, Agana, Guam 96910
DAHA90—National Guard Bureau, Washington, DC 20310
DAHC06—Hq, US Army Computer Systems Command, Fort Belvoir, VA 22060
DAHC21, G3—Eastern Area, MTMC, Attn: MTE-AQ, Bayonne, NJ 07002
DAHC23, G4—Commander, Western Area, MTMC, Attn: MTW-AQ, Oakland Army Base, Oakland, CA 94626
DAHC24—HDQTRS, Military Traffic Management Command, Contract Operation Office, Attn: MT-ASO, Washington, DC 20315
DAHC25—Directorate of Personal Property, MTMC, Washington, DC 20315
DAHC26, 1X—USA Computer Systems Selection and, Acquisition Agency (USACSSA-CD), Hoffman Building, 2461 Eisenhower Avenue, Alexandria, VA 22331
DAHC30—HDQTRS, Military District of Washington, Attn: HCA Staff Office, Bldg. 15, Cameron Station, Alexandria, VA 22314
DAHC31—The Adjutant General Center, Army Publication Directorate, DAAG-PAR-C, Hoffman Building, Alexandria, VA 22331
DAHC32—National Defense University, Attn: Contracting Officer, Fort Leslie J. McNair, Washington, DC 20310
DAHC34—Superintendent, Arlington National Cemetery, Arlington, VA 22211,
DAHC40—USA Troop Support Agency, Southeast Commissary Field Office, Fort Lee, VA 23801
DAHC41—USA Troop Support Agency, Northeast Commissary Field Office, Fort George G. Meade, MD 20755
DAHC42—USA Troop Support Agency, Midwest Commissary Field Office, Fort Sam Houston, TX 78234
DAHC43—USA Troop Support Agency, Western Commissary Field Office, Fort Lewis, WA 98433
DAHC44—Headquarters, USA Troop Support Agency, Fort Lee, VA 23801
DAHC61—USA Memorial Affairs Agency, Washington, DC 20315
DAHC75—U.S. Army Western Command, ACofS for Acquisition, Fort Shafter, HI 96858
DAHC77, CJ—USA Support Command, Hawaii, Contracts Division, DIO, Fort Shafter, HI 96858
DAJA01, 9Q—U.S. Army Southern European Task Force, Attn: AESE-GDL-PC, APO New York, NY 09168
DAJA02, G5—Seckenheim Area Contracting Office, Attn: AEUPC-SKM, APO New York, NY 09081
DAJA04, 9R—Fuerth Area Procurement Office, Attn: AEUPC-FH, APO New York, NY 09696
DAJA06, 9S—Stuttgart Area Procurement Office, Attn: AEUPC-ST, APO New York, NY 09154
DAJA10, 9U—Augsburg Area Procurement Office, USAPAE, USAREUR, APO New York, NY 09178
DAJA16, 8X—Grafenwoehr Suboffice, Attn: AEUPC-FH-G, APO New York, NY 09114
DAJA23, 9W—U.S. Army, Berlin, Attn: AEBA-PR, APO New York, NY 09742
DAJA25, 9X—Bremerhaven Area Procurement Office, Attn: AEUPC-BRN, APO New York, NY 09069
DAJA37, G6—USA Procurement Agency, Europe, Attn: AEUPC-CO, APO New York, NY 09710
DAJA45, 9Y—Department of the Army, Hq, 47th Area Support Group, APO New York, NY 09075
DAJA61, 9Z—NATO/SHAPE Support Group (U.S.), Attn: AERSH-BCD, APO New York, NY 09667
DAJA75—USA Pipeline Liaison Office, France, Attn: DPGMM, APO New York, NY 09777
DAJA76, 8V—Frankfurt Area Procurement Office, Attn: AEUPC-FKT, Box #73, APO New York, NY 09710
DAJB03, F4—USA Korea Procurement Agency, APO San Francisco, CA 96301
DAKF01, 1A—Presidio of San Francisco, ATTN: AFZM-DI-PR, San Francisco, CA 94129
DALF03, F2—7th Infantry Division & Fort Ord, ATTN: AFZW-DI-PC, P.O. Box 27, Fort Ord, CA 93941
DAKF04—National Training Center, ATTN: AFZJ-DIC, General Delivery c/o Post Office, Fort Irwin, CA 92311
DAKF06, 1C—4th Inf Div (Mech) &, Fort Carson, ATTN: AFZC-DI-A, Fort Carson, CO 80913
DAKF10, 1D—24th Inf Div &, Fort Stewart, ATTN: AFZP-DIP, Fort Stewart, GA 31313
DAKF11, 1E—Fort McPherson, ATTN: AFZK-DI-P, Atlanta, GA 30330
DAKF15, 1F—Fort Sheridan, ATTN: AFZO-DI-C, Fort Sheridan, IL 60037
DAKF19, 1G—1st Inf Div &, Fort Riley, ATTN: AFZN-DI-C, P.O. Box 2248, Fort Riley, KS 66442
DAKF23, 1H—101st ABN Div (AAST) &, Fort Campbell, ATTN: AFZB-DI-PC, Fort Campbell, KY 42223
DAKF24, G1—5th Inf Div (Mech), Fort Polk, ATTN: AFZX-DI, Fort Polk, LA 71459
DAKF27, 1J—Fort George G. Meade, ATTN: AFZI-DI-C, Fort George G. Meade, MD 20755
DAKF31, 1K—Fort Devens, ATTN: AFZD-DI-P, Fort Devens, MA 01433
DAKF36, 1M—Fort Drum, ATTN: AFZS-DI-P, Fort Drum, NY 13602
DAKF40, 1N—XVIII ABN CORPS &, Fort Bragg, ATTN: AFZA-DI-C, Drawer 70120, Fort Bragg, NC 28306
DAKF44, 1P—USA Garrison, Fort Indiantown Gap, ATTN: AFZQ-DI-P, Annville, PA 17003
DAKF48, 1Q—III CORPS &, Fort Hood, ATTN: AFZF-DI-CON, Fort Hood, TX 76544
DAKF49, 1R—Fort Sam Houston, ATTN: AFZG-DI-P, Fort Sam Houston, TX 78234
DAKF57, 1T—I CORPS &, Fort Lewis, ATTN: AFZH-DIP, Fort Lewis, WA 98433
DAKF61, 1U—Fort McCoy, ATTN: AFZR-DI-P, Sparta, WI 54656
DAKF70, 8U—HQ, 172d Infantry Brigade, ATTN: AFZT-DI-D, P.O. Box 5-525, Fort Richardson, AK 99505
DAKF71, 1V—HQ, 193d Infantry Brigade (Panama), ATTN: AFZU-LSC, APO Miami 34004
DAMD17, B3—USA Medical Research and Development Command, Fort Detrick, Frederick, MD 21701
DASG60, CB—Ballistic Missile Defense Systems Command, P.O. Box 1500, Huntsville, AL 35807

Department of the Navy

N000.14, EE—Office of Naval Research, Arlington, VA 22217
N00019, EF—Naval Air Systems Command, Washington, DC 20361
N00023—Naval Supply Systems Command, Washington, DC 20376
N00024, EH—Naval Sea Systems Command, Washington, DC 20360

N00025, EJ—Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332
N00030, EK—Strategic System Project Office, Department of the Navy, Washington, DC 20376
N00032, GU—Director of Contracts, Joint Cruise Missile Project, Washington, DC 20360
N00033, EL—Commander, Military Sealift Command, Washington, DC 20390
N00034, EM—U.S. Navy Finance Center, Cleveland, OH 44114
N00039, NS—Naval Electronic Systems Command, Washington, DC 20360
N00062, 8A—Chief of Naval Education and Training, Code 013, NAS, Pensacola, FL 32508
N00072—Chief of Naval Reserve, Code 17, New Orleans, LA 70146
N00101, 3R—Naval Air Station, South Weymouth, MA 02190
N00102, EN—Portsmouth Naval Shipyard, Portsmouth, NH 03801
N00104, EP, EQ—U.S. Navy Ships Parts Control Center, Mechanicsburg, PA 17055
N00109, F1—U.S. Naval Weapons Station, Yorktown, VA 23491
N00112—U.S. Naval Hospital, Chelsea, MA 02150
N00123, ES—Commanding Officer, Naval Regional Contracting Center, Long Beach, CA 90822
N00124, M5—Naval War College, Newport, RI 02840
N00127, H1—Naval Air Station, Quonset Point, RI 02819
N00128, EU—Supply Department, Naval Administrative Command, U.S. Naval Training Center, Great Lakes, IL 60088
N00129, EV—U.S. Naval Submarine Base, New London, Groton, CT 06340
N00140, EX, LA—Commanding Officer, Naval Regional Contracting Center, Naval Base Bldg. No. 600, Philadelphia, PA 19112
N00146, QK—Marine Corps Air Station, Cherry Point, NC 28533
N00148—Naval Air Station, New York, c/o Naval Air Station, Willow Grove, PA 19090
N00151, EY—Philadelphia Naval Shipyard, Philadelphia, PA 19112
N00153—Governor, U.S. Naval Home, 01800 East Beach Blvd., Gulfport, MS 39501
N00158, 3V—Naval Air Station, Willow Grove, PA 19090
N00161, FA—U.S. Naval Academy, Annapolis, MD 21402
N00163, FB—U.S. Naval Avionics Center, 21st and Arlington Avenue, Indianapolis, IN 46218
N00164, FC—U.S. Naval Weapons Support Center, Crane, IN 47522
N00166, LC—U.S. Naval Air Facility, Washington, DC 20390,
N00167, FD—Naval Ship Research & Development Center, Washington, DC 20084
N00168, FE—National Naval Medical Center, Bethesda, MD 20014
N0017A—Atlantic Fleet Weapons Training, Facility (Code 51), U.S. Naval Station, Box 3023, FPO Miami 34051
N00171, N5—HQ, Naval District Washington, Washington Navy Yard, Washington, DC 20374
N00173, FF—U.S. Naval Research Laboratory, Washington, DC 20390
N00174, FG—U.S. Naval Ordnance Station, Indian Head, MD 20640
N00181, FJ—Norfolk Naval Shipyard, Portsmouth, VA 23709
N00187, 3J—U.S. Naval Public Works Center, Norfolk, VA 23511
N00188, H2—Naval Air Station, Norfolk, VA 23511
N00189, FK—U.S. Naval Supply Center, Norfolk, VA 23512
N00191, FL—Charleston Naval Shipyard, U.S. Naval Base, Charleston, SC 29408
N00193—Commanding Officer (Code 11), Naval Weapons Station, Charleston, SC 29408
N00196, 3K—Commanding Officer (Code 60), Naval Air Station, Atlanta, Marietta, GA 30060
N00197, FM—U.S. Naval Ordnance Station, Louisville, KY 40214
N00200, H3—U.S. Naval Station, Key West, FL 33040
N00203—Commanding Officer, Naval Aerospace & Regional Medical Center, Pensacola, FL 32512
N00204, FN—Naval Air Station (Code 19P10), Pensacola, FL 32508
N00205, FP—Naval Support Activity (Code N443), New Orleans, LA 70146
N00206—Naval Air Station, New Orleans, LA 70146
N00207, FQ—Naval Air Station, Jacksonville, FL 32212
N00213, H4—Naval Air Station, Key West, FL 33040
N00215, 3W—Naval Air Station (Code 60), Dallas, TX 75211
N00216, FR—Commanding Officer (Code 194), Naval Air Station, Bldg 10, Corpus Christi, TX 78419
N00221, K5—Mare Island Naval Shipyard, Vallejo, CA 94592
N00228, FU—U.S. Naval Supply Center, Oakland, CA 94625
N00231—Commanding Officer, Naval Regional Medical Clinic, Quantico, VA 22134
N00236, NX—Naval Air Station, Alameda, CA 94501
N00244, NW—U.S. Naval Supply Center, Naval Base, 937 North Harbor Drive, San Diego, CA 92132
N00246, H5—Naval Air Station, North Island, San Diego, CA 92135
N00247, HC—U.S. Naval Training Center, San Diego, CA 92133
N00249—Commanding Officer, Civil Engineer Support Officer, Naval Construction Battalion Center, Port Hueneme, CA 93043
N00250, FW—Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, NY 10305
N00251, FX—Puget Sound Naval Shipyard, Bremerton, WA 98314
N00253, FY—Commanding Officer, Naval Undersea Warfare Engineering Station, Keyport, WA 98345
N00267—Commanding Officer, Navy Regional Medical Clinic, Key West, FL 33040
N00274—Naval Air Facility, Selfridge Air Force Base, Supply Department, Mt. Clemens, MI 48045
N00275, 3M—Naval Air Station, Glenview, IL 60026
N00276—Naval Air Station, Twin Cities, Minneapolis, MN 55450
N00278—Naval Air Station, Olathe, KS 66061
N00281—Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, VA 23461
N00285—Commanding Officer, Naval Regional Medical Clinic, Corpus Christi, TX 78419
N00288—U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120
N00296, NY—Naval Air Station, Moffett Field, CA 94035
N00311, GA—Pearl Harbor Naval Shipyard, Box 400, Pearl Harbor, HI 96860
N00314, M7—Naval Submarine Base, Pearl Harbor, HI 96860,
N00334, N6—Naval Air Station, Barbers Point, HI 96862
N00383, GB NK, GC NL, GD NM—U.S. Navy Aviation Supply Office, 700 Robbins Avenue, Philadelphia, PA 19111
N00389, KL—Contracting Officer (Code 192), U.S. Naval Station, Box 3002, FPO Miami 34051
N00406, GE—U.S. Naval Supply Center, Puget Sound, Bremerton, WA 98314
N00421, M8—Naval Air Test Center, Patuxent River, MD 20670
N00600, GG—Naval Regional Contracting Center, Washington Navy Yard, Washington, DC 20374
N00604, NQ—U.S. Naval Supply Center, Pearl Harbor, Pearl Harbor, HI 96860
N00612, GH—Commanding Officer, Naval Supply Center, RCD, Code 200M, Charleston, SC 29408
N00620, H6—Naval Air Station, Whidbey Island, Oak Harbor, WA 98277
N00639, H7—Commanding Officer, Naval Air Station, Memphis (84), Millington, TN 38054
N00651, H8—U.S. Naval Supply Depot, Subic Bay, Box 33, FPO San Francisco, CA 96651
N00743, 8N—Commanding Officer, U.S. Naval Communication Station, Box 3022, FPO Miami 34051
N00788—Commanding Officer, U.S. Naval Communication Unit, Washington (Cheltenham, MD), Washington, DC 20390
N00867, 8P—Commanding Officer, U.S. Naval Communication Station, (NAVCOMMSTA), Box 5016, FPO Miami 34059
N00886, QB—U.S. Naval Communication Station, San Francisco, Rough and Ready Island, Stockton, CA 95203
N00950, 8R—U.S. Naval Communication Area, Master Station, EASTPAC, Wahiawa, HI 96786
N0428A, 3Q—Naval Air Station, Patuxent River, MD 20670
N0429A, 3A—Naval Air Station, Point Mugu, CA 93042
N0463A—Commanding Officer, Navy Experimental Diving Unit, NAVCOASTSYSCEN, Bldg. 321, Panama City, FL 32401
N06939—U.S. Naval Mission to Venezuela, Caracas, Department of State, Washington, DC 20521
N09534—Chief, Military Assistance, Advisory Group, Peru, APO Miami 34031
N09550, 4G—U.S. Fleet Air Mediterranean, FPO New York, NY 09521

N30776, 4N—Naval Air Station, Kingsville Auxiliary Landing Field, Orange Grove Det., Orange, TX 77630
N30779, 3Z—U.S. Naval Auxiliary Landing Field, Goliad, TX 77963
N30829—Officer in Charge, U.S. Naval Support Activity Naples, Detachment Gaeta, Italy, FPO New York 09522
N30929—Commanding Officer, Navy Flight Demonstration Squadron, Naval Air Station (Attn: Supply Officer), Pensacola, FL 32508
N31863—Director, Naval Audit Service, Capital Region, P.O. Box 1206, Falls Church, VA 22041
N32525, 8S—U.S. Naval Communication Detachment (Sigonella, Italy), FPO New York 09523
N32832, 7K—Naval Air Technical Assistance Group, Alverca, Portugal, APO New York, NY 09285
N32960, K2—U.S. Naval Support Unit, La Maddalena, Italy, FPO New York 09533
N33137—U.S. Navy Liaison Unit, Munich, Germany, APO New York 09108
N39096—U.S. Naval Liaison Officer, American Embassy, P.O. Box N–8197, Nassau, Bahamas, FPO New York 09559
N39167—Commanding Officer, NAVEROSPREGMEDCEN BR Clinic, Naval Air Station, Meridian, MS 39309
N39353, GV—Commanding Officer, Integrated Combat Systems Test Facility, San Diego, CA 92152
N42237, 7A—Commanding Officer, Naval Submarine Supp. Base, Code N411, Kings Bay, GA 31547
N46079—Military Sealift Command Office, Northern Europe, APO New York 09069–0006
N55418, V5—U.S. Naval Support Force, Antarctica, Detachment Christchurch, Christchurch, New Zealand, FPO San Francisco 96690
N57012, GQ—Commander Naval Air Force, U.S. Atlantic Fleet, Naval Air Station, Norfolk, VA 23511
N57023, GT—Commander, Operational Test and Evaluation Force, Naval Base, Norfolk, VA 23511
N57032—U.S. Naval Air Facility, Mildenhall UK, FPO New York 09127
N57075—Commanding Officer, U.S. Naval Facility Argentia, FPO New York 09597
N60002—Commanding Officer, Naval Regional Medical Center, Memphis, Millington, TN 38054
N60028, QC—U.S. Naval Station, Treasure Island, San Francisco, CA 94130
N60036, QD—U.S. Naval Weapons Station, Concord, CA 94520
N60050, HD—Marine Corps Air Station, El Toro, Santa Ana, CA 92709
N60087, 3P—Naval Air Station, Brunswick, ME 04011
N60169—Commanding Officer, Marine Corps Air Station, Beaufort, SC 29904
N60191, 4A—Naval Air Station, Oceana, Virginia Beach, VA 23460
N60200, 3G—Commanding Officer, Naval Air Station, Cecil Field, FL 32215
N60201, L7—Commanding Officer, Naval Station, P.O. Box M, Mayport, FL 32228
N60211, 3D—U.S. Naval Auxiliary Landing Field, Crows Landing, CA 95313
N60234, 4R—Naval Air Station, Saufley Field, Pensacola, FL 32508
N60241, 3X—Commanding Officer, Naval Air Station, Bldg. 2701, Kingsville, TX 78363
N60258, GK—Long Beach Naval Shipyard, Long Beach, CA 90801
N60259, H9—Naval Air Station, Miramar, CA 92145
N60376, 3Y—Commanding Officer, Naval Air Station, Chase Field, Beeville, TX 78103
N60462—U.S. Naval Station, Adak, FPO Seattle, WA 98791
N60478, 3C—U.S. Naval Weapons Station, Earle, Colts Neck, NJ 07722
N60495, 3T—Naval Air Station, Fallon, NV 89406
N60508, 4Q—Commanding Officer, Naval Air Station, Whiting Field, Milton, FL 32570
N60514, GL—Commanding Officer, U.S. Naval Station, Box 33, FPO New York 09593
N60530, GM—U.S. Naval Weapons Center, China Lake, CA 93555
N60656, GN—U.S. Navy Commissary Store, Naval Station, Annapolis, MD 21402
N60663, GR—Officer in Charge, U.S. Navy Commissary Store, Naval Base, Bldg. 2600, Great Lakes, IL 60088
N60666, GS—U.S. Navy Commissary Store, Naval Station, Key West, FL 33040
N60676, GX—U.S. Navy Commissary Store, Naval Air Station, Patuxent River, MD 20670
N60681, HA—U.S. Navy Commissary Store, Naval Station, San Diego, CA 92136
N60693, HB—U.S. Navy Commissary Store, Naval Base Pearl Harbor, Box 110, Pearl Harbor, HI 96860
N60701, 4M—U.S. Naval Weapons Station, Seal Beach, CA 90740
N60895, HF—U.S. Navy Commissary Store, Naval Air Station, Alameda, CA 94501
N60921, HG, FH—Commander, Naval Surface Weapons Center, Headquarters, Dahlgren, VA 22448
N60935, HH—U.S. Navy Commissary Store, Naval Air Station, Jacksonville, FL 32212
N60936, HJ—U.S. Navy Commissary Store, Naval Air Station, Pensacola, FL 32508
N60937, HK—U.S. Navy Commissary Store, Naval Support Activity, New Orleans, LA 70140
N60938, HL—U.S. Navy Commissary Store, Naval Air Station, Corpus Christi, TX 78419
N60939, HM—U.S. Navy Commissary Store, Naval Air Station, Memphis 32, Millington, TN 38054
N61115, HN—U.S. Navy Commissary Store, Naval Submarine Base, New London, Groton, CT 06340
N61119, HP—U.S. Naval Supply Depot, Guam, FPO San Francisco, CA 96630
N61165—Supply Officer, Bldg. NS46, Naval Station, Charleston, SC 29408
N61173—U.S. Naval Station, 495 Summer Street, Boston, MA 02210
N61174, 7B—Naval Support Activity, Brooklyn, NY 11251
N61189—U.S. Naval Station, Philadelphia, PA 19112
N61217, HQ—U.S. Navy Commissary Store, Naval Station, Bermuda, FPO New York 09560
N61331, HR—Commanding Officer, Naval Coastal Systems Center, Panama City, FL 32407
N61337—Commanding Officer, Naval Hospital, Beaufort, SC 29904
N61339, HT—Commanding Officer, Naval Training Equipment Center (N–601), Orlando, FL 32813
N61414, 4B—U.S. Naval Amphibious Base, Little Creek, Norfolk, VA 23521
N61466—Commander, Naval Base, Bldg. NH48, Charleston, SC 29408
N61510, HU—U.S. Navy Commissary Store, Naval Station, Guam, Box 179, FPO San Francisco, CA 96630
N61533, HW—Naval Ship Research and Development Laboratory, Annapolis, MD 21402
N61602, HX—Morocco-U.S. Naval Training Command, FPO New York 09544
N61726, QL—Naval Submarine Medical Center, Naval Submarine Base New London, Groton, CT 06340
N61751—U.S. Naval Medical Research Unit No. 3, Cairo, FPO New York 09527
N61762, HY—U.S. Naval Ordnance Missile Test Facility, White Sands Missile Range, NM 88002
N61894—Commanding Officer, Naval and Marine Corps Reserve Center, Armed Forces Reserve Center, Naval District Washington, Washington Navy Yard, Anacostia, Washington, DC 20374
N61910—Commanding Officer, Naval and Marine Corps Reserve Center, 2869 Central Avenue, Augusta, GA 30904
N61911—Commanding Officer, Naval Reserve Center, Naval Base, Bldg RTC–1, Charleston, SC 29408
N61912—Commanding Officer, Naval and Marine Corps Reserve Center, 513 Pickens Street, Columbia, SC 29201
N61913—Commanding Officer, Naval Reserve Center, 1680 Riverside Drive, P.O. Box 6115, Macon, GA 31208
N61915—Commanding Officer, Naval and Marine Corps Reserve Center, 274 Fifth Street, N.W., Atlanta, GA 30318
N61916—Commanding Officer, Naval Reserve Center, 2144 Lakeshore Drive, Wilmington, NC 28401
N61917—Commanding Officer, Naval and Marine Corps Reserve Center, 725 W. Sixth Street, Charlotte, NC 28202
N61919—Commanding Officer, Naval Reserve Center, 414 Fourth Avenue, Box 1539, Columbus, GA 31902
N61920—Commanding Officer, Naval Reserve Center, 721 Merriman Ave., Asheville, NC 28804
N61921—Commanding Officer, Naval & Marine Corps Reserve Center, Triad Armed Forces Reserve Center, 7838 McCloud Rd, Greensboro, NC 27409
N61923—Commanding Officer, Naval & Marine Corps Reserve Center, 2725 Western Blvd., Raleigh, NC 27606
N61926—Commanding Officer, Naval & Marine Corps Reserve Center, Box 44, Naval Air Station (NAS), Jacksonville, FL 32802
N61927—Commanding Officer, Naval Reserve Center, 2610 Tigertail Ave., Miami, FL 33133
N61929—Commanding Officer, Naval & Marine Corps Reserve Center, 595 N. Primrose Drive, Orlando, FL 32803
N61930—Commanding Officer, Naval Reserve Center, Bayboro Harbor, St. Petersburg, FL 33701

N61931—Commanding Officer, Naval Reserve Center, 2214 Ave. E, Riviera Beach, FL 33404
N61933—Commanding Officer, Naval Reserve Center, 1325 York Street, Tampa, FL 33602
N61934—Commanding Officer, Naval & Marine Corps Reserve Center, 12 Meadow Street, Chattanooga, TN 37405
N61935—Commanding Officer, Naval & Marine Corps Reserve Center, P.O. Box 1180, Gulfport, MS 39501
N61937—Commanding Officer, Naval Reserve Center, 100 Navy Drive, P.O. Box 1544, Fort Smith, AR 72901
N61938—Commanding Officer, Naval & Marine Corps Reserve Center, Tulsa (AFRC), 1101 North 6th, Suite 5, Broken Arrow, OK 74012
N61940—Commanding Officer, Naval & Marine Corps Reserve Center, 503 "B" Street, Ryan Airport, Baton Rouge, LA 70807
N61942—Commanding Officer, Naval & Marine Corps Reserve Center, 1101 Fourth Ave, SW, Bessemer, AL 35020
N61944—Commanding Officer, Naval & Marine Corps Reserve Center, State Fair Grounds, Shreveport, LA 71109
N61945—Commanding Officer, Naval & Marine Corps Reserve Center, P.O. Box 8485, Mobile, AL 36608
N61947—Commanding Officer, Naval & Marine Corps Reserve Center, 1650 Federal Drive, Montgomery, AL 36109
N61948—Commanding Officer, Naval & Marine Corps Reserve Center, P.O. Box 667, Alcoa Highway, Knoxville, TN 37901
N61949—Commanding Officer, Naval Reserve Center, Bldg 845, Saufley Field, Pensacola, FL 32509
N61952—Commanding Officer, Naval Reserve Center, P.O. Box 1669, Tuscaloosa, AL 35401
N61954—Commanding Officer, Naval & Marine Corps Reserve Center, 5020 Lakeshore Drive, New Orleans, LA 70146
N61955—Commanding Officer, Naval Reserve Center, P.O. Box 821, Jackson, MS 39205
N61956—Commanding Officer, Naval Reserve Center, 4501 West Stone Drive, Kingsport, TN 37660
N61958—Commanding Officer, Naval Reserve Center, P.O. Box 1748, Stillwater, OK 74074
N61959—Commanding Officer, Naval & Marine Corps Reserve Center, 2309 Line Avenue, Amarillo, TX 79106
N61962—Commanding Officer, Naval Reserve Center, 2524 Avery Ave., Box 12487, Memphis, TN 38112
N61963—Commanding Officer, Naval Reserve Center, 4601 Fairview Drive, Austin, TX 78731
N61965—Commanding Officer, Naval Reserve Center, 5316 S. Douglas Blvd., Oklahoma City, OK 73115
N61967—Commanding Officer, Naval & Marine Corps Reserve Center, 1712 Surrey Street, Lafayette, LA 70508
N61968—Commanding Officer, Naval Reserve Center, 1902 Old Spanish Trail, Houston, TX 77054
N61970—Commanding Officer, Naval & Marine Corps Reserve Center, Memorial Park, Little Rock, AR 72205
N61971—Commanding Officer, Naval Reserve Center, Shelby Park, P.O. Box 60404, Nashville, TN 37206
N61972—Commanding Officer, Naval Reserve Center, 435 E. Gadsden St., P.O. Box 2367, Gadsden, AL 35903
N61973—Commanding Officer, Naval Reserve Center, 501 Casson Street, Alexandria, LA 71301
N61978—Commanding Officer, Naval Reserve Center, Naval Air Station, Corpus Christi, TX 78419
N61979—Commanding Officer, Naval & Marine Corps Reserve Center, Bldg 193, Naval Air Station, Dallas, TX 75211
N61980—Commanding Officer, Naval & Marine Corps Reserve Center, 1313 Indiana Street, El Paso, TX 79930
N61982—Commanding Officer, Naval & Marine Corps Reserve Center, 311 E. Arsenal Street, San Antonio, TX 78204
N62021, 7V—Naval Amphibious Base, Coronado, CA 92155
N62154—Commanding Officer, Naval Reserve Center, 1407 Wheaton Street, Savannah, GA 31404
N62161, HZ—U.S. Navy Commissary Store, Rough and Ready Island, Stockton, CA 95203
N62190—Commanding Officer, Naval Research Laboratory, Underwater Sound Reference Detachment, P.O. Box 8337, Orlando, FL 32856
N62245—U.S. Naval Medical Field Research Laboratory, Camp Lejeune, NC 28542
N62247—Commanding Officer, Naval Reserve Center, 209 Pollard St., SW, Huntsville, AL 35801
N62248—Commanding Officer, Naval & Marine Reserve Center, 2903 4th Street, Lubbock, TX 79415
N62254—Commander Fleet Activities, Okinawa, U.S. Naval Air Facility, Kadena, Box SU/CR, FPO Seattle 98770
N62257—Commanding Officer, Naval & Marine Corps Reserve Center, 1941 S. 3rd Street, Abilene, TX 79602
N62269, JC—Commander, U.S. Naval Air Development Center, Johnsville, Warminster, PA 18974
N62271, QE—U.S. Naval Postgraduate School, Monterey, CA 93940
N62306, 7C—Commanding Officer (Code 4410), Naval Oceanographic Office, National Space Technology Laboratory, Bay St. Louis, MS 39552
N62375—Commanding Officer, Naval & Marine Corps Reserve Center, 426 North Main Street, Greenville, SC 29601
N62376, 4K—Commanding Officer, U.S. Naval Air Propulsion Center, P.O. Box 7176, Trenton, NJ 08628
N62381, JG—Military Sealift Command, Atlantic, Military Ocean Terminal, Building 42, Bayonne, NJ 07002
N62382—Military Sealift Command, Gulf Subarea, 4400 Dauphin Street, New Orleans, LA 70146
N62383, JH—Military Sealift Command, Pacific, Naval Supply Center, Oakland, CA 94625
N62387—Commander, Military Sealift Command (Code M10-3), 4228 Wisconsin Avenue, Washington, DC 20016
N62404, JJ—Military Sealift Command, Far East, FPO Seattle 98760
N62412—Commanding Officer, Naval Recruiting District, 4525 Executive Park Dr., Montgomery, AL 36116
N62415—Commanding Officer, Naval Recruiting District, P.O. Box 2711, Columbia, SC 29202
N62419—Commanding Officer, Naval Recruiting District, Melrose Bldg., 1121 Walker Street, Houston, TX 77002
N62422—Commanding Officer, Naval Recruiting District, 2974 Woodcock Drive, Jacksonville, FL 32207
N62423—Commanding Officer, Naval Recruiting District, 301 Center Street, Little Rock, AR 72201
N62425—Commanding Officer, Naval Recruiting District, 1808 West End Ave., Suite 1312, Nashville, TN 37203
N62430—Commanding Officer, Naval Recruiting District, 1001 Navaho Drive, Raleigh, NC 27609
N62437—Commanding Officer, Naval Recruiting District, 918 So. Ervay Street, Dallas, TX 75201
N62442—Commanding Officer, Naval Recruiting District Atlanta, 612 Tinker Street, Suite C, Marietta, GA 30060
N62444—Commanding Officer (Code 602-2C), Naval Recruiting District, 4400 Dauphine Street, New Orleans, LA 70146
N62462—Naval Applied Science Laboratory, Brooklyn, NY 11251
N62467, JM—Commanding Officer, Southern Division, Naval Facilities Engineering Command (SODIVNAVFAC), P.O. Box 10068, 2144 Melbourne Street, Charleston, SC 29411
N62470, JN—Atlantic Division, Naval Facilities Engineering Command, Norfolk, VA 23511
N62471, N7—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mid-Pacific, Pearl Harbor, HI 96860
N62472, JP—Northern Division, Naval Facilities Engineering Command, U.S. Naval Base, Philadelphia, PA 19112
N62474, JR—Western Division, Naval Facilities Engineering Command, San Bruno, CA 94066
N62477, JU—Chesapeake Division, Naval Facilities Engineering Command, Washington Navy Yard, Washington, DC 20390
N62481, N8—U.S. Naval Station, Bermuda, FPO New York 09560
N62507—Commanding Officer, U.S. Naval Air Facility, Atsugi, Japan, Box 3, FPO Seattle 98767
N62522, JV—Military Sealift Command, Europe, Box 3, FPO New York 09510-3700
N62535, HE—Marine Corps Air Station (HELO), Tustin, CA 92710
N62537—Military Sealift Command, Mediterranean Sub-Area, Box 23, FPO New York 09521-0600
N62538, K1—Military Sealift Command Office, Norfolk, Bldg Y100A, Norfolk, VA 23512
N62539—Military Sealift Command Office, United Kingdom, Box 29, FPO New York 09510-3700
N62566, 3F—Officer in Charge, U.S. Naval Fuel Depot, P.O. Box 9068, Jacksonville, FL 32208

N62573, K8—Marine Corps Air Facility, New River Plaza, Jacksonville, NC 28540
N62578, J2—Naval Construction Battalion Center, Davisville, RI 02854
N62583, J3—Naval Construction Battalion Center, Port Heuneme, CA 93041
N62585, K3—Commander, U.S. Naval Activities, UK, FPO New York 09510
N62588, NR—U.S. Naval Support Activity, Naples, FPO New York 09521
N62593—Director, Navy Publications & Printing Service Office, Southeast Div., 4400 Dauphine St., Unit 601-3-B, New Orleans, LA 70146
N62603—Commanding Officer, Fleet & Mine Warfare Training Center, Naval Base, Bldg 647, Charleston, SC 29408
N62604, J4—Commanding Officer, Naval Construction Battalion Center, Gulfport, MS 39501
N62613—Commanding Officer, U.S. Marine Corps Air Station, Iwakuni, Japan, FPO Seattle 98764
N62649, JY—U.S. Naval Supply Depot, Yokosuka, FPO Seattle 98762
N62651—Director, Naval Publications & Printing, Service Detachment Office, Naval Education and Training Command, Pensacola, FL 32508
N62653—Director, Naval Publications & Printing, Service Detachment Office, Bldg. 1628, Naval Base, Charleston, SC 29408
N62665, JQ—Supervisor of Shipbuilding, Conversion and Repair, USN, Barnes Building—6th Floor, 495 Summer Street, Boston, MA 02210
N62670, 8B—Supervisor of Shipbuilding, Conversion and Repair, USN, Drawer T, Mayport Naval Station, Jacksonville, FL 32228
N62673—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Base, Charleston, SC 29408
N62678, 8C—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 215, Portsmouth, VA 23705
N62695—Auditor General of the Navy, P.O. Box 1206, Falls Church, VA 22041
N62735—Commander, U.S. Fleet Activities, Sasebo, Japan, FPO Seattle 98766
N62741—Commanding Officer, Navy Supply Corps School, Code 60, Athens, GA 30606
N62742, KB—Pacific Division, Naval Facilities, Engineering Command, Pearl Harbor, HI 96860
N62745—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mediterranean, APO New York 09285
N62748—Commanding Officer, Naval & MARCORPS RESCEN, 2100 N. New Road, Waco, TX 76707
N62766, L1—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Guam, FPO San Francisco, CA 96630
N62786, ER—Supervisor of Shipbuilding, Conversion and Repair, USN, 574 Washington Street, Bath, ME 04530
N62789, L8—Supervisor of Shipbuilding, Conversion and Repair, USN, Groton, CT 06340
N62791, NU—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Station, Box 119, San Diego, CA 92136
N62793, 4T—Supervisor of Shipbuilding, Conversion and Repair, USN, Newport News, VA 23607
N62794, 7D—Supervisor of Shipbuilding, Conversion and Repair, USN, Flushing & Washington Avenues, Brooklyn, NY 11251
N62795, 7F—Supervisor of Shipbuilding, Conversion and Repair, USN, Pascagoula, MS 39567
N62798, 4X—Supervisor of Shipbuilding, Conversion and Repair, USN, San Francisco, CA 94135
N62799, 7M—Supervisor of Shipbuilding, Conversion and Repair, USN, Seattle, WA 98115
N62810—Chief, Navy Section, Military Assistance Advisory Group, Taipei, Box 12, FPO San Francisco, CA 96268
N62832—U.S. Naval Activities, Rota, Spain, FPO New York 09540
N62836, L4—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Far East, Yokosuka, Box 61, FPO Seattle, WA 98762
N62841—Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, FL 32920
N62852—Naval Electronic System Security Engineering Center, Naval Security Station, 3801 Nebraska Avenue, NW, Washington, DC 20390
N62861, KD—Naval Plant Representative Office, General Dynamics, P.O. Box 2505, Pomona, CA 91766
N62863, K4—U.S. Naval Station, Rota, Spain, FPO New York 09540
N62864, L2—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Southwest Pacific, APO San Francisco, CA 96528
N62892—Commanding Officer, Naval Security Group Activity, Site "B", Card Sound Road, Homestead, FL 33039
N62894—Commander, U.S. Naval Forces, Korea, APO San Francisco, CA 96301
N62907, KG—Naval Plant Representative Office, Applied Physics Laboratory, Johns Hopkins Road, Laurel, MD 20810
N62908, 8D—Naval Weapons Engineering Support Activity, Washington Navy Yard, Washington, DC 20374
N62913—Commander, Naval Recruiting Area Three, 451 College Street, P.O. Box 4887, Macon, GA 31208
N62917—Commander, Navy Recruiting Area Seven, 1499 Regal Row, Suite 501, Dallas, TX 75247
N62921, KH—Naval Plant Representative Office, (Special Projects), Lockheed Missiles & Space Co., P.O. Box 504, Sunnyvale, CA 94088
N62922, 7W—Resident Officer in Charge of Construction, Pacific, Department of the Navy, P.O. Box 418, San Bruno, CA 94067
N62938, KK—Naval Plant Representative Office, Grumman Aerospace Corp., Bethpage, L.I., NY 11714
N62940, KM—Naval Plant Representative, Naval Plant Representative Office, Rockwell International Corp., 4300 East 5th Avenue, P.O. Box 1259, Columbus, OH 43216
N62974, JB—Marine Corps Air Station, Yuma, AZ 85364
N62990, L3—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 28, Sturgeon Bay, WI 54235
N62995, 4H—U.S. Naval Air Facility, Sigonella, FPO New York 09523
N63005—Commanding Officer, Administrative Support Unit, Bahrain, FPO New York 09526
N63015, 7Y—Naval Education and Training Support Center, Pacific, Fleet Station P.O. Bldg, San Diego, CA 92132
N63028—Polaris Missile Facility Atlantic, Charleston, SC 29408
N63032, KS—U.S. Naval Station, Keflavik, FPO New York 09571
N63038, 8M—U.S. Naval Communication Unit, Cutler, East Machias, ME 04630
N63042, NZ—Naval Air Station, Lemoore, CA 93245
N63043, 3S—Commanding Officer, Naval Air Station, Meridian, MS 39301
N63051—Commanding Officer, Naval Investigative Service Office, Naval Base, Bldg NH 53, Charleston, SC 29408
N63053—Commanding Officer, Naval Investigative Service Office, P.O. Box 6438, New Orleans, LA 70174
N63073—U.S. Naval Security Group Activity RAF, Edzell UK, FPO New York 09518
N63080, KT—U.S. Navy Commissary Store, Chinhae, FPO Seattle, WA 98769
N63082—Commanding Officer, Naval Technical Training Center, Corry Station (Code 4460), Pensacola, FL 32511
N63105, 4W—Naval Air Systems Command Representative, Atlantic, U.S. Naval Air Station, Norfolk, VA 23511
N63110—Commanding Officer, Chief of Naval Air Training (Code N-73), Naval Air Station, Corpus Christi, TX 78419
N63111—Commanding Officer, Chief of Naval Technical Training, Naval Air Station, Memphis, Millington, TN 38054
N63124—Supervisor of Shipbuilding, Conversion and Repair, USN, New Orleans, LA 70146
N63134, 7R—Fleet Numerical Oceanography Center, Monterey, CA 93940
N63136—Navy Section, U.S. Military Group, Argentina, Buenos Aires, Dept. of State, Washington, DC 20521
N63143, 8K—U.S. Naval Communication Station (Keflavik, Iceland), Box 22, FPO New York 09571
N63165, 7U—Navy Regional Data Automation Center, Washington, Washington Navy Yard, Washington, DC 20374
N63182, 8T—U.S. Naval Communication Station (Rota, Spain), FPO New York 09539
N63204, KV—Naval Plant Representative Office, Goodyear Aerospace Corp., Akron, OH 44305
N63205, KW, QM—Naval Air Engineering Center Detachment, GSE, Naval Plant Representative Office, Vought Corporation, P.O. Box 5907, Dallas, TX 75222
N63212—Commanding Officer, NROTC Unit, University of Texas at Austin, Austin, TX 78712
N63219—Commanding Officer, NROTC Unit, Rice University, P.O. Box 1892, Houston, TX 77001
N63228—Commanding Officer, NROTC Unit, Tulane University, New Orleans, LA 70118
N63229—Commanding Officer, NROTC Unit, University of Oklahoma, Norman, Oklahoma 73019

N63273, 4S—Fleet Combat Direction Systems Support Activity, Dam Neck, Virginia Beach, VA 23461
N63274, 4F—Naval Electronic Systems Engineering Center, Vallejo, CA 94592
N63282, KZ—Naval Plant Representative Office, Lockheed Aircraft Corp., Burbank, CA 91503
N63287, LB—Naval Plant Representative Office, McDonnell-Douglas Corp., Douglas Aircraft Company, Aircraft Div., Long Beach, CA 90801
N63296—Commanding Officer, NROTC Unit, Auburn University, Auburn, AL 36830
N63299—Commanding Officer, NROTC Unit, Duke University, Durham, NC 27706
N63301—Commanding Officer, NROTC Unit, Georgia Tech, Atlanta, GA 30313
N63307—Commanding Officer, NROTC Unit, University of Mississippi, Box 69, University, MS 38677
N63308—Commanding Officer, NROTC Unit, University of North Carolina, Chapel Hill, NC 27515
N63313—Commanding Officer, NROTC Unit, University of South Carolina, Columbia, SC 29208
N63315—Commanding Officer, NROTC Unit, Vanderbilt University (Westside Hall), Nashville, TN 37240
N63325, 7X—Naval Education & Training Support Center, Atlantic, Bldg. Z-86, Naval Station, Norfolk, VA 23511
N63331, LF—Naval Plant Representative Office, United Aircraft Corp., Sikorsky Aircraft Div., Stratford, CT 06497
N63339, LL—U.S. Navy Commissary Store, Naval Station, Adak, FPO Seattle, WA 98791
N63340, LM—U.S. Navy Commissary Store, Naval Station, Argentia, FPO New York 09597
N63341, LN—U.S. Navy Commissary Store, Naval Auxiliary Air Station, Chase Field, Beeville, TX 78102
N63344, LR—U.S. Navy Commissary Store, Naval Station, Charleston, SC 29408
N63345, LS—U.S. Navy Commissary Store, Naval Base, Guantanamo Bay, FPO New York 09598
N63346, LT—U.S. Navy Commissary Store, Naval Station, Keflavik, FPO New York 09571
N63348, LV—U.S. Navy Commissary Store, Naval Auxiliary Air Station, Kingsville, TX 78364
N63349, LW—U.S. Navy Commissary Store, Naval Air Station, Lemoore, CA 93246
N63350—U.S. Commissary Store Region UK, Dunstable, England, FPO New York 09510
N63351, LY—U.S. Navy Commissary Store, Naval Station, Long Beach, CA 90802
N63352, KE—U.S. Navy Commissary Store, Naval Auxiliary Air Station, Meridian, MS 39301
N63353, MA—Officer in Charge, U.S. Navy Commissary Store Region, Naval Support Activity, Naples, FPO New York 09521
N63356, MD—U.S. Navy Commissary Store, Naval Station, Roosevelt Roads, FPO New York 09551
N63357, ME—U.S. Navy Commissary Store, Naval Station, Rota, FPO New York 09540
N63362, MK—Officer in Charge, U.S. Navy Commissary Store Region, Subic Bay, Philippines, P.O. Box 28, FPO San Francisco 96651
N63365, MN—U.S. Navy Commissary Store Region, Yokosuka, Japan, Box 33, FPO Seattle 98762
N63367, MP—Officer in Charge, U.S. Navy Commissary Store Div., Navy Resale System Field Support Office, Norfolk, VA 23511
N63369—Military Sealift Command Office, Benelux, APO New York 09159
N63387, JD—U.S. Naval Public Works Center, Naval Base, San Diego, CA 92136
N63394, L6—Naval Ship Weapon Systems Engineering Station, Port Hueneme, CA 93043
N63395, 8L—U.S. Naval Communication Station (Thurso, Caithness, UK), FPO New York 09516
N63402, K7—Commanding Officer, Strategic Weapons Facility, Pacific, Bremerton, WA 98383
N63410, KA—Navy Manpower and Material Analysis Center, Atlantic, Norfolk, VA 23511
N63427, 8F—U.S. Naval Communication Station, Harold E. Holt, Exmouth, Western Australia, FPO San Francisco 96680
N63439, K9—Naval Ophthalmic Support and Training Activity, Yorktown, VA 23690
N63482—Commanding Officer, Naval & MARCORPS RESCEN, 2910 Roberts Ave., Tallahassee, FL 32304
N63821—Officer in Charge, Naval Underwater Systems Center, AUTEC Andros Range Detachment, Andros Island, Bahama Islands, FPO New York 09559
N63886, 8Q—U.S. Naval Security Group Activity (Adak, AK), FPO Seattle 98777
N64267, M9—Naval Weapons Station, Seal Beach Detachment, Fleet Analysis Center, Corono Annex, Corono, CA 91720
N64281, 3U—Commanding Officer, Naval Sea Combat Systems Engineering Station, Naval Station, Norfolk, VA 23511
N64980—Officer in Charge, U.S. Naval Aviation Weapons Facility, Detachment Machrinhanish, UK, FPO New York 09515
N64981—Commanding Officer, U.S. Naval Aviation Weapons Facility, St. Mawgan UK, FPO New York 09511
N65114—Commanding Officer, Navy Public Works Center, Naval Air Station, Pensacola, FL 32508
N65117, NJ—Naval Plant Representative Office (Strategic Systems Project Office), General Electric Ordnance Systems, 100 Plastics Avenue, Pittsfield, MA 01201
N65146, 7E—Procurement Branch, OP-09B31, Office of the Chief of Naval Operations, Support Activity, Washington, DC 20350
N65202—Supervisor of Shipbuilding, Conversion and Repair, USN, Box 400, Pearl Harbor, HI 96860
N65227, NH—Naval Plant Representative Office, Sperry Rand Corp., Great Neck, L.I., NY 11020
N65236, V7—Naval Electronic Systems Engineering Center, 4600 Goer Road, North Carleston, SC 29406
N65428—Commanding Officer, U.S. Naval Hospital, FPO Miami 34051
N65440—Officer in Charge, U.S. Navy Commissary Store, Exmouth, Western Australia, FPO San Francisco 96680
N65492—Commanding Officer, Naval Regional Medical Center, Fiscal & Supply Service, Code 32C, Orlando, FL 32813
N65576—Navy Space Systems Activity, PO Box 92960, Worldway Postal Center, Los Angeles, CA 90009
N65580, M2—Naval Electronic Systems Engineering Center, PO Box 55, Portsmouth, VA 23705
N65584, EW, 3E—Naval Electronic Systems Engineering Center, PO Box 80337—Building #4, Code 104, San Diego, CA 92138
N65870, M4—Supervisor of Shipbuilding, Conversion and Repair, USN, Long Beach Naval Shipyard, Long Beach, CA 90822
N65886—Commanding Officer, Naval Air Rework Facility, Naval Air Station, Jacksonville, FL 32212
N65889—Commanding Officer, Naval Air Rework Facility, Naval Air Station, Code 56000, Pensacola, FL 32508
N65912, GP—Commanding Officer, Naval Sea Support Center, Atlantic, St. Juliens Creek Annex, Portsmouth, VA 23702
N65913, 7L—Naval Sea Support Center, Pacific, San Diego, CA 92138
N65926—Officer in Charge, Naval Underwater Systems Center Detachment, AUTEC, West Palm Beach Detachment, West Palm Beach, FL 33402
N65928, N3—Naval Training Center, Orlando, FL 32813
N65980—Naval Electronic Systems Engineering Activity, St. Inigoes, MD 20684
N65995—Officer in Charge, U.S. Naval Activities UK, Detachment Holy Loch, FPO New York 09514
N66001, 7N—Naval Ocean Systems Center, San Diego, CA 92152
N66021, 7G—Fleet Air, Western Pacific, FPO Seattle, WA 98767
N66032—Automatic Data Processing Selection Office, Building 218, Washington Navy Yard, Washington, DC 20374
N66074—Commanding Officer, NROTC Unit, Prairie View A&M University, Prairie View, TX 77445
N66604, N4—Naval Underwater Systems Center, Newport, RI 02840
N66691, 4P—Commanding Officer, U.S. Naval Support Activity, Souda Bay, Crete, Greece, FPO New York 09528
N66753—Commanding Officer, NROTC Unit, Jacksonville University, Jacksonville, FL 32211
N66754—Commanding Officer, U.S. Naval Security Group Activity, FPO Miami 34053
N66809—Commanding Officer, NROTC Unit, Savannah State College, Savannah, GA 31404
N66810—Commanding Officer, NROTC Unit, Southern Univeristy and A&M College, Baton Rouge, LA 70613
N66818, JX—Commanding Officer, Naval Regional Medical Center, Portsmouth, VA 23708
N66833—Commanding Officer, U.S. Naval Station Panama Canal, FPO Miami 34061
N66863—Commanding Officer, Naval Biodynamics Laboratory, 13800 Old Gentilly Road, Michout Assembly Facility, New Orleans, LA 70189
N66898—Commanding Officer, Naval Regional Medical Clinic, New Orleans, LA 70142
N66957—Director, Navy Publications and Printing Service, Branch Officer Southeast

Division, Bldg. 2049, NTC, Orlando, FL 32813
N66959—Director, Navy Publications and Printing Service, Branch Officer Southeast Division, P.O. Box 3, NAS, Jacksonville, FL 32212
N66972—Commanding Officer, Navy Recruiting District, 5901 S.W. 74th Street, Miami, FL 33143
N67596—Commanding Officer, Navy Recruiting District, 102 W Rector Street, San Antonio, TX 78216
N68011—Commanding Officer, Navy Recruiting District, 8 North Third Street, Sterick Bldg., Memphis, TN 38103
N68032—Director, NAVRESMGTSCOL, NACRESUPPOFC, Detachment One, Bldg. 59, Naval Support Activity, New Orleans, LA 60146
N68047, 4L—U.S. Naval Office, Singapore, FPO San Francisco, CA 96699
N68056, JE—Navy Regional Medical Center, San Diego, CA 92134
N68064—Commanding Officer, NROTC Unit, University of Florida, Van Fleet Hall, Room 26, Gainesville, FL 32601
N68072—Commanding Officer, NROTC, Texas A&M University, College Station, TX 77843
N68084—Commanding Officer (Code 206), Naval Regional Medical Center, Charleston, SC 29408
N68085—Commanding Officer, Naval Regional Medical Center, Code 18, Jacksonville, FL 32214
N68086, 7S—Navy Regional Medical Center, Newport, RI 02840
N68092—Navy Regional Medical Center, Great Lakes, IL 60088
N68093—Navy Regional Medical Center, Camp Lejeune, NC 28542
N68094, V9—Navy Regional Medical Center, Camp Pendleton, CA 92055
N68095, JF—Naval Regional Medical Center, Bremerton, WA 98314
N68096, J5—Commanding Officer, U.S. Naval Regional Medical Center, FPO San Francisco 96630
N68097, QA—Navy Regional Medical Center, Oakland, CA 94627
N68101—Navy Regional Medical Center, 17th Street and Pattison Avenue, Philadelphia, PA 19145
N68139—Commanding Officer, NROTC Unit, Florida A&M University, Tallahassee, FL 32307
N68171, M3—Commanding Officer, U.S. Naval Regional Contracting Center, FPO New York 09521
N68199—Commanding Officer, Navy Office of Information, 1459 Peachtree Street, NE—Suite 300, Atlanta, GA 30309
N68200—Director, Navy Office of Information, Dallas Branch, 1114 Commerce Street, Suite 811, Dallas, TX 75242
N68221, 7J—Commanding Officer, Naval Personnel Research and Development Center, San Diego, CA 92152
N68248, V6—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Naval Submarine Base, Kings Bay, GA 31547
N68307—Commander, Code 431, Naval Reserve Readiness Command Region Ten, New Orleans, LA 70142
N68311, JL—Naval Station, Long Beach, CA 90822
N68322, 7Z—Naval Education & Training Program, Development Center, Code SU1, Saufley Field, Pensacola, FL 32509
N68335, 4Y—Commanding Officer, Naval Air Engineering Center, Supply Dept., Purchase Division, Lakehurst, NJ 08733
N68348—Commander, Naval Reserve Readiness Command, Region Nine, NAS Memphis (76), Bldg E-35, Millington, TN 38054
N68356—Commander, Naval Reserve Readiness Command, Region Seven, Naval Base, Charleston, SC 29408
N68358—Commander, Naval Reserve Readiness Command, Region Eight, Naval Air Station, Jacksonville, FL 32212
N68359—Commander, Naval Reserve Readiness Command, Region Eleven, Bldg 11, Naval Air Station, Dallas, TX 75211
N68436, KC, J6—Naval Submarine Base, Code 863, Bangor, Bremerton, WA 98315
N68441—Commanding Officer, Naval Regional Dental Center, Naval Air Station, Pensacola, FL 32508
N68443, 7T—Commanding Officer, Naval Regional Dental Center, Bremerton, WA 98314
N68449—Commanding Officer, Naval & Marine Corps Reserve Center, Pier Road, Bldg 187, Orange, TX 77630
N68478, 7H—Naval Plant Branch Representative Office, Westinghouse Electric Corporation, Oceanic Division, PO Box 1488, Annapolis, MD 21404
N68497—Commanding Officer, Code 40, Naval Administrative Command, Naval Training Center, Orlando, FL 32813
N68518—Commanding Officer, Naval Reserve Support Office, Internal Supply, Code S43, 4400 Dauphine Street, New Orleans, LA 70146
N68520, 7P—Naval Aviation Logistics Center, U.S. Naval Air Station, Patuxent River, MD 20670
N68525, 7Q—Naval Plant Representative Office, General Electric Company, Aircraft Engine Group, 1000 Western Avenue, Lynn, MA 01910
N68546, QG—Navy Environmental Health Center, Naval Station, Norfolk, VA 23511
N68610, GF—Officer in Charge, Fleet Hospital Support Center, 620 Central Ave., Bldg No. #5, Alameda, CA 94501
N68679, 3N—Commanding Officer, Naval Plant Representative Office, 4800 East River Road, Minneapolis, MN 55421
N68790—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Diego Garcia, FPO San Francisco 96685
N68836, J9—Commanding Officer, Naval Supply Center, Jacksonville, FL 32212
N70092—U.S. Naval Security Station, 3801 Nebraska Avenue, NW, Washington, DC 20390
N70240, M6—Commanding Officer, Naval Communication Station, San Diego, 937 N. Harbor Drive, San Diego, CA 92132
N70272, 8G—U.S. Naval Communication Area, Master Station LANT, Norfolk, VA 23511
N70273, V3—Naval Radio Station, Jim Creek, Oso, WA 98223
N70278, V4—U.S. Naval Communication Station (Yokosuka, Japan), Box 3, FPO Seattle 98762
N70283—Commanding Officer, Code 30, Naval Security Group Activity, FPO Miami 34060
N70294, 8H—U.S. Naval Communication Area, Master Station MED (Naples, Italy), FPO New York 09524
N70295, 8J—U.S. Naval Communication Station (Nea Makri, Greece), FPO New York 09525
M00027, MS—Headquarters, U.S. Marine Corps, Washington, DC 20380
M00146, MT—Commissary Store, Marine Corps Air Station, Cherry Point, NC 28533
M00243, NE—Marine Corps Recruit Depot, San Diego, CA 92140
M00263, MX—Marine Corps Recruit Depot, Parris Island, SC 29905
M00264, MY—Marine Corps Schools Development and Education Command, Quantico, VA 22134
M00318, MU—Commissary Store, Marine Corps Air Station, FPO San Francisco, CA 96628
M00681, NG—Marine Corps Base, Camp Pendleton, Oceanside, CA 92054
M28300, QH—1st Force Service Regiment, Force Logistic Command, FPO San Francisco, CA 96602
M60050, MV—Commissary Store, Marine Corps Air Station, El Toro (Santa Ana), CA 92709
M61801—Marine Corps Reserve Training Center, Lawrence, MA 01843
M61807—Marine Corps Reserve Training Center, Springfield, MA 01104
M61809—Marine Corps Reserve Training Center, Manchester, NH 03102
M61815—Marine Corps Reserve Training Center, Worcester, MA 01605
M61821—Marine Corps Reserve Training Center, Providence, RI 02905
M61835—Marine Corps Reserve Training Center, Hartford, CT 06114
M61839—Marine Corps Reserve Training Center, Rochester, NY 14617
M61842—Marine Corps Reserve Training Center, Buffalo, NY 14201
M61843—Marine Corps Reserve Training Center, Bronx, NY (Fort Schuyler) 10465
M61846—Marine Corps Reserve Training Center, New Rochelle, NY 10801
M61858—Marine Corps Reserve Training Center, Newark, NJ 07114
M61861—Marine Corps Reserve Training Center, Albany, NY 12203
M61866—Marine Corps Reserve Training Center, New Haven, CT 06512
M61869—Marine Corps Reserve Training Center, Huntington, L.I., NY 11743
M61876—Marine Corps Reserve Training Center, Wilmington, DE 19808
M61877—Marine Corps Reserve Training Center, Harrisburg, PA 17101
M61881—Marine Corps Reserve Training Center, Reading, PA 19610
M61884—Marine Corps Reserve Training Center, Folsom, PA 19033
M61888—Marine Corps Reserve Training Center, Camden, NJ 08103
M61894—Marine Corps Reserve Training Center, Washington, DC 20390

M61899—Marine Corps Reserve Training Center, Portsmouth, VA 23709
M61902—Marine Corps Reserve Training Center, Cumberland, MD 21502
M61910—Marine Corps Reserve Training Center, Augusta, GA 30904
M61912—Marine Corps Reserve Training Center, Columbia, SC 29201
M61915—Marine Corps Reserve Training Center, Atlanta, GA 30318-5699
M61917—Marine Corps Reserve Training Center, Charlotte, NC 28202
M61921—Marine Corps Reserve Training Center, Greensboro, NC 27401
M61923—Marine Corps Reserve Training Center, Raleigh, NC 27607
M61926—Marine Corps Reserve Training Center, Jacksonville, FL 32207
M61934—Marine Corps Reserve Training Center, Chattanooga, TN 37405
M61935—Marine Corps Reserve Training Center, Gulfport, MS 39503
M61936—Marine Corps Reserve Training Center, Norman, OK 73070
M61938—Marine Corps Reserve Training Center, Tulsa, OK 74104
M61939—Marine Corps Reserve Training Center, Galveston, TX 77552
M61942—Marine Corps Reserve Training Center, Birmingham, AL 35208
M61944—Marine Corps Reserve Training Center, Shreveport, LA 71109
M61945—Marine Corps Reserve Training Center, Mobile, AL 36608
M61947—Marine Corps Reserve Training Center, Montgomery, AL 36109
M61948—Marine Corps Reserve Training Center, Knoxville, TN 37901
M61954—Marine Corps Reserve Training Center, New Orleans, LA 70140
M61955—Marine Corps Reserve Training Center, Jackson, MS 39205
M61959—Marine Corps Reserve Training Center, Amarillo, TX 79106
M61963—Marine Corps Reserve Training Center, Austin, TX 78704
M61964—Marine Corps Reserve Training Center, Fort Worth, TX 76110
M61966—Marine Corps Reserve Training Center, Beaumont, TX 77701
M61967—Marine Corps Reserve Training Center, Lafayette, LA 70502
M61970—Marine Corps Reserve Training Center, Little Rock, AR 72205
M61979—Marine Corps Reserve Training Center, Dallas, TX 75220
M61980—Marine Corps Reserve Training Center, El Paso, TX 79923
M61982—Marine Corps Reserve Training Center, San Antonio, TX 78204
M61984—Marine Corps Reserve Training Center, Evansville, IN 47712
M61989—Marine Corps Reserve Training Center, Green Bay, WI 54305
M61992—Marine Corps Reserve Training Center, St. Louis, MO 63145
M61997—Marine Corps Reserve Training Center, Joliet (Rockdale), IL 60436
M61998—Marine Corps Reserve Training Center, Omaha, NE 68111
M61999—Marine Corps Reserve Training Center, Toledo, OH 43611
M62028—Marine Corps Reserve Training Center, Trenton, NJ 08608
M62034—Marine Corps Reserve Training Center, Detroit MI 48214
M62035—Marine Corps Reserve Training Center, Milwaukee, WI 53207
M62037—Marine Corps Reserve Training Center, Peoria, IL 62633
M62038—Marine Corps Reserve Training Center, Springfield, MO 65801
M62041—Marine Corps Reserve Training Center, Topeka, KS 60607
M62042—Marine Corps Reserve Training Center, Waterloo, IA 50703
M62044—Marine Corps Reserve Training Center, Fort Des Moines, IA 50135
M62045—Marine Corps Reserve Training Center, Steubenville, OH 43952
M62046—Marine Corps Reserve Training Center, Gary, IN 46403
M62054—Marine Corps Reserve Training Center, Kansas City, MO 64130
M62055—Marine Corps Reserve Training Center, Dayton, OH 45417
M62058—Marine Corps Reserve Training Center, Naval Air Station, Minneapolis, MN 55450
M62060—Marine Corps Reserve Training Center, Danville, IL 61834
M62063—Marine Corps Reserve Training Center, Mansfield, OH 44901
M62071—Marine Corps Reserve Training Center, Rockford, IL 61105
M62073—Marine Corps Reserve Training Center, Fort Wayne, IN 46803
M62075—Marine Corps Reserve Training Center, South Bend, IN 46613
M62077—Marine Corps Reserve Training Center, Lexington, KY 40503,
M62078—Marine Corps Reserve Training Center, Louisville, KY 40214
M62080—Marine Corps Reserve Training Center, Dearborn, MI 48120
M62081—Marine Corps Reserve Training Center, Flint, MI 48503
M62082—Marine Corps Reserve Training Center, Grand Rapids, MI 49505
M62084—Marine Corps Reserve Training Center, Kalamazoo, MI 49001
M62085—Marine Corps Reserve Training Center, Lansing, MI 48912
M62092—Marine Corps Reserve Training Center, Akron, OH 43310
M62093—Marine Corps Reserve Training Center, Canton, OH 44706
M62094—Marine Corps Reserve Training Center, Cincinnati, OH 45207
M62095—Marine Corps Reserve Training Center, Columbus, OH 43215
M62096—Marine Corps Reserve Training Center, Lorain, OH 44052
M62098—Marine Corps Reserve Training Center, Youngstown, OH 44507
M62100—Marine Corps Reserve Training Center, Madison, WI 53703
M62103—Marine Corps Reserve Training Center, Los Angeles, CA 90012
M62107—Marine Corps Reserve Training Center, Tucson, AZ 85711
M62108—Marine Corps Reserve Training Center, Albuquerque, NM 87106
M62109—Marine Corps Reserve Training Center, Phoenix, AZ 85009
M62110—Marine Corps Reserve Training Center, Santa Monica, CA 90405
M62111—Marine Corps Reserve Training Center, Bakersfield, CA 93307
M62113—Marine Corps Reserve Training Center, Pasadena, CA 91107
M62114—Marine Corps Reserve Training Center, San Bernardino, CA 92402
M62115—Marine Corps Reserve Training Center, San Francisco, CA 94130
M62119—Marine Corps Reserve Training Center, Sacramento, CA 95818
M62121—Marine Corps Reserve Training Center, Fresno, CA 93702
M62126—Marine Corps Reserve Training Center, Salt Lake City, UT 84113
M62127—Marine Corps Reserve Training Center, Reno, NV 89502
M62128—Marine Corps Reserve Training Center, San Jose, CA 95112
M62130—Marine Corps Reserve Training Center, Denver, CO 80225
M62135—Marine Corps Reserve Training Center, Tacoma, WA 98402
M62138—Marine Corps Reserve Training Center, Billings, MT 59101
M62139—Marine Corps Reserve Training Center, Boise, ID 83701
M62145—Marine Corps Reserve Training Center, Portland, OR 97217
M62146—Marine Corps Reserve Training Center, Spokane, WA 99208
M62204, MW—Marine Corps Logistics Base, Barstow, CA 92311
M62205—Marine Barracks, Bremerton, WA 98314
M62211—Marine Barracks, Naval Base, Pearl Harbor, Hawaii, FPO San Francisco, CA 96610
M62214—Marine Barracks, Fleet Activity, FPO Seattle, WA 98762
M62217—Marine Barracks, Fleet Activities, Yokosuka, FPO San Francisco, CA 96662
M62218—Marine Barracks, Naval Base, New York, Brooklyn, NY 11201
M62222—Marine Barracks, Naval Base, Boston, MA 02129
M62248—Marine Corps Reserve Training Center, Lubbock, TX 79408
M62250—Marine Corps Reserve Training Center, Salem, OR 97308
M62257—Marine Corps Reserve Training Center, Abilene, TX 79602
M62274—Marine Corps Reserve Training Center, Compton, CA 90221
M62293—Marine Barracks, Guam, FPO San Francisco, CA 96630
M62298—Marine Corps Reserve Training Center, Eugene, OR 97401
M62361—Marine Air Reserve Training Detachment, NAS, Alameda, CA 94501
M62375—Marine Corps Reserve Training Center, Greenville, SC 29601
M62378—Marine Corps Reserve Training Center, East Ninth Street, Cleveland, OH 44114
M62400—Marine Corps Reserve Training Center, Moline, IL 61265
M62748—Marine Corps Reserve Training Center, Waco, TX 76710
M62757—Marine Corps Reserve Training Center, Forest Park, IL 60130
M62952—Marine Corps Reserve Training Center, Pittsburgh, PA 15213
M62974, NA—Commissary Store, Marine Corps Air Station, Yuma, AZ 85364
M63438—Marine Corps Reserve Training Center, Little Creek, Norfolk, VA 23521
M67001, NB—Marine Corps Base, Camp Lejeune, NC 28542
M67004, NC—Marine Corps Logistics Base, Albany, GA 31704

M67011—Director, 1st Marine Corps District, Long Island, NY 11530
M67013—Director, 4th Marine Corps District, Philadelphia, PA 19112
M67015—Director, 6th Marine Corps District, Atlanta, GA 30303
M67016—Director, 8th Marine Corps District, New Orleans, LA 70113
M67017—Director, 9th Marine Corps District, Shawnee Mission, KA 66204
M67019—Director, 12th Marine Corps District, San Francisco, CA 94130
M67021—Marine Corps Reserve Training Command, Glenview, IL 60026
M67025 Headquarters, Fleet Marine Force, Pacific, Oahu, FPO San Francisco, CA 96610
M67027—Marine Barracks, Naval Base, Key West, FL 33040
M67029—Marine Barracks, Washington, DC 20003
M67030—Marine Barracks, Mare Island, Vallejo, CA 94592
M67031—Marine Barracks, Naval Station, Treasure Island, San Francisco, CA 94130
M67032—Marine Barracks, Naval Station, Sangley Point, Luzon, Philippines, FPO San Francisco, CA 96652
M67033—Marine Barracks, Naval Base, Subic Bay, Luzon, Philippines, FPO San Francisco, CA 96650
M67036—Marine Barracks, San Juan, P.R., FPO New York, NY 09550
M67037—Marine Barracks, Fleet Activities, Saesbo, FPO San Francisco, CA 96666
M67042—Marine Barracks, Naval Ammunition Depot, Hawthorne, NV 89415
M67043—Marine Barracks, NAD, Bangor, Bremerton, WA 98314
M67044—Marine Barracks, Naval Ammunition Depot, McAlester, OK 74501
M67048—Marine Barracks, Hunters Pt. Div., SFran Bay NSY (R), San Francisco, CA 94135
M67054—Marine Barracks, Naval Weapons Station, Yorktown, VA 23491
M67058—Marine Barracks, Naval Base, Newport, RI 02844
M67059—Marine Barracks, Submarine Base, New London, CT 06342
M67063—Marine Barracks, Naval Ammunition Depot, Earle, NJ 07722
M67066—Marine Barracks, Naval Station, Annapolis, MD 21402
M67068—Marine Barracks, Naval Base, Portsmouth, NH 03804
M67228—Marine Barracks, Naval Base, Guantanamo Bay, FPO New York, NY 09593
M67229—Marine Barracks, Naval Base, Charleston, SC 29408
M67230—Marine Barracks, Naval Base, Norfolk, VA 23511
M67231—Marine Barracks, Naval Base, Philadelphia, PA 19146
M67232—Marine Barracks, Norfolk Naval Shipyard, Portsmouth, VA 23709
M67235—Marine Air Reserve Training Detachment, Naval Air Facility, Andrews AFB, Washington, DC 20390
M67236—Marine Air Reserve Training Detachment, NAS, Atlanta, GA 30063
M67241—Marine Air Reserve Training Detachment, NAS, Glenview, IL 60026
M67242—Marine Air Reserve Training Detachment, NAS, Grosse Ile, MI 48138
M67244—Marine Air Reserve Training Detachment, NAS, Los Alamitos, CA 90721
M67245—Marine Air Reserve Training Detachment, Memphis, TN 38115
M67247—Marine Air Reserve Training Detachment, NAS, Minneapolis, MN 55450
M67248—Marine Air Reserve Training Detachment, NAS, New Orleans, LA 70140
M67249—Marine Air Reserve Training Detachment, NAS, Brooklyn, NY 11234
M67251—Marine Barracks, Naval Air Station, Alameda, CA 94501
M67252—Marine Air Reserve Training Detachment, NAS, Olathe, KS 66061
M67254—Marine Air Reserve Training Detachment, South Weymouth, MA 02190
M67256—Marine Air Reserve Training Detachment, NAS, Willow Grove, PA 19090
M67270—Marine Air Reserve Training Detachment, Norfolk, VA 23511
M67272—Marine Barracks, Naval Air Station, Atsugi, FPO San Francisco, CA 96667
M67273—Marine Barracks, Naval Weapons Station, Concord, CA 94520
M67281—Marine Detachment, Naval Station, Trinidad, FPO New York, NY 09655
M67283—Marine Barracks, Naval Station, Bermuda Barracks, Naval Station, Bermuda, FPO New York, NY 09560
M67284—Marine Barracks, Naval Station, Argentia, FPO New York, NY 09597,
M67285—Marine Barracks, Naval Station, Adak, FPO Seattle, WA 98791
M67336—Marine Barracks, Clarksville Base, Clarksville, TN 37040
M67341—Marine Barracks, Naval Station, San Diego, CA 92136
M67342—Marine Barracks, Naval Air Station, Barbers Point, Oahu, Hawaii, FPO San Francisco, CA 96611
M67343—Marine Barracks, Naval Ammunition Depot, Oahu, FPO San Francisco, CA 96612
M67348—Marine Detachment, Naval Disciplinary Command, Naval Base, Portsmouth, NH 03804
M67350—Marine Barracks, Naval Activities, Naples, FPO New York, NY 09521
M67351—Marine Detachment, London, APO New York, NY 09510
M67353—Headquarters Battalion, Marine Corps, Henderson Hall, Arlington, VA 22214
M67354—Post Supply Officer, Headquarters Marine Corps, Navy Annex, Arlington, VA 20380
M67385—Camp H. M. Smith, U.S. Marine Corps Aiea, Oahu, Hawaii 96861
M67387—Marine Barracks, Fallbrook Annex, NWPSTA Seal Beach, CA 92028
M67388—Marine Barracks, Lake Meade Base, Las Vegas, NV 89110
M67390—Director, 14th Marine Corps District, Pearl Harbor, Hawaii, FPO San Francisco, CA 96610
M67391 Headquarters Fleet Marine Force Atlantic (Camp Elmore), Norfolk, VA 23511
M67399, NF—Marine Corps Air Ground Combat Center, Twentynine Palms, CA 92278
M67400, QJ—Marine Corps Procurement Office, Okinawa, Marine Corps Base, Camp Smedley D. Butler, FPO Seattle, WA 98773
M67401—Marine Barracks, Rota, FPO New York, NY 09540
M67403—Marine Barracks, NWPSTA, Seal Beach, CA 90740
M67405—Marine Barracks, NAD, Charleston, SC 29408
M67410—Marine Barracks, Naval Missile Facility Lompoc, CA 93436
M67415—Marine Barracks, Sigonella, Sicily, FPO, New York, NY 09521
M67418—Marine Barracks, NAV Forces Iceland, Keflavik, FPO New York, NY 09571
M67422—Marine Air Reserve Training Detachment, NAS, Seattle, WA 98105
M67424—Subunit 2, Marine Air Reserve Training Detachment, Los Alamitos, Pasadena, CA 91107
M67425—Subunit 3, Marine Air Reserve Training Detachment, Alameda, CA 94501
M67426—Subunit 4, Marine Air Reserve Training Detachment, Alameda, San Jose, CA 95112
M67432—Subunit 2, Marine Air Reserve Training Detachment, Willow Grove, MCRTC, Wyoming, PA 18644
M67433—Subunit 1, Marine Corps Reserve Training Detachment, Grosse Ile, NMCRTC, Green Bay, WI 54305

Department of the Air Force

(C) Denotes a Central Contracting Activity

F01600, 5A—Maxwell AFB, AL 36112
F01620, MG—HQ SISC/PK, Gunter AFS, AL 36114
F01630, TL—Air Force Automated Systems, Projects Office/PGZ, Gunter AFS, AL 36114
F02600, 5B—Williams AFB, AZ 85224
F02601, 5C—Davis-Monthan AFB, AZ 85707
F02604, 5D—Luke AFB, AZ 85309
F02610, SR—AFPRO, Hughes Aircraft Co., Missile Systems Group, P.O. Box 11337, Emery Park Station, Tucson, AZ 85734
F03601, 5E—Blytheville AFB, AR 72315
F03602, 5F—Little Rock AFB, AR 72079
F04604, 5G—Castle AFB, CA 95342
F04605, 5H—March AFB, P.O. Box 6443, CA 92518
F04606, SM—Sacramento ALC/PM, McClellan AFB, CA 95652
F04607, 5J—Norton AFB, CA 92409
F04609, 5K—George AFB, CA 92392
F04611, QQ—AFFTC R & D Contracts (C), Edwards AFB, CA 93523
F04612, 5L—Mather AFB, CA 95655
F04614, S5—WSMC/PM, Vandenberg AFB, CA 93437
F04620, S6—AFPRO TRW, Defense & Space Systems Group, One Space Park, Redondo Beach, CA 90278
F04626, 5M—Travis AFB, CA 94535
F04630, RY—AFPRO, Rockwell International, Rocketdyne Division, 6633 Canoga Avenue, Canoga Park, CA 91304
F04666, 5N—Beale AFB, CA 95903
F04679, QR—AFPRO, Northrop Corp., Hawthorne, CA 90250
F04681, QS—AFPRO, Rockwell International Corp., North American Aircraft Div., Los Angeles, CA 90009
F04682, QT—AFPRO, Hughes Aircraft Company, P.O. Box 92463, Los Angeles, CA 90009
F04684, QW—Vandenberg AFB, CA 93437
F04688, QV—AFPRO, Aerojet-General Corp., P.O. Box 15846, Sacramento, CA 95813

F04689, RN—Air Force Satellite Control Facility, AFSCF/PMC, Base Contracts, Sunnyvale AFS, CA 94086
F04690, RF—Air Force Satellite Control Facility, Sunnyvale AFS, CA 94086
F04691, QX—AFPRO, Lockheed Missile & Space Co., Inc., P.O. Box 504, Sunnyvale, CA 94088
F04693, MG—SD/PMB Directorate of Base Contracts, Los Angeles AFS, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009
F04696, RB—AFPRO, Rockwell International Corp., Anaheim, 3370 Miraloma Ave., Anaheim, CA 92803
F04699, Q5—Sacramento ALC/PMK, Base Contracting, McClellan AFB, CA 95652
F04700, Q2—AFFTC Base Contracting, Edwards AFB, CA 93523
F04701, TB—SD(C), Los Angeles AFS, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009
F04702—1352 Audiovisual Squadron (MAC), Norton AFB, CA 92409–5439
F04703, R8—Western Space and Missile Center (C), Vandenberg AFB, CA 93437
F04704, R9—Ballistic Missiles Office (C), Norton AFB, CA 92409
F04705, RT—Det 6, 2762 Logistics Sq. Special (AFLC), Norton AFB, CA 92409
F04710, TC—AFPRO, McDonnell Douglas Corporation, Douglas Aircraft Company, Long Beach, CA 90846
F04720, RD—AFCMD OL-AD, AF Plant 42, 2503 East Avenue P, Palmdale, CA 93550
F04735, UE—Det 51, Sacramento Air Logistics Center, OL Norton AFB, CA 92409
F05600, 5P—Lowry AFB, CO 80230
F05604, SX—1014 Contracting Squadron, Peterson AFB, CO 80914
F05611, 5Q—USAF Academy, CO 80840
F05617, RE—AFPRO, Martin Marietta, Aerospace (Denver Div.), P.O. Box 179, Denver, CO 80201
F06700, T5—AFPRO, Pratt & Whitney, OL/AA, Commercial Products Division, East Hartford, CT 06108
F07603, 5R—Dover AFB, DE 19901
F08602, 5S—MacDill AFB, FL 33608
F08606, RG—Eastern Space and Missile Center (C), Patrick AFB, FL 32925
F08620, 5T—Hurlburt FLD, FL 32544
F08621, 5U—Homestead AFB, FL 33039
F08635, RH—AD(C), Eglin AFB, FL 32542
F08637, 5V—Tyndall AFB, FL 32401
F08650, TJ—Eastern Space and Missile Center (Base Contracts), Patrick AFB, FL 32925
F08651, Q3—AD, Directorate of Base Contracts, Eglin AFB, FL 32542
F08675, T2—AFPRO, Pratt & Whitney, Government Products Division, West Palm Beach, FL 33402
F09603, RJ, RR—Warner Robins ALC/PM, Robins AFB, GA 31098
F09604, RU—Det 8, 2762 Logistics Sq. Special (AFLC), Robins AFB, GA 31098
F09607, 5W—Moody AFB, GA 31601
F09609, 5X—Dobbins AFB, GA 30060
F09632, RK—AFPRO, Lockheed-Georgia Co., Marietta, GA 30063
F09634, 5Y—AFRES, Robins AFB, GA 31098
F09650, Q6—Warner Robins ALC/PMK, Base Contracting, Robins AFB, GA 31098
F10603, 5Z—Mountain Home AFB, ID 83648
F11602, 6A—Chanute AFB, IL 61868
F11603, 6B—Chicago O'Hare Intl Airport, Chicago, IL 60666
F11623, 6C—Scott AFB, IL 62225
F11624, UD—TSPMO/PGZ, Scott AFB, IL 62225
F11626, RL—HQ MAC/LGC, Scott AFB, IL 62225
F11628, RM—HQ AFCC(C), Scott AFB, IL 62225
F12617, 6D—Grissom AFB, IN 46971
F14614, 6E—McConnell AFB, KS 67221
F14615, RP—AFPRO Boeing Military Airplane Company, 3801 South Oliver Street, Wichita, KS 67210
F16600, 6F—England AFB, LA 71301
F16602, 6G—Barksdale AFB, LA 71110
F17600, 6H—Loring AFB, ME 04751
F18400, S2—AFPRO, Westinghouse Electric Corp., PO Box 1693, Baltimore, MD 21203
F18600, RQ—HQ, AFSC, Andrews AFB (C), Washington, DC 20334
F18601, 4D—Information Systems Group, Washington, DC 20330–5040
F19617—Westover AFB, MA 01022
F19620, SQ—AFPRO, AVCO, 201 Lowell Street, Wilmington, MA 01887
F19628, RS—ESD, Hanscom AFB (C), MA 01731
F19630, RV—AF Computer Acquisition Center, AFCAC/PK (C), Hanscom AFB, MA 01731
F19650, SH—Base Contracts Directorate, ESD, Hanscom AFB, MA 01731
F20603, 6J—Wurtsmith AFB, MI 48753
F20613, 6L—K.I. Sawyer AFB, MI 49843
F21611, 6N—Minneapolis-St. Paul Intl Airport, St. Paul, MN 55417
F22600, RC—Keesler AFB, MS 39534
F22608, 6Q—Columbus AFB, Q MS 39701
F23606, 6R—Whiteman AFB, MO 65305
F23608, 6S—Base Contracting Division, Richards-Gebaur AFB, MO 64030
F24604, 6T—Malmstrom AFB, MT 59402
F24607—Glasgow AFB, MT 59231
F25600, 6U—Offutt AFB, NE 68113
F25606, TD—HQ SAC/LGC, Offutt AFB, NE 68113
F26600, S4—Nellis AFB, NV 89191
F27604, R5—Pease AFB, NH 03801
F28609, 6V—McGuire AFB, NJ 08641
F29601, RW—Kirtland Contracting Center (PKR), Kirtland AFB, NM 87117
F29605, 6W—Cannon AFB, NM 88101
F29650, R3—Kirtland Contracting Center (PKB), Kirtland AFB, NM 87117
F29651, 6X—Holloman AFB, NM 88330
F30602, RX—RADC (C), Griffiss AFB, NY 13441
F30617, 6Y—Niagara Falls Intl Airport, NY 14304
F30625, ST—AFPRO, AIL, Eaton Corporation, AIL Div., Comac Road, Deer Park, NY 11729
F30635, S3—Griffiss AFB, NY 13441
F30636, 6Z—Plattsburgh AFB, NY 12903
F30669, R7—AFPRO Fairchild Republic Co., Farmingdale, NY 11735
F31601, BU—Pope AFB, NC 28308
F31610, BW—Seymour Johnson AFB, NC 27530
F32604, BX—Minot AFB, ND 58705
F32605, BY—Grand Forks AFB, ND 58205
F33600, RZ—2750 ABW/PMA & PMT, WPAFB, OH 45433
F33601, Q7—2750 ABW/PMB, Base Contracting, WPAFB, OH 45433
F33606, WP—AFLC Logistics Management Center/LDK, WPAFB, OH 45433
F33615, SG—ASD/PMR, Directorate of R&D Contracting, WPAFB, OH 45433
F33617, BZ—Rickenbacker AFB, OH 43217
F33620, SN—AFPRO, Rockwell International, North American Aircraft Operations OL/AB, 4300 E. Fifth Avenue, Columbus, OH 43216
F33630, C1—Youngstown Municipal Airport, Vienna, OH 44473
F33654, SB—AFPRO, General Electric Company, Evendale, OH 45215
F33657, SC—ASD (C), WPAFB, OH 45433
F33659, Q8—Aerospace Guidance & Metrology Center, Newark AFS, OH 43055
F33661—AFCMC, WPAFB, OH 45433

(With the Following Codes for Each Detachment)

MJ—Det 33, AF Contr. Maint. Center, APO New York, NY 09667
QY—Det 30, AF Contr. Maint. Center, APO New York, NY 09253
SS—Det 16, AF Contr. Maint. Center APO New York, NY 09633
SU—Det 19, AF Contr. Maint. Center APO New York, NY 09285
S8—AFLC Logistics Support Grup, Suadi Arabia AFCMC OL, APO New York, NY 09616
SV—Det 17, AF Contr. Maint. Center, APO New York, NY 09378
R1—Det 28, AF Contr. Maint. Center, APO San Francisco, CA 96259

(End of AFCMC Detachments)

F33700, S7—HQ Acquisition Logistics Division (AFLC), WPAFB, OH 45433
F34600, C2—Vance AFB, OK 73701
F34601, SD, TA, TG— Oklahoma City ALC/PM, Tinker AFB, OK 73145
F34608, TF—Engineering Installation Center, Oklahoma City AFS, OK 73145
F34612, Altus AFB, OK 73523
F34650, Q9—Oklahoma City ALC/PMK, Base Contracting, Tinker AFB, OK 73145
F35610, C4—Kingsley Field, Klamath Falls, OR 97601
F36629, C7—Greater Pittsburgh Airport, Pittsburgh, PA 15231
F36700, C8—Willow Grove Air Reserve Facility, Willow Grove, PA 19090
F36701, SF—AFPRO, General Electric Company, Re-Entry and Environmental Systems Division and Space Division, P.O. Box 8555, Philadelphia, PA 19101
F38601, C9—Shaw AFB, SC 29152
F38604, T3—USCENTAF Purchasing Office, USCENTAF/LGCD, Shaw AFB, SC 29152
F38606, CA—Myrtle Beach AFB, SC 29577
F38610, CR—Charleston AFB, SC 29404
F39601, CT—Ellsworth AFB, SD 57706
F40600,Q4—AEDC (C), Arnold AFS, TN 37389
F40650, D1—Base Contracting Div (AEDC), Arnold AFS, TN 37389
F41608, SA, QU—San Antonio ALC/PM, Kelly AFB, TX 78241
F41612, D4—Sheppard AFB, TX 76311
F41613, D5—Carswell AFB, TX 76127
F41614, E2—Goodfellow AFB, TX 76901
F41620, E3—Reese AFB, TX 79489
F41621, SJ—Electronic Security Command/LGC, San Antonio, TX 78243–5000
F41650—San Antonio ALC/PMK, Base Contracting, Kelly AFB, TX 78241–5320

F41652, E5—Dyess AFB, TX 79607
F41685, E6—Laughlin AFB, TX 78840
F41687, E9—Bergstrom AFB, TX 78743
F41689, SK—3303 Contracting Squadron (C), Randolph AFB, TX 78150
F41695, SL, TH—AFPRO, General Dynamics, P.O. Box 371, Ft. Worth Division, Fort Worth, TX 76101
F41800, T9—San Antonio Contracting Center, P.O. Box 8218, San Antonio, TX 78208
F41999—AFNAF Purchasing Office, HQ AFMPC/DPMSK, Bldg 499D, 3rd Floor, Randolph AFB, TX 78150-6001
F42600, QP SY—Ogden ALC/PM, Hill AFB, UT 84056
F42650, R2—Ogden ALC/PMK, Base Contracting, Hill AFB, UT 84056
F42651, R6—AFPRO, Thiokol Corporation, Box 524, Brigham City, UT 84302
F44600, F3—Langley AFB, VA 23665
F44650, Q1—4400 Contracting Squadron, Langley AFB, VA 23665
F45603, F5—McChord AFB, WA 98438
F45613, F8—Fairchild AFB, WA 99011
F45632, SP—AFPRO, Boeing Company, P.O. Box 3707, Seattle, WA 98124
F47606, G7—Gen. Billy Mitchell Field, 300 College Ave., Milwaukee, WI 53207
F48608, G9—F.E. Warren AFB, WY 82001
F49620, SE—AFOSR (C), Bolling AFB, DC 20332
F49642, J1—Washington Area Contracting Center, Andrews AFB, Washington, DC 20331
F61040, M1—1605 Military Airlift Support Wing, APO New York, NY 09406
F61051—USDAO, American Embassy, APO New York, NY 09667
F61060—USDAO, American Embassy, Sofia, Bulgaria
F61080—USDAO, American Embassy, Prague, Czechoslovakia
F61100—USDAO, American Embassy, APO New York, NY 09170
F61101, T1—USAFE Contracting Region—Denmark, Det 8, 7000 Contr. Sq., APO New York, NY 09170
F61130—USDAO, American Embassy, Helsinki, Finland
F61171—USDAO, American Embassy, APO New York, NY 09223
F61173, N1—USAFE Contracting Region—Greece, Det 7, 7000 Contr. Sq., APO New York, NY 09223
F61180—USDAO, American Legation, Budapest, Hungary
F61210—USDAO, American Embassy, APO New York, NY 09794
F61211, N9—USAFE Contracting Region—Italy, Det 6, 7000 Contr. Sq., APO New York, NY 09293
F61214, U9—USAFE Contracting Office, OL A Det 6, 7000 Contr. Sq., APO New York, NY 09240
F61250, TP—USAFE Contracting Office, OL B Det 6, 7000 Contr. Sq., APO New York, NY 09694
F61260—USDAO, American Embassy, APO, New York, NY 09159
F61270—USDAO, American Embassy, APO New York, NY 09085
F61271, T8—USAFE Contracting Office, OL A Det 8, 7000 Contr. Sq., APO New York, NY 09085
F61280—USDAO, American Consulate Gen., APO New York, NY 09757
F61290—USDAO, American Embassy, APO New York, NY 09678
F61301—USDAO, American Embassy, Bucharest, Rumania
F61308, W3—USAFE Contracting Region—Spain, Det 5, 7000 Contr. Sq., APO New York, NY 09283
F61310—USDAO, American Embassy, APO New York, NY 09285
F61354, W8—TUSLOG Det 118/LGC, APO New York, NY 09224
F61355, T4—HQ TUSLOG/LGC, APO New York, NY 09254
F61358, W9—TUSLOG Det 10/LGC, APO New York, NY 09289
F61503, UC—435 TAW/LGC, APO New York, NY 09057
F61504, T6—7350 ABG, APO New York, NY 09611
F61517, UF—USAFE Contracting Region—EIFEL, Det 3, 7000 Contr. Sq., APO New York, NY 09132
F61519, R4—50 TFW/LGC, APO New York, NY 09109
F61521, UH—USAFE Contracting Region—Rheinland, Det 2, 7000 Contr. Sq., APO New York, NY 09012
F61546, UJ—USAFE Contracting Center, Det 1, 7000 Contr. Sq., APO New York, NY 09633
F61560, 4C—AFLC Logistics Support Group—Europe, APO New York, NY 09012
F61700, TM—USAFE Contracting Office, OL A Det 9, 7000 Contr. Sq., APO New York, NY 09150
F61708, UK—USAFE Contracting Region—Thames Valley, Det 9, 7000 Contr. Sq., APO New York, NY 09194
F61712, UM—81 TFW/LGC, APO New York, NY 09755
F61730, UQ—10 TFW/LGC, APO New York, NY 09238
F61775, UV—USAFE Contracting Region—UK, North, APO New York, NY 09179
F61815, T7—32 TFS/LGC, APO New York, NY 09292
F61817, UW—USAFE Contracting Office, OL A Det 5, 7000 Contr. Sq., APO New York, NY 09286
F61910, WJ—USAFE Contracting Office, OL A Det 3, 7000 Contr. Squadron/LGC, APO New York, NY 09188
F62032—U.S. Military Training Mission (Saudi Arabia), APO New York, NY 09616
F62088—John Hay Air Base, APO San Francisco, CA 96298
F62321, RA—PACAF Contracting Center, Okinawa, APO San Francisco, CA 96239
F62509, QZ—Misawa AB, APO San Francisco, CA 96519
F62562, SW—PACAF Contracting Center, Japan, APO San Francisco, CA 96328
F62600—5DSCS, APO San Francisco, CA 96287
F63197, UX—USAFE Contracting Office, OL A Det 7, 7000 Contr. Sq., APO New York, NY 09291
F64133, WC—Andersen AFB, APO San Francisco, CA 96334
F64605, TN—PACAF Contracting Center, Hawaii, Hickam AFB, HI 96853
F64608—Pacific Communications Division, Hickam AFB, HI 96853
F64620, SZ—CINCPACAF/LGC, Hickam AFB, HI 96853
F64719, TK—PACAF Contracting Center, Philippines, APO San Francisco, CA 96274
F65501, WF—Elmendorf AFB, AK 99506
F65503, WH—Eielson AFB, AK 99702
F65517, QN—HQ AAC/LGC, Elmendorf AFB, AK 99506
F66501—24th Composite Wing, Howard AFB, Panama 34001

Defense Logistics Agency

DLAH00, YK—HQ, Defense Logistics Agency, Contracting Directorate, Cameron Station, Alexandria, VA 22314
DLA001, TR—Defense Logistics Services Center, 50 North Washington Street, Battle Creek, MI 49016
DLA002, TS—Defense Industrial Plant Equipment Center, Defense Depot Memphis, TN 38114
DLA003, TT—Defense Depot Ogden, Ogden, UT 84401
DLA004, TU—Defense Depot Memphis, Memphis, TN 38115
DLA005, TV—Defense Depot Tracy, Tracy, CA 95376
DLA006, W1—Defense Logistics Agency Admin. Support Center, Cameron Station, Alexandria, VA 22314
DLA100, TW—Defense Personnel Support Center, Directorate of Clothing & Textiles, 2800 South 20th Street, Philadelphia, PA 19101
DLA120, TX—Defense Personnel Support Center, Directorate of Medical Materiel, 2800 South 20th Street, Philadelphia, PA 19101
DLA13H, UE—Defense Personnel Support Center, Directorate of Subsistence, 2800 South 20th Street, Philadelphia, PA 19101
DLA132, U8—Defense Subsistence Office, Kansas City, 601 E. 12th Street, Room 1768, Kansas City, MO 64106
DLA135, W4—Defense Subsistence Office, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146
DLA136, W5—Defense Subsistence Office, Cheatham, Cheatham Annex, Bldg 113, Williamsburg, VA 23185
DLA137, W6—Defense Subsistence Region, Pacific, 2155 Mariner Square Loop, Alameda, CA 94501
DLA139, U6—Defense Subsistence Region, Europe, APO New York, NY 09052
DLA140, W7—Defense Personnel Support Center (Installation Support), 2800 South 20th Street, Philadelphia, PA 19101
DLA200, X1—Defense Property Disposal Service, Federal Center, Battle Creek, MI 49016
DLA400, TY—Defense General Supply Center, Richmond, VA 23297
DLA410, XH—Defense General Supply Center, Base Support Branch, Richmond, VA 23297
DLA420, XK—Defense General Supply Center, Educational Supplies Branch, Richmond, VA 23297
DLA500, TZ, YQ—Defense Industrial Supply Center, 700 Robbins Avenue, Philadelphia, PA 19111
DLA600, UA—Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22314
DLA700, UB—Defense Construction Supply Center, Columbus, OH 43215
DLA710, YL—Defense Construction Supply Center, Commercial Services & Supplies

Branch, Contracting Division II, Columbus, OH 43215
DLA720, YM—Defense Construction Supply Center, Wood Products Branch, Contracting Division I, Columbus, OH 43215
DLA8AC, UC—DCASMA, Santa Ana, 34 Civic Center Plaza, P.O. Box C 12700, Santa Ana, CA 92712
DLA8AG, Z3—DCASPRO, Aero, Route 7, Box 40, Lake City, FL 32055
DLA8AL, Y1—DCASMA, Atlanta, 805 Walker Street, Marietta, GA 30060
DLA8AT, UL—DCASR, Atlanta, 805 Walker Street, Marietta, GA 30060
DLA8BA, UN—DCASMA, Birmingham, 908 South 20th Street, Birmingham, AL 35256
DLA8BC, UP—DCASMA, Bridgeport, 181 Middle Street, Bridgeport, CT 06606
DLA8BL, Y4—DCASPRO AVCO Lycoming Division, 550 South Main Street, Stratford, CT 06497
DLA8BM, UR—DCASMA, Baltimore, 300 East Joppa Road, Towson, MD 21204
DLA8BN, US—DCASPRO, Western Electric Company, 204 Graham Hopedale Road, Burlington, NC 27215
DLA8BP, UT—DCASR, Boston, 495 Summer Street, Boston, MA 02210
DLA8BS, Y3—DCASMA, Boston, 495 Summer Street, Boston, MA 02210
DLA8BT, UU—DCASPRO, Bendix Corp., Route 46, Teterboro, NJ 07608
DLA8BU, XC—DCASMA, Buffalo, 1103 Federal Building, 111 W. Huron Street, Buffalo, NY 14202
DLA8BV, YT—DCASPRO, GE, Burlington, Lakeside Avenue, Burlington, VT 05402
DLA8CD, UZ—DCASMA, Cedar Rapids, 4333 Edgewood Road, N.E., Cedar Rapids, IA 52402
DLA8CH, UY—DSCASR, Chicago, O'Hare International Airport, P.O. Box 66475, Chicago, IL 60666
DLA8CL, VB—DCASR, Cleveland, Anthony J. Celebrezze Federal Bldg., 1240 East Ninth Street, Cleveland, OH 44199
DLA8CN, Y5—DCASMA, Cleveland, Anthony J. Celebrezze Federal Bldg., 1240 East Ninth Street, Cleveland, OH 44199
DLA8CO, X6—DCASPRO, Goodyear Aerospace, c/o Goodyear Aerospace Corp., 1210 Massillon Road, Akron, OH 44305
DLA8CS, VE—DCASPRO, General Dynamics, 5001 Kearny Villa Road, P.O. Box 80847, San Diego, CA 92138
DLA8DA, VG—DCASR, Dallas, 1200 Main Street, Dallas, TX 75202-4399
DLA8DB, Z7—DCASMA, Dallas, P.O. Box 50500, Dallas, TX 75250-5050
DLA8DC, VH—DCASMA, San Diego, Bldg. 4, AF Plant 19, 4297 Pacific Coast Highway, San Diego, CA 92110
DLA8DD, U4—DCASPRO, Rockwell International Corporation, 870 Presidential Drive, Richardson, TX 75081
DLA8DM, Y7—DCASMA, Detroit, McNamara Federal Bldg., 477 Michigan Avenue, Detroit, MI 48226
DLA8DN, VK—DCASMA, Denver, 701 West Hampden Ave., Suite E-3210, Englewood, CO 81054
DLA8DP, VL—DCASMA, Dayton, c/o Defense Electronics Supply Center, Bldg. 1, 1502 Wilmington Pike, Dayton, OH 45401
DLA8EC, YP—DCASMA, Chicago, O'Hare International Airport, 6400 N. Manneheim Road, P.O. Box 66911, Chicago, IL 60666
DLA8FL, VN—DCASPRO, ITT, Defense Space Group, 500 Washington Avenue, Nutley, NJ 07110
DLA8FS, VR—DCASPRO, FMC, 1125 Coleman Avenue, P.O. Box 367, San Jose, CA 95103
DLA8FT, Y2—DCASPRO, Ford Aeronutronic Div., Admin Bldg, Rm 307, Ford Road, Newport Beach, CA 92660
DLA8GD, YB—DCASPRO, Gould, 18901 Euclid Avenue, Cleveland, OH 44117
DLA8GL, VV—DCASPRO, General Electric, 1100 Western Avenue (27753), Lynn, MA 01910
DLA8GM, VW—DCASMA, Grand Rapids, Riverview Center Bldg., 678 Front Street, N.W., Grand Rapids, MI 49504
DLA8GN, VX—DCASMA, Garden City, 605 Stewart Avenue, Garden City, LI, NY 11530
DLA8HB, WA—DCASPRO, Hayes, Hayes International Corporation, P.O. Box 2583, Birmingham, AL 35202
DLA8HC, WB—DCASMA, Hartford, 96 Murphy Road, Hartford, CT 06114
DLA8HD, WC—DCASPRO, Singer, 1225 McBride Avenue, Little Falls, NJ 07424
DLA8HE, Z2—DCASPRO, Hayes (Dothan), Napier Field, Dothan, AL 36301
DLA8HM, WD—DCASPRO, Honeywell, 2701 Fourth Avenue South, Minneapolis, MN 55408
DLA8HR, Z9—Hawaii Residency (DCASMA-SF), Federal Building, Room 4115, 300 Ala Moana Blvd., Honolulu, HI 96813
DLA8HS, XT—DCASPRO, Hamilton Standard, Bradley Field, Windsor Locks, CT 06096
DLA8HU, XG—DCASPRO, Hughes Aircraft Company, Ground Systems Group, Bldg. 600, Mail Station B104, P.O. Box 3310, Fullerton, CA 92634
DLA8JJ, WG—DSCASMA, Indianapolis, Building 1, Finance Center, Fort Benjamin Harrison, Indianapolis, IN 46249
DLA8JK, Z6—DCASPRO, GMC Detroit, Diesel Allison, 2001 South Tibbs Avenue, Indianapolis, IN 46241
DLA8JL, X2—DCASPRO, Magnavox, 1616 Directors Row, Fort Wayne, IN 46808
DLA8KA, XY—DCASPRO, Kaman Aerospace Corp., Old Windsor Road, Bloomfield, CT 06002
DLA8LA, WL—DCASR, Los Angeles, 11099 South La Cienega Blvd., P.O. Box 45011, Los Angeles, CA 90045
DLA8LB, WM—DCASPRO, Litton, 20812 Ventura Blvd., Woodland Hills, CA 91364
DLA8LC, Y8—DCASMA, Inglewood, 9920 South La Cienega Blvd., Inglewood, CA 90301
DLA8LT, WN—DCASPRO, E-Systems, Inc., P.O. Box 379, Greenville, TX 75401
DLA8MB, V1—DCASPRO, Harris-Melbourne, 1465 Clearmont Street, N.E., Palm Bay, Florida 32905-4017
DLA8MC, V2—DCASPRO, Rockwell International-MSD, P.O. Box 1367, Duluth, GA 30136-4099
DLA8MF, QF—DCASMA, San Juan, P.O. Box 34167, Ft. Buchanan, PR 00934
DLA8MH, X9—DCASPRO, McDonnell Douglas, Astronautics Co., West, 5301 Bolsa Avenue, Huntington Beach, CA 92647
DLA8MM, XL—DCASPRO Martin Marietta Aerospace Orlando, P.O. Box 5837, Mail Point 49, Orlando, FL 32855
DLA8MN, WQ—DCASMA, Twin Cities, 2305 Ford Parkway, St. Paul, MN 55116
DLA8MW, WR—DCASMA, Milwaukee, Henry S. Reuss Federal Plaza, Suite 340, 310 W. Wisconsin Avenue, Milwaukee, WI 53203
DLA8NC, WV—DCASMA, Ottawa, 24th Floor Journal Towers South, 365 Laurier Avenue West, Ottawa, ON, Canada K1A0S5
DLA8NF, WW—DCASMA, Orlando, 3555 Maguire Blvd., Orlando, FL 32803
DLA8NH, YS—DCASPRO, Sanders Associates, Inc., Daniel Webster Highway South, Nashua, NH 03061
DLA8NJ, WT—DCASMA, Springfield, 240 Route 22, Springfield, NJ 07081
DLA8NL, Z1—DCASMA, New Orleans, 13800 Old Gentilly Highway, Bldg. 350, P.O. Box 29283, New Orleans, LA 70189
DLA8NM, YR—DCASPRO, IBM, Route 17C, Owego, NY 13827
DLA8NN, YN—DCASPRO, PRD Electronics, 6801 Jericho Turnpike, Syosset, NY 11791
DLA8NY,WU—DCASR, New York, 201 Varick Street, New York, NY 10014
DLA8NZ, Y9—DCASMA, New York, 201 Varick Street, New York, NY 10014
DLA8PA, WY—DCASMA, Phoenix, 3800 North Central Avenue, Phoenix, AZ 85012
DLA8PH, XA—DCASR, Philadelphia, P.O. Box 7478, Philadelphia, PA 19101
DLA8PL, X3—DCASMA, Philadelphia, P.O. Box 7699, Philadelphia, PA 19101
DLA8PM, XB—DCASPRO, IBM Manassas, 9500 Godwin Drive, Manassas, VA 22110
DLA8PP, XD—DCASMA, Pittsburgh, 1626 South Federal Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222
DLA8PR, X7—DCASPRO, RCA, Marne Highway and Borton Landing Road, Moorestown, NJ 08057
DLA8PW, XE—DCASPRO, Ford Aerospace, 3939 Fabian Way, Palo Alto, CA 94303
DLA8RB, XF—DCASPRO, Raytheon, Spencer Laboratory, Wayside Avenue, Burlington, MA 01803
DLA8RP, XM—DCASMA, Reading, 45 South Front Street, Reading, PA 19602
DLA8RS, X4—DCASPRO, Rocketdyne, 6633 Canoga Avenue, Canoga Park, CA 91304
DLA8SA, XN—DCASMA, San Antonio, 615 E. Houston, San Antonio, TX 78294
DLA8SD, X8—DCASPRO, Sundstrand, P.O. Box 5066, Rockford, IL 61125
DLA8SF, XR—DCASMA, San Francisco, 1250 Bayhill Drive, San Bruno, CA 94066
DLA8SK, XQ—DCASPRO, Singer-Link, Kirtland Plant, Binghamton, NY 13902
DLA8SL, XS—DCASR, St. Louis, 1136 Washington Avenue, St. Louis, MO 63101
DLA8SN, XU—DCASMA, Syracuse, U.S. Courthouse & Federal Bldg., Syracuse, NY 13260
DLA8ST, X5—DCASMA, St. Louis, 1136 Washington Avenue, St. Louis, MO 63101
DLA8SW, XW—DCASMA, Seattle, Bldg. 5D, Naval Station Center, Seattle, WA 98115
DLA8SY, XX—DCASPRO, GTE Communications Products Corporation, 360 First Avenue, Needham, MA 02194

DLA8TC, YF—DCASPRO, Teledyne CAE, c/o Teledyne Continental Aviation and Engineering, 1330 Laskey Road, Toledo, OH 43612

DLA8TE, XZ—DCASPRO, Texas Instruments, P.O. Box 226015, MS 256, Dallas, TX 75226

DLA8TO, U3—DCASPRO, McDonnell Douglas/Rockwell, 2000 North Memorial Drive, Tulsa, OK 74115

DLA8VC, YC—DCASMA, Van Nuys, 6230 Van Nuys Blvd., Van Nuys, CA 91408

DLA8WK, YD—DCASMA, Wichita, Wichita Mid-Continent, Airport Terminal Bldg., Wichita, KS 67209

DLA8WR, YH—DCASPRO, Williams International Corp., 2280 West Maple Road, Walled Lake, MI 48088

DLA8WS, YG—DCASPRO, Westinghouse, Hendy Avenue, Sunnyvale, CA 94088,

DLA8WT, Z8—DCASPRO, Grumman Aerospace Corp., Stuart, FL 33494

DLA8WU, VA—DCASPRO, Northrop DSD, 600 Hicks Road, Rolling Meadows, IL 60008-1098

DLA8WV, VD—DCASPRO, AM General, 701 W. Chippewa Avenue, South Bend, IN 46614-3711

DLA900, UD—Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444

DLA910—Defense Electronics Supply Center, Base Contracting Section, 1507 Wilmington Pike, Dayton, OH 45444

Defense Mapping Agency

DMA600—Defense Mapping Agency, Bldg. 56, U.S. Naval Observatory, Washington, DC 20305-3000

DMA650—Defense Mapping Agency, Inter-American Geodedic Survey, Fort Sam Houston, TX 78234-5000

DMA700—Defense Mapping Agency, Aerospace Center, 3200 South Second Street, St. Louis, MO 63118-3399

DMA800, YZ—Defense Mapping Agency, Hydrographic/Topographic Center, 6500 Brooks Lane, Washington, DC 20315-0030

DMA920—Director, DMA Distribution Center, Clearfield, UT 84016-1292

Defense Communications Agency

DCA100—Defense Communications Agency, Washington, DC 20305

DCA200—Defense Communications Agency, Defense Commercial Communications Office, Scott AFB, IL 62225

DCA300—DECCO-PAC, 1154 Bishop Street, Honolulu, HI 96813

DCA400—DECCO-EUR, APO New York, NY 09130

Defense Nuclear Agency

DNA001, 8Z—Defense Nuclear Agency, Washington, DC 20305

DNA002, 9Z—Headquarters Field Command, Defense Nuclear Agency, Kirtland AFB, NM 87115

DNA004—Armed Forces Radiobiology Research Institute, Defense Nuclear Agency, Bethesda, MD 20014

Strategic Defense Initiative Organization

SDI084—Strategic Defense Initiative Organization, Washington, DC 20301-7100

Miscellaneous Defense Activities

MDA902—American Forces Radio and Television Service, 1016 North McCadden Place, Los Angeles, CA 90038

MDA903, F7—Defense Supply Service—Washington, Room 1D245, The Pentagon, Washington, DC 20310

MDA904, BE—Maryland Procurement Office, Procurement & Production Directorate, 9800 Savage Road, Fort George G. Meade, MD 20755

MDA905—Uniformed Services University of the Health Services, 4301 Jones Bridge Road, Bethesda, MD 20014

MDA906—Reserved for CHAMPUS

MDA907—Menwith Hill Station, Harrogate, Yorkshire, England

Appendix O—Cost Accounting Standards

(**Note:** The Cost Accounting Standards are codified in 4 CFR Chapter III.)

Appendix P—Department of Defense Directive 5400.11 of 9 June 1982

Subject: Department of Defense Privacy Program

Insert illustration(s) 1590

BILLING CODE 3810-01-C

DEPARTMENT OF DEFENSE DIRECTIVE 5400.11

June 9, 1982
NUMBER 5400.11

Department of Defense Directive

ASD(C)

SUBJECT: Department of Defense Privacy Program

References:
(a) DoD Directive 5400.11, "Personal Privacy and Rights of Individuals," August 4, 1975 (hereby canceled)
(b) Title 5, United States Code, Section 552a (Public Law 93-579, "The Privacy Act of 1974")
(c) DoD 5025.1-M, "Directives System Procedures" April, 1981, authorized by DoD Directive 5025.1, "Department of Defense Directives System," October 16, 1980
(d) through (g), see enclosure 1

A. REISSUANCE AND PURPOSE

1. This Directive reissues reference (a); establishes policies and procedures for implementing the DoD Privacy Program under reference (b); delegates authorities and assigns responsibilities for administration of the DoD Privacy Program; and establishes the Defense Privacy Board and the Defense Privacy Board Legal Committee.

2. This Directive authorizes the development, publication, and maintenance of DoD 5400.11-R, "The DoD Privacy Program Regulation," consistent with reference (c).

B. APPLICABILITY AND SCOPE

1. The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereafter referred to as "DoD Components"), except for the National Security Agency/Central Security Service (NSA/CSS) (see subsection B.2., below).

2. This Directive shall apply to the NSA/CSS to the extent that its provisions are consistent with references (d) and (e), and with requirements to protect sensitive cryptologic information.

3. The provisions of this Directive shall be made applicable by contract or other legally binding actions to government contractors whenever a contract is let for the operation of a system of records or a portion of a system of records. For purposes of liability under the Privacy Act (reference (b)) the employees of the contractor are considered employees of the contracting DoD Component.

4. The DoD Privacy Program components are listed at enclosure 2.

C. Definitions

1. *Individual.* A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. All members of U.S. Armed Forces are considered individuals for Privacy Act purposes. The legal guardian of an individual or the parent of a minor may act on behalf of the individual. No rights are vested in the representatives of a deceased person under this Directive

2. *Law Enforcement Activity.* Any activity engaged in the enforcement of criminal laws, including efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities.

3. *System of Records.* Any group or records under the control of any DoD Component from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

D. Policy

It is the policy of the Department of Defense to safeguard personal information contained in any system of records maintained by DoD Components and to make that information available to the individual to whom it pertains to the maximum extent practicable.

E. Procedures

Detailed procedures for implementing the DoD Privacy Program are set forth in DoD 5400.11–R. In summary, these procedures:

1. *Permit individual access and amendment.* Individuals are permitted:

a. To determine what records pertaining to them are being collected, maintained, used, or disseminated.

b. To gain access to the information pertaining to them maintained in any system of records, and to correct or amend that information.

c. To obtain an accounting of all disclosures of the information pertaining to them except when disclosures are made (1) to DoD personnel in the course of their official duties; (2) under DoD 5400.7–R (reference (f)); or (3) to another agency or to an instrumentality or any governmental jurisdiction within or under control of the United States conducting law enforcement activities authorized by law.

d. To appeal any refusal to grant access to or amend any record pertaining to them, and to file a statement of disagreement with the record in the event amendment is refused.

2. *Limit collection, maintenance, use, and dissemination of personal information.* DoD Components are required:

a. To collect, maintain, use, and disseminate personal information only when it is relevant and necessary to achieve a purpose required by statute or Executive Order.

b. To collect personal information directly from the individuals to whom it pertains to the greatest extent practical.

c. To inform individuals who are asked to supply personal information for inclusion in any system of records:

(1) The authority for the solicitation;

(2) Whether furnishing the information is mandatory or voluntary;

(3) The intended uses of the information;

(4) The routine disclosures of the information that may be made outside the Department of Defense; and

(5) The effect on the individual of not providing all or any part of the requested information.

d. To ensure that all records used in making determinations about individuals are accurate, relevant, timely, and complete.

e. To make reasonable efforts to ensure that records containing personal information are accurate, relevant, timely, and complete for the purposes for which the record is being maintained before making them available to any recipients outside the Department of Defense, other than a federal agency, unless the disclosure is made under DoD 5400.7–R (reference (f)).

f. To keep no record that describes how individuals exercise their rights guaranteed by the First Amendment of the U.S. Constitution, unless expressly authorized by statute or by the individual to whom the records pertains, or the record is pertinent to and within the scope of an authorized law enforcement activity.

g. To make reasonable efforts, when appropriate, to notify individuals whenever records pertaining to them are made available under compulsory legal process, if such process is a matter of public record.

h. To establish safeguards to ensure the security of personal information and to protect this information from threats or hazards that might result in substantial harm, embarrassment, inconvenience, or unfairness to the individual.

i. To establish rules of conduct for DoD personnel involved in the design, development, operation, or maintenance of any system of records and to train them in these rules of conduct.

3. *Require public notice and annual publication.* DoD Components are required to publish in the **Federal Register:**

a. At least annually, a notice of the existence and character of every system of records maintained.

b. A notice of the establishment of any new or any alteration to existing system of record notices.

c. At least 30 days before adoption, advance notice for public comment of any new or intended changes to the routine uses of the information in existing system of records including the categories of users and the purposes of such use.

4. *Permit exempting eligible systems of records.* DoD Components may exempt from certain specific provisions of the Privacy Act (reference (b)) eligible systems of records, but only when there is an important public purpose to be served and specific statutory authority for the exemption exists.

5. *May require annual and other reports.* DoD Components shall furnish the Privacy Office that information required to complete any reports required by the Office of Management and Budget or other authorities.

F. Organization

1. *Defense Privacy Board.* Membership of the board shall consist of the Executive Secretary and representatives designated by the Secretaries of the Military Departments; the Assistant Secretary of Defense (Comptroller) (whose designee shall serve as chairman); the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), the General Counsel, Department of Defense and the Director, Defense Logistics Agency:

2. *The Defense Privacy Office.* The office consists of a Director, who shall also function as the Executive Secretary of the Defense Privacy Board, and his staff.

3. *The Defense Privacy Board Legal Committee.* The committee shall be composed of a legal counsel from each of the DoD Components represented on the DoD Privacy Board. The legal counsels shall be appointed by the Executive Secretary in coordination with the Secretaries of the Military Department or the head of the appropriate DoD Components. Other DoD legal counsels may be appointed by the Executive Secretary, after coordination with the appropriate representative of the DoD Component concerned, to serve on the committee.

G. Responsibilities

1. *The Assistant Secretary of Defense (Comptroller) (ASD(C)),* or his designee, *the Deputy Assistant Secretary of Defense (Administration) (DASD(A)),* shall:

a. Direct and administer the DoD Privacy Program.

b. Develop and maintain DoD 5400.11–R consistent with DoD 5025.1–M (reference (c)) and other guidance, to ensure timely and uniform implementation of the DoD Privacy Program.

c. Serve as chairman of the Defense Privacy Board.

2. *Chairman and members of the Defense Privacy Board* shall:

a. Serve as the principal policymakers for the DoD Privacy Program and the focal point for implementation of this Directive.

b. Ensure that all DoD Components actively participate in establishing policies, procedures, and practices in carrying out the DoD Privacy Program.

3. *Director, Defense Privacy Office,* shall carry out the specific responsibilities for implementation of the DoD Privacy Program set forth in enclosure 3.

4. *Members of Defense Privacy Board Legal Committee* shall:

a. Consider legal questions referred to the Board regarding the application of the Privacy Act (reference (b)), this Directive, DoD 5400.11–R, and the implementation of the DoD Privacy Program.

b. Render advisory opinions to the DoD Privacy Board, subject to approval by the General Counsel, Department of Defense.

5. The *General Counsel, Department of Defense,* shall:

a. Review the advisory opinions of the Defense Privacy Board Legal Committee to ensure uniformity in legal positions and interpretations rendered.

b. Be the final approving authority on all advisory legal opinions rendered by the Defense Privacy Board or the Defense Privacy Board Legal Committee regarding the Privacy Act (reference (b)) or its implementation.

6. The *Head of Each DoD Component* shall implement the DoD Privacy program by carrying out the specific responsibilities set forth in subsection E.2. and enclosure 4.

7. *System Managers* shall carry out the responsibilities set forth in enclosure 5.

8. *Automated Data Processing (ADP) or Word Processing Managers*, who process information from any system of records, shall carry out the responsibilities set forth in enclosure 6.

9. *DoD Employees* shall:

a. Not disclose any personal information contained in any system of records except as authorized by this Directive.

b. Not maintain any official files which are retrievable by name or other personal identifier without first ensuring that a notice for the system has been published in the **Federal Register**.

c. Report any disclosures of personal information from a system of records or the maintenance of any system of records that are not authorized by this Directive to the appropriate Privacy Act officials for his or her action.

H. Effective Date and Implementation

This Directive is effective immediately. Although DoD 5400.11–R expands on this Directive and implements the DoD Privacy Act Program, DoD Components shall forward within 180 days two copies of their internal implementing documents to the Assistant Secretary of Defense (Comptroller) to ensure compliance with paragraph G.2.b. of the basic Directive, and paragraph 5, enclosure 3.

Frank E. Carlucci,

Deputy Secretary of Defense.

Enclosures—6

1. References
2. DoD Privacy Program Components
3. Responsibilities of the Director, Defense Privacy Office
4. Responsibilities of DoD Component Heads
5. Responsibilities of the System Manager
6. Responsibilities of ADP and Word Processing Managers

(d) Public Law 86–36, "National Security Agency," May 29, 1959.

(e) Public Law 88–290, "Personnel Security Procedures in the National Security Agency," March 26, 1964.

(f) DoD 5400.7–R "DoD Freedom of Information Act Program," December 1980, authorized by DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980.

(g) Title 12, United States Code, Section 3401, "The Financial Privacy Act of 1978".

DOD Privacy Program Components

Office of the Secretary of Defense and its field activities
Department of the Army
Department of the Navy
Department of the Air Force
U.S. Marine Corps
Organization of the Joint Chiefs of Staff
Unified and Specified Commands
Defense Advanced Research Projects Agency
Defense Audiovisual Agency
Defense Audit Service
Defense Communications Agency
Defense Contract Audit Agency
Defense Criminal Investigative Service
Defense Intelligence Agency
Defense Investigative Service
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
Defense Security Assistance Agency
National Security Agency/Central Security Service
Uniformed Services University of the Health Sciences

Responsibilities of the Director, Defense Privacy Office

The *Director, Defense Privacy Office*, shall:

1. Serve as Executive Secretary and a member of the Defense Privacy Board.

2. Monitor implementation of the DoD Privacy Program for the Defense Privacy Board.

3. Serve as the focal point for the coordination of Privacy Act matters with the Defense Privacy Board; the Defense Privacy Board Legal Committee; the Office of Management and Budget; the General Accounting Office; the Office of the Federal Register, in conjunction with the OSD Federal Register Liaison Officer; and other Federal agencies, as required;

4. Develop and maintain DoD 5400.11–R consistent with DoD 5025.1–M reference (c)).

5. Review DoD Component instructions and related issuances pertaining to the DoD Privacy Program and provide overall guidance to avoid conflict with DoD Privacy Program policy and procedures.

6. Supervise the implementation of the Right to Financial Privacy Act of 1978 (reference (g)) and any other legislation that impacts directly on individual privacy.

7. In conjunction with the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), the Office of the General Counsel, DoD; and other DoD Components:

(a) Ensure that training programs regarding DoD Privacy Program policies and procedures are established for all DoD personnel whose duties involve design, development, operation, and maintenance of any system of records.

(b) Coordinate on all DoD personnel policies that may affect the DoD Privacy Program.

8. In conjunction with the Office of the Deputy Assistant Secretary of Defense (Management Systems), Office of the ASD(C), and other DoD Components, ensure that:

(a) All information requirements developed to collect or maintain personal data conform with DoD Privacy Program standards;

(b) Procedures are developed to protect personal information while it is being processed or stored in automated data processing or word processing centers.

9. In conjunction with the Office of the ASD(MRA&L), the Defense Manpower Data Center (Defense Logistics Agency), and other DoD Components, ensure that procedures developed to collect or maintain personal data for research purposes conform both to the requirements of the research and DoD Privacy Program standards.

Responsibilities of DoD Components Heads

The *Head of each DoD Component* shall:

1. Establish an active program to implement the DoD Privacy Program.

2. Provide adequate funds and personnel to support the Privacy Program.

3. Designate a senior official to serve as the principal point of contact for DoD Privacy Program matters and to monitor compliance with the program.

4. Ensure that DoD Privacy Program compliance is reviewed during the internal inspections conducted by Inspectors General or equivalent inspectors.

5. Ensure that the DoD Component head, a designee, or an appellant reviews all appeals from denials or refusals by Component officials to amend personal records.

6. Establish rules of conduct to ensure that:

a. Only personal information that is relevant and necessary to achieve a purpose required by statute or Executive Order is collected, maintainted, used, or disseminated.

b. Personal information is collected to the greatest extent practicable directly from the individual to whom it pertains.

c. No records are maintained describing how individuals exercise their rights guaranteed by the First Amendment to the U.S. Constitution unless expressly authorized by statute or the individuals to whom they pertain or unless the records pertain to and are within the scope of an authorized law enforcement activity.

d. Individuals are granted access to records which pertain to them in systems of records unless the system has been exempted from the access provisions of the Privacy Act (reference (b)).

e. No system of records subject to reference (b) is maintained, used, or disseminated without prior publication of a system notice in the **Federal Register**.

f. All personal information contained in any system of records is safeguarded against unwarranted and unauthorized disclosure.

g. Procedures are established that permit an individual to seek the correction or amendment of any record in a system of records pertaining to the individual unless the system of records has been exempted from the amendment procedures of reference (b).

h. All personnel whose duties involve design, development, operation, and maintenance of any system of records are trained in the rules of conduct established.

7. Assist, upon request, the Defense Privacy Board on matters of special interest.

Responsibilities of the System Manager

The *System Manager* for any system of records shall:

1. Ensure that all personnel who either have access to the system of record or who are engaged in developing or supervising procedures for handling records in the system of records are aware of their responsibilities for protecting personal information established by the DoD Privacy Program.

2. Prepare promptly any required new, amended, or altered system notices for the system of records and submit them through channels for publication in the **Federal Register**.

3. Notify all ADP or word processing managers who process information from the

system of records that the information is subject to the DoD Privacy Program and the applicable routine uses for the information in the system.

4. Coordinate with ADP and word processing managers providing services to ensure an adequate risk analysis is conducted.

5. Coordinate with the servicing ADP and word processing managers to ensure that the system manager is notified when there are changes to processing equipment, hardware or software, and the data base that may require submission of a amended system notice.

Responsibilities of ADP and Word Processing Managers

All *ADP* and *word processing managers*, who process information from a system of records shall:

1. Ensure that each system manager provides a current system notice or information as to the contents of the system notice for each system of records from which information is to be processed.

2. Ensure that all personnel who have access to information from a system of records during processing or who are engaged in developing procedures for processing such information are aware of the provisions of the DoD Privacy Program policies and procedures.

3. Notify promptly the system manager whenever there are changes to processing equipment, hardware or software, and the data base that may require the submission of an amended system notice for any system of records.

Appendix Q—Department of Defense Foreign Tax Relief Program

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Q-202	Administration of Program Under Unified Commands.	Q:9
	Part 3—Designated Commanding Officers	
Q-301	Designated Commanding Officers	Q:10

BILLING CODE 3810-01-M

insert illustration(s) 1604

BILLING CODE 3810-01-C

APPENDIX Q

DEPARTMENT OF DEFENSE FOREIGN TAX RELIEF PROGRAM

Part 1—Department of Defense Directive 5100.64

Q-100 Reprint of DoD Directive 5100.64.

June 12, 1979
NUMBER 5100.64

OC, DoD

Department of Defense Directive

SUBJECT DoD Foreign Tax Relief Program

References:
(a) DoD Directive 5100.64, "Department of Defense Foreign Tax Relief Program," August 12, 1970 (hereby canceled)
(b) DoD Instruction 2050.1, "Delegated Approval Authority to Negotiate and Conclude International Agreements," July 6, 1977
(c) DoD Directive 5000.35, "Defense Acquisition Regulatory System," March 8, 1978
(d) DoD Directive 5525.1, "Status of Forces Policies and Information," January 20, 1966

A. REISSUANCE AND PURPOSE

This Directive (1) reissues reference (a), without substantive change, to correct superseded references; and (2) defines the tax relief policy of the Department of Defense, designates the organizational element which has continuing responsibility for the overall direction of the DoD Foreign Tax Relief Program, delineates the responsibilities of other organizational elements to implement and monitor the program, and requires the preparation and maintenance of specified foreign country tax law studies in order to facilitate the institution of statistical reporting procedures.

B. APPLICABILITY AND SCOPE

1. The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified Command, and the Defense

Agencies (hereafter referred to as "DoD Components").

2. The policy set forth in this Directive applies to:

a. Military functions expenditures by the Department of Defense, and

b. Expenditures by nonappropriated fund activities of the Department of Defense that are subject to taxes imposed by:

(1) Foreign countries in which U.S. military forces are regularly stationed (other than attache and other military personnel assigned to a U.S. diplomatic mission); and

(2) Any other foreign country in which all or most U.S. defense activities, in a collective sense, are conducted in the interest of the common defense or otherwise significantly improve the military security of that country.

3. The policy set forth in this Directive also applies to Military Assistance Program (MAP) expenditures in all countries.

C. Definitions

1. Regardless of how a charge is denominated in foreign law or regulation, the words "tax" and "taxes" include all direct or indirect foreign customs duties, import and export taxes, excises, fees and other charges imposed at the national, local or intermediate level of a foreign country other than charges for services rendered or for other consideration received.

2. For example, taxes include but are not limited to purchase tax, sales tax, use tax, gross receipts tax, stamp tax, transfer tax, transaction tax, turnover tax, value added tax, service tax, trade tax, business tax, license tax, transportation tax, circulation tax, luxury tax, possession tax, production tax, registration tax, consumption tax, gasoline tax, real property tax, personal property tax, and gross income tax.

3. The word "relief" includes any method, technique, or procedure by which the ultimate economic burden of a tax on DoD funds may be avoided or otherwise remedied, such as exemption, refund, or drawback.

D. Policy

It is the policy of the Department of Defense to secure, to the maximum extent practicable, effective relief from all foreign taxes wherever the ultimate economic burden of those taxes would, in the absence of such relief, be borne by funds appropriated or allocated to the Department of Defense (including MAP appropriations) or under the control of its nonappropriated fund activities. In those cases in which the total economic burden of a tax not readily identifiable in the normal course of business is so small that it may be considered a *de minimis* matter, or in which the administrative burden of securing effective relief from a tax in a particular instance would be out of proportion to the amount of the relief obtained, tax relief shall be considered impracticable.

E. Responsibilities

1. The *General Counsel of the Department of Defense* shall:

a. Provide overall supervision and direction of the DoD Foreign Tax Relief Program.

b. Resolve any significant issues relating to the program.

c. Designate those countries that come within subparagraph B.2.b.(2) of this Directive.

d. Direct the preparation of country tax law studies for countries not within the scope of subsection B.2. of this Directive.

e. Designate the DoD member of the Inter-Agency Committee on Foreign Tax Relief, established by the Department of State.

2. The *Assistant Secretary of Defense (International Security Affairs)* shall monitor the negotiation and conclusion of international agreements subject to the Secretary's approval authority under DoD Instruction 2050.1 (reference (b)), to ensure that such agreements are compatible with the policy set forth in this Directive and any implementing guidance concerning that policy issued by the General Counsel of the Department of Defense.

3. The *Chairman, Defense Acquisition Regulatory Council*, shall coordinate with the General Counsel of the Department of Defense before the issuance, amendment, or revision of any portion of the Defense Acquisition Regulatory System (or regulation, directive, circular, or other publication within the scope of DoD Directive 5000.35 (reference (c)) that pertains to the implementation of the DoD Foreign Tax Relief Program.

4. The *Assistant Secretary of Defense (Comptroller)* shall perform such fiscal functions as may be required to implement the DoD Foreign Tax Relief Program, including advice and assistance in the institution of procedures for collecting data, compiling reports, and performing internal audits.

5. The *Secretary of each of the Military Departments* and the *Director of each of the Defense Agencies* shall issue instructions or regulations that charge a single office within the respective Military Department or Defense Agency (referred to as the "Cognizant Office") with continuing responsibility for supervising and monitoring the implementation of the DoD Foreign Tax Relief Program within such Department or Agency. Such instructions or regulations shall delegate to the Cognizant Office authority commensurate with its responsibility.

6. *Commanders of Unified Commands*, as appropriate, shall promulgate management procedures to guide and coordinate the administration of the DoD Foreign Tax Relief Program throughout their respective area commands.

7. For each foreign country that comes within the scope of subsection B.2. of this Directive, a single Military Commander shall be designated by the Commander of the Unified Command. The designated Military Commander shall be the same designated under the procedures in subsection IV.C. of DoD Directive 5525.1 (reference (d)). The designated Military Commander shall:

a. Make and maintain a current country tax law study in accordance with section F. of this Directive.

b. Be the single point of contact for U.S. contracting officers and activities for the investigation and resolution of specific matters that relate to the foreign tax relief program within the country for which the Military Commander is designated and for the forwarding of major problems affecting that program through proper channels to the General Counsel of the Department of the Defense.

c. Provide liaison with the responsible U.S. diplomatic mission on current tax relief problems and, where appropriate, with local foreign tax authorities.

F. Country Tax Law Studies

1. The taxes covered by each country tax law study shall be limited to those which in the absence of tax relief, would affect, or would appear to affect, U.S. Government expenditures, even as a *de minimis* matters. (All such taxes are hereafter referred to as "applicable taxes.") The formats of the studies for all countries shall be similar within each Unified Command insofar as practicable, and designed to facilitate statistical reporting procedures. The studies shall be prepared and maintained with a view to the practical utilization of the studies by U.S. contracting officers and activities for purposes of making reliable estimates of the total amount of taxes applicable to any particular contract and the amount thereof for which tax relief is available.

2. Each country tax law study shall consist of the following:

a. A general survey of all applicable taxes, together with translations, as appropriate, of the salient featured of the law or regulations imposing those taxes.

b. For each applicable tax, a summary statement containing: Its name; its rate (or rates); the taxing authority (national, provincial, or municipal); the legal incidence of the tax (the nature of the taxpayer or other entity liable for the payment of the tax to the taxing authority under the law of the country); its descrition (including the base or bases on which the tax is imposed); the applicability of the tax to various types of contracts (supplies, services or construction) is the event the tax is applicable to only one or serveral of such types of contracts; the applicability of the tax to the prime contract, as well as to any subcontracts or purchase orders issued by the prime contractor or subcontractor; the applicability of the tax to contractor and subcontractor personnel; the variation, if any, of the applicability of the tax depending upon the domicile of the contractor or contractor personnel, such as United States, host country, or third country; any applicable exemptions of deductions of significance; and the method of collection of the tax.

c. The basis upon which it is concluded that each applicable tax, in absence of tax relief, would affect, or would appear to affect, U.S. Government expenditures; and any evidence of the degree to which its ultimate economic burden would, in absence of tax relief, be borne by the U.S. Government rather than be absorbed by others.

d. The substantive tax relief, if any, from each applicable tax that is available to the U.S. Government either by international agreements in force or under the tax law or other regulation of the country; the procedures which may be used to obtain any such relief; the requirement, if any, for the issuance of a tax exemption certificate by the military procuring agency or by an agency of

the country to secure an exemption; the entitlement, if any, of the taxpayer to interest on any tax refund made by the host country; the credits, if any, that may be available against any other taxes otherwise payable by the taxpayer resulting from the payment of the tax under analysis; the approximate amount of the tax that should be involved in a particular case, if such can be estimated, taking into account the costs of filing a claim for refund by a contractor to warrant filing such a claim; and a brief narration of any significant problems which have occurred in attempting to obtain relief in particular cases.

e. A conclusion with regard to the adequacy of current tax relief measures; and such recommendations as may be appropriate for more efficient implementation of the policy set forth in this Directive.

3. Appended to each country tax law study shall be a verbatim quotation of all provisions relating to tax relief afforded by the countries that are contained in international agreements in force.

4. One copy of each country tax law study shall be forwared to the General Counsel of the Department of Defense and to each of the Cognizant Offices of the Military Departments and Defense Agencies within 30 days after its approval by the designated Military Commander. The information contained in the studies shall be disseminated by the Cognizant Offices to U.S. contracting officers and activities when required.

5. Country tax law studies shall be subject to continuing review. When there is a significant change in country tax laws, regulations, tax relief procedures, or in pertinent international agreements in force, the corresponding revision shall be promptly forwarded by the designated Military Commander to each of the offices referred to in subsection F.4.

G. Information Requirements

1. The reporting requirement contained in section F. relating to the submission of country tax law studies and revisions thereof is assigned Report Control Symbol (DDSD(AR) 1036.

2. Each January a summary of significant activities during the preceding year in implementation of the DoD Foreign Tax Relief Program shall be furnished by the Heads of Cognizant Officer to the General Counsel of the Department of Defense. The summary, in narrative form, shall include actions taken by the Cognizant Office to discharge its responsibility for supervising and monitoring the implementation of the foreign tax relief program within its Military Department or Defense Agency, and for disseminating the information contained in country tax law studies to U.S. contracting officers and activities. The reporting requirement contained in this subsection is assigned Report Control Symbol DDGC(A) 1198.

3. Each January a summary of significant activities during the preceding year of the administration of the foreign tax relief program shall be furnished by Commanders of the Unified Commands to the General Counsel of the Department of Defense. The summary, in narrative form, shall include actions taken by the Unified Command to discharge its responsibility to supervise and coordinate the preparation and maintenance of country tax law studies. The reporting requirement contained in this subsection is assigned Report Control Symbol DDGC(A) 1199.

H. Effective Date

This Directive is effective immediately. Forward two copies of implementing documents to the General Counsel of the Department of Defense within 120 days.

C.W. Duncan, Jr.,

Deputy Secretary of Defense.

Part 2—Implementation and Administration of DoD Directive 5100.64

Q–201 Implementation. DoD Directive 5100.64 has been implemented by the following regulations and instructions:

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 5100.3;

Defense Mapping Agency Instruction 5500.2;

Defense Nuclear Agency Instruction 5100.64; and

Defense Supply Agency Regulation 5500.6.

Pursuant to 11–000(d), the applicable implementing regulation or instruction should be consulted by contracting activities before the initiation of foreign acquisition.

Q–202 Administration of Program Under Unified Commands. 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; and

as regards Canada and Greenland, Commander, Aerospace Defense Command (ADC) ADC Regulation 110–1.

These issuances implement subsection E. 7. of DoD Directive 5100.64 *(see Part I of this Appendix Q)* and apply to the contracting activities within the geographical areas assigned to the respective Unified Commands.

Part 3—Designated Commanding Officers

Q–301 Designated Commanding Officers. For the following foreign countries and areas a single military commander as indicated has been designated pursuant to subsection E. 7. of DoD Directive 5100.64 to make and maintain a current country tax law study, to 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 point of liaison 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, Bemuda
Canada	Commander, Aerospace Defense 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, Aerospace Defense 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. Force, 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. Philippines
Portugal	Commander in Chief, U.S. Naval Forces, Europe
Spain	Commander in Chief, U.S. Air Force, Europe
Taiwan	Commander, U.S. Taiwan Defense Command
Thailand	Commander, U.S. Military Assis tance Command, Thailand
Turkey	Commander in Chief, U.S. Air Forces, Europe
United Kingdom.	Commander in Chief, U.S. Air Forces, Europe

Appendix R—Code of Federal Reguations

Title 41—Public Contracts and Property Management

Chapter 50—Public Contracts, Department of Labor

PART 50–206—THE WALSH-HEALEY PUBLIC CONTRACTS ACT INTERPRETATIONS

(**Note.**—Part 50–206 is codified in 41 CFR Chapter 50.)

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Part 1—FMS/Offset Arrangements

T-100 Scope of Part. This part provides, for information purposes only, copies of FMS/Offset Arrangements negotiated pursuant to FMS agreements. See DAR 6-1315.

T-101 Australian Memorandum of Discussion.

Memorandum of Discussions

Against the purchase by the Government of Australia from the United States Department of Defense of major weapons systems and items of defense equipment, the U.S. Department of Defense agrees to establish the basis of an associated offset arrangement. The offset arrangement is pursuant to the discussions held in Washington on 10 April 1973 between the U.S. Department of Defense and the Australian Department of Defense. In these discussions the following principles and understandings were agreed:

1. The U.S. Department of Defense will commit itself to a combined U.S. Industry and DoD offset objective of no more than 25% of the value of a major Australian order.

2. The U.S. Department of Defense and the Australian Department of Defense will look to those U.S. firms benefiting substantially from an Australian order to carry the initial and primary burden of offset implementation.

3. In the event that U.S. firms and subcontractors are unable to completely fulfill their offset objectives, the U.S. DoD will first offer Government Furnished Equipment (GFE) to Australian industry as bid opportunities and, second, if GFE items turn out to be unsuitable for either partner, select other items of defense equipment and supplies which appear to be competitively obtainable from Australian sources.

4. The DoD reserves the right, unilaterally, to select appropriate procurements for offset implementation. However, to facilitate the selection of suitable items, DoD will consult with A/DoD to identify areas of Australian industrial/technological strength.

5. DoD procurement from Australian sources will normally be competitive and be subject to two basic conditions: *one*, that the items of procurement fully satisfy DoD requirements for performance, quality, and delivery, and *two*, that the items of procurement cost DoD no more than would comparable U.S. items or other foreign items eligible for award.

6. If and when special circumstances invite it, the DoD may consider alternative means of procurement involving directed procurements or negotiated procurements, including items of Research and Development, to the extent appropriate items can be selected.

7. Procurements from Australian sources made under DoD implementation of offset arrangements will be in accord with the Armed Services Procurement Regulations (ASPR). Selective waiver of the Buy American Act and the DoD "Gold Flow" rule will be made by the DoD for those procurements in which Australian sources are solicited and evaluated to be the winning bid except for application of these differentials. Thus the DoD will authorize case-by-case exceptions of these differentials in consonance with the principles and understandings of this Memorandum of Discussions.

8. As a general rule, the DoD role in this offset agreement will begin at the time of an Australian Request for Quotation (RFQ). The time-frame for placement of orders in fulfillment of the DoD share of the U.S. offset objective will be within five years of the initial date of delivery of the items purchased against which the offset objective is measured.

9. Notwithstanding the DoD's willingness to facilitate and to assist the A/DoD and Australian industry in successfully accomplishing the purposes and understandings of the offset arrangement, it remains the basic Australian responsibility to carry out those actions to bring its sales to the U.S. defense industry market and to the DoD to successful consummation.

10. It is recognized that detailed implementing procedures for the management of offsets will be needed. These procedures necessarily involve both procurement and sales activities and they will be developed in subsequent meetings as mutually agreed.

Signed, ad referendum, this 10th day of April 1973 in Washington, DC.

SUBMITTED:

Leonard A. Alne,

For the U.S., Department of Defense.

Roy W.G. Davies,

For the Australian Department of Defense.

APPROVED:

W.P. Clements, Jr.

L. Barnard, M.O.D.

Details of Agreement (D of A) Mutual Acceptance of Government Quality Assurance

ANNEXES:

A(D of A)—Quality Assurance Request Format.
B(D of A)—Certificate of Conformity.
C(D of A)—Statement of Unsatisfactory Conditions.

Agreement

1. a. The Defense Authorities of the United States of America and of Australia agree that the appropriate national authority in each country will provide in its country upon request by the appropriate national authority in the purchasing country a Government Quality Assurance Service to orders in all areas of defense supply and services subject to the conditions and definitions contained in this D of A.

b. Nothing contained in this D of A shall be construed as a limitation to bilateral agreements between the two countries which further and extend the reciprocal utilization of the services of the national authorities beyond the minima specified in this D of A.

Application

2. It is agreed that request for Government Quality Assurance in the manufacturing country will be restricted to those cases where quality cannot be satisfactorily verified after receipt or when Government Quality Assurance at source is considered essential by the purchasing country.

Definitions

3. a. *Government Quality Assurance.* Government Quality Assurance is the process by which the appropriate national authorities determine and certify that the technical requirements of contracts are met.

b. *Supplier.* Supplier is the manufacturer on whom an order is placed.

c. *Purchaser.* Purchaser is the Government, or company or organization with Government cognizance placing an order on a supplier.

d. *Order.* Order is the contract placed by the Government, company or organization or the sub-contract arising therefrom placed by a purchaser on a supplier.

Procedure for Requesting Government Quality Assurance

4. a. Requests for Government Quality Assurance in Australia shall be directed to: Department of Defence, P.O. Box E33, Queen Victoria Terrace, Parkes, ACT 2600, Attn: QAERP (CP4-3-46).

Request for Government Quality Assurance in the United States shall be directed to DCASR, New York as follows: Department of Defense Central Control Point, DCASR, New York, 201 Varrick St., New York, N.Y. 10014.

b. All requests for Government Quality Assurance shall be forwarded on the form shown at Annex A.

c. Such request shall contain all pertinent information including, but not limited to, the name and address to which technical communications may be forwarded, special requirements with regard to certificates, markings, identification, etc.

d. Further, the Delegator shall ensure that the Delegatee is supplied with the required number of copies of the order, applicable specifications, drawings, specific quality requirements and other documents or data essential to the performance of the requested Government Quality Assurance with interpretations approved by the contracting parties if necessary.

Acceptance of a Request for Government Quality Assurance

5. a. On receipt of a request for Government Quality Assurance the Delegatee shall, as the case may be:

(i) Accept the request, with or without comments and qualifications, and forward to the Delegator such acceptance in writing, or

(ii) Transfer the request to another authority in his country informing the Delegator of the action taken, or

(iii) Inform the Delegator that the Government Quality Assurance cannot be performed, for reasons stated.

5. The Delegator shall inform the supplier through the Delegatee when decisions 5 (i) or 5 (ii) are taken.

b. If an article to be inspected includes a portion or portions outside the competence of the Delegatee Inspectorate, special arrangements will be made by the Delegatee Authority for the inspection of such portion or portions.

c. The Delegatee will inform the Delegator of any subcontract placed by the supplier in a third country. The Delegator as advised by the Delegatee will then decide what Government Quality Assurance shall be performed and if necessary or desirable shall co-operate with the Delegatee in arranging the quality assurance in that third country.

Contractual Provisions

6. a. The order shall contain an appropriate requirement on the supplier which will enable the Delegatee as the authorized representative of the Delegator to have all necessary access and the right to perform the required Quality Assurance, in accordance with his normal or such special procedure as may otherwise be agreed between the Delegator and Delegatee.

b. The order shall define the method to be used for any conversion between the foot-pound—and the metric systems of measurements which may be required in the course of checking and measuring.

c. Order shall provide that the supplier (including his sub-contractors) is responsible for maintaining effective control of the quality of supplies and services, for the provision of test facilities and the performance of inspection essential to demonstrate full conformance of the supplies to contract requirements prior to offering them for acceptance, and for the provision of objective evidence that controls and inspections are effective.

Procedure for Government Quality Assurance

7. Having accepted a request for Government Quality Assurance the Delegatee shall take appropriate actions inaccordance with its normal and established Quality Assurance Procedures to satisfy the request. If required for specific production, the Delegator and Delegatee may mutually establish special requirements for the Government Quality Assurance.

Notification of Unsatisfactory Conditions

8. If the Delegatee finds that, at any time during the course of the order, he cannot proceed with his function of Government Quality Assurance because of deficiencies in the supplier's system (e.g. required supplier testing cannot be performed because of lack of test facilities, test devices are not in a known state of calibration, qualification or other engineering approval is not held, etc.) or product (including parts, materials or processes) and such deficiencies are of major importance or will be a cause of excessive delay, the Delegatee will immediately advise the Delegator of these facts using the form shown at Annex C (D of A).

Certification of Conformity

9. Certification of conformity shall be provided by the Delegatee to the Delegator for each batch, lot or shipment in the manner prescribed at Annex B (D of A) or in any equivalent format containing the same minimum information.

Release for Delivery

10. Release for delivery of materiel and equipment whose quality has been assured by the above procedures shall be given in manner prescribed in the Delegator's initial request. Normally, release for delivery will be simultaneous with the issue of the Certificate of Conformity.

Deviations

11. a. Prime Contracts

Except where otherwise directed by the Delegator, the Delegatee shall be empowered to grant requests by the manufacturer for permission to depart from the technical requirements of the contract unless such departures will affect safety, reliability, maintainability, interchangeability, storage life, performance, or cost. The Delegator shall be notified of any requests granted by the Delegatee.

Those applications for deviations which are subject to the decisions of the Delegator shall be forwarded by the manufacturer to the Delegator via the Delegatee.

b. Sub-Contracts

Requests for deviations on sub-contracts shall be forwarded by the supplier to the purchaser for action in accordance with the contractual requirements.

Delegator's Participation

12. The Delegator shall have the right to visit the manufacturer concerned during the course of the performance of the contract/subcontract. Any such visits shall be arranged through the Delegatee who shall have the right to accompany.

Communication

13. a. The Delegator shall ensure that the Delegatee is promptly furnished with any amendments, modifications or changes in the documents originally supplied in accordance with paragraph 4 d. above.

b. Any correspondence between the Delegator and the manufacturer, pertaining to Quality Assurance shall be transmitted through the Delegatee.

c. Delegatee and Delegator will consult together on any event of an unexpected character which is likely to affect the quality of materiel, equipment or services.

Charges

14. Reimbursement will be required for Quality Assurance services provided by each country. Charges will be determined by mutual arrangement.

Liability

15. The fact that the Delegatee has signed a Conformity Certificate will not relieve the contractor from the responsibility for furnishing supplies that meet all specifications of the contract. In the event that defects are discovered on or subsequent to delivery of materiel and services, no liability shall be attached to the Delegatee. The Delegatee shall, however, assist the Delegator in the investigation of such defects. The Delegator will provide the Delegatee with full description of the defects with supporting evidence, and, if possible, a sample of the defective parts.

Review of Agreement

16. This agreement will be reviewed every two years or as otherwise required.

Implementation of the Agreement

17. This D of A will be considered to have been implemented when orders have been issued to the personnel of the Government Quality Assurance Authority to comply with the provisions of this documents.

Mary Ann Gillence,

Deputy Under Secretary (Acquisition Management), For the United States Department of Defense.

Desmond N. Biddle,

Counsellor (Defence Supply), For the Secretary, Department of Defence Commonwealth of Australia.

Washington D.C.

October 1984

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INTERNATIONAL AGREEMENTS

ANNEX A

REQUEST FOR QUALITY ASSURANCE	
1. Issuing Authority (Delegator)	2. Forward to (Delegatee)
QUALITY ASSURANCE IS HEREBY REQUESTED FOR	
3. Government Contract No.	4. Purchaser
5. Order No.	6. Supplier (Name and manufacturing location)
7. Description and quantity	
8. Special Quality Assurance Requirements (if necessary, attach sheets)	
9. Attached hereto are: Copies of above order	10. Special remarks and/or instructions (if necessary, attach sheets)
11. Technical data and quality assurance requirements are attached hereto will be furnished by the supplier/purchaser	12. Signature (Delegator) 13. Date 14. Name and title/position (Block Capitals)

Decision overleaf

INTERNATIONAL AGREEMENTS

DECISION
15. The requested Government Quality Assurance will be performed by the activity designated in 17 below and all communication on technical subjects should be addressed to that authority.
16. Above request cannot be accepted due to reasons stated in 17 below.
17. Designated activity or reasons for reservations or non-acceptance or notice of transfer of request to another national authority.

The addressee in 2 above is requested to complete columns 15-20 and return one copy to the issuing authority (re.1 above)	18. Signature (Delegates) 19. Date 20. Name and title/position (Block Capitals)

ANNEX B

CERTIFICATE OF CONFORMITY	
Page 1	No. of Pages
1. Purchaser	2. Order reference 3. Government Contract No.
4. Mailed to (Delegator)	6a. Shipped to (Consignee)
5. From (Supplier)	6b. Shipment number on order Partial Final
7. Certified that the whole of the supplies detailed below (or the services described above) conform in all respects to the specification(s), drawing(s) and order relative thereto and that the supplies have been inspected and tested in accordance with the conditions and requirements of the order Date Signature(Supplier) Name(printed)	

8. Contract Item No.	9. Stock/Part No. and Name	10. Quantity	11. Package No.	12. Undelivered Balance

Continue list on separate pages if necessary

Government Certificate (see overleaf)

13. Quantity received	
14. Government Quality Assurance Service (Delegatee)	15. This is to certify that within the provisions of the agreement the supplies and (or) services identified above have been subject to Government Quality Assurance and are considered to comply with the provisions of the applicable contract. Date Signature Name(printed)
16. REMARKS	

INTERNATIONAL AGREEMENTS

ANNEX C

QUALITY ASSURANCE ADVISORY REPORT
STATEMENT OF UNSATISFACTORY CONDITIONS

to (Delegator)	Contract issued by
Contract Number	Supplier
Request for Government Quality Assurance Number Date	
Pertinent contractual provisions(s) (identity by article number if possible)	
STATEMENT The following unsatisfactory conditions(s) pertaining to Quality Assurance on the above contract is reported	

Issued by (Delegatee)	Date	Signature, Name and Title

T–102 Swiss Agreements.
T–102.1 Swiss F–5 Agreement.

Memorandum of Understanding Between the Government of the Swiss Confederation and the Government of the United States Concerning the F–5 Program

1. The Government of the Swiss Confederation, acting through the Federal Military Department (hereinafter called the FMD) intends to purchase a quantity of F–5E and F–5F aircraft, with associated supporting defense articles and services, from U.S. sources through the Untied States Department of Defense (hereinafter called the DoD) under Foreign Military Sales procedures.

2. The goal of the Memorandum of Understanding (MOU) is to offect to the maximum extent possible the amount to be paid by the Swiss Government for the aircraft and supporting equipment set out in paragraph 1 by placing comtracts on a competitive basis with Swiss industries, but in no even will the goal be less than 30%.

3. The United States Government, acting through the DoD, and the Government of the Swiss Confederation, acting through the FMD, in seeking to attain this goal, will look to the U.S. firms benefiting substantially from the Swiss purchase to carry the primary burden of offset implementations. It will be the basic responsibility of industry in each country to identify and define their capability and to carry out the supporting action to facilitate the industrial participation envisioned herein. During the first two years the primary burden of offset implementation will be upon Northrop, General Electric and related contractors. However, if during that period Swiss industry offers items which can meet valid U.S. defense procurement on a competitive basis, the provisions of paragraph 5 will be applicable. After such two year period representatives of the parties hereto, with appropriate representatives from the industrial sectors, will meet to review progress hereunder. Should it be apparent that the offset objectives may not be reached before the expiration of the MOU, the DoD will augment industry efforts to reach that objective by offering to Swiss industry the opportunity to provide defense articles and services under competitive solicitation procedures and in accordance with paragraph 5.

4. (A) In order to achieve the goal the DoD, contingent on the sale of the above quantities of aircraft to the Government of the Swiss Confederation, agrees to use the best efforts to have Northrop, General Electric, and other companies associated with the F–5E and F aircraft program provide Swiss industry with the opportunity to compete, on an equal basis with U.S. industry and other sources for sub-contracts. In addition, the DoD will encourage the prime contractors (Northrop and GE) to implement their plans for expansion of Swiss products in the U.S. and third-country markets.

(B) Swiss items purchased by U.S. sources (including municipalities) and Swiss items purchased by third-country sources as a result of the efforts of Northrop, GE and other U.S. contractors associated with the F–5 program will be recognized in any computation of offset amounts. The primary test will be a mutual accord as to whether or not a given sale occurred as a result of efforts arising from this offset agreement. To facilitate these computations the DoD will look primarily to the contractor to keep records adequate for this purpose.

5. The DoD agrees that in seeking to attain this goal, it will:

(A) Provide for waiver of the cost of import duties in evaluating defense prime contracts and sub-contract solicitations from Swiss industry and for the necessary duty-free entry certificates and related documentation.

(B) Emphasize that in inviting submission of selected tenders, special consideration should be given to those items for which Swiss industry can bid on a competitive basis.

(C) Use its best efforts to have technical data required for production provided to Swiss contractors on a reasonable cost basis.

(D) Facilitate the necessary export licenses required for the provision of bid package and related technical data to accomplish the above.

(E) Provide for waiver to the extent permitted under "Buy National" legislation and regulations.

6. The FMD and its organizations will use their good offices and authority to achieve the established procurement objectives. This will include, in addition to the purchase of the F–5 aircraft, the following:

(A) Direction to the Swiss industry on steps to be taken by Swiss industrial firms to make known their capabilities and products which might qualify for competitive procurement by U.S. industry and, to the extent necessary, by the DoD;

(B) Advice to Swiss industry on the necessary steps they must take to coordinate their efforts in responding to U.S. offers;

(C) Assistance to Swiss industry in meeting handling requirements for classified U.S. information.

7. The FMD and the DoD will appoint project officers to monitor progress toward the objective of this MOU. These project officers will meet periodically, but not less than annually, to review the progress of this understanding and recommend such action as may appear necessary to carry out its objective.

8. At the end of every two years, representatives of the parties hereto with appropriate representatives from the industrial sectors will meet to review progress under this MOU.

9. This Memorandum of Understanding is effective on the date on which it is signed, and shall remain in effect for eight years, subject to the respective laws of the Government of the Swiss Confederation and the Government of the United States.

James R. Schlesinger,

The Secretary of Defense of the United States of America.

Dated: 2 July 1975.

Rudolf Gnaegi,

The Chief of the Federal Military Department of the Swiss Confederation.

Dated: 9 July 1975.

T–102.2 *Amendment 1 to Swiss F–5 Agreement.*

Amendment 1 to the Memorandum of Understanding Between the Government of the Swiss Confederation and the Government of the United States Concerning the F–5 Program

1. The Government of the Swiss Confederation, acting through the Federal Military Department, intends to purchase an additional quantity of approximately 40 F–5 aircraft over and above that quantity covered by the basic Memorandum of Understanding (MOU). This purchase will be made from U.S. sources through the United States Department of Defense (hereinafter called the DoD) under Foreign Military Sales procedures.

2. The purpose of this Amendment is to extend the period of time during which Swiss industry will be allowed to compete with U.S. industries for DoD contracts. It is understood that reciprocal access to Swiss Government defense contract opportunities is afforded to U.S. industry, since the Government of Switzerland imposes no national protectionist barriers nor import duties in considering foreign proposals for Swiss Government defense contracts.

3. The U.S. Government will continue to perform its commitments with respect to the offset goal specified in the basic MOU through the period of time specified therein. However, this Amendment does not obligate the U.S. Government to any additional offset goal with respect to the additional F–5 purchase.

4. In consideration of the purchase by the Government of Switzerland of this additional quantity of F–5 aircraft, the basic MOU is herewith amended to provide that, upon termination of the obligations of the U.S. Government as set forth in the basic MOU, the DoD will continue, on a case-by-case basis, and to the extent permitted by U.S. laws and regulations, to:

(A) Provide for waiver on the cost of import duties in evaluating defense prime contract and subcontract solicitations from Swiss industry.

(B) Use its best efforts to have technical data required for production provided to Swiss contractors on a reasonable cost basis.

(C) Facilitate the necessary export licenses required for the provision of bid package and related technical data to accomplish the above.

(D) Provide for necessary duty-free certification and related documentation.

(E) Provide for waivers of buy national and balance of payments restrictions.

5. This Amendment shall become effective in July 1983 contingent upon Swiss Federal Military Department acceptance of the U.S. DoD's Letter of Offer and Acceptance for the additional F–5E/F Aircraft. This Amendment shall remain in effect for four years, subject to the respective laws of the Government of

the Swiss Confederation and the Government of the United States.

———— ————,

Secretary of Defense for the Government of the United States of America.

Dated: October 7, 1980.

———— ————,

Chief of the Federal Military Department for the Government of the Swiss Confederation

Dated: October 29, 1980.

Part 2—MOU's With NATO Participating Countries

T–200 Scope of Part. This part provides, for information purposes only, copies of Participating Country Agreement, Memoranda of Understanding, and accompanying annexes. See DAR 6–1406.

T–201 Canadian Agreements.

T–201.1 *Letter of Agreement With Canada.*

1. This agreement applies to all contracts placed, on or after October 1, 1956, by any of the Military Departments with the Corporation. It shall remain in force from year to year until terminated by mutual consent; however, it can be terminated on the 31st day of December or the 30th day of June in any year by either party *provided* that six months notice of termination has been given in writing. In addition, this agreement provides for certain reciprocal arrangements facilitating procurement by each of the parties in the country of the other.

2. (a) The Corporation agrees that it will cause all first-tier subcontracts under contracts covered by this agreement to be placed in accordance with the practices, policies, and procedures of the Government of Canada covering procurement for defence purposes; and agrees that if the aggregate profit realized under such subcontracts by any first-tier subcontractor exceeds that which is allowed by the Government of Canada under the above mentioned practices, policies, and procedures, the amount of such excess will be refunded by the Corporation to the Military Departments. There shall also be refunded profits on any subcontract in excess of amounts which the Minister of Defence Production (Canada) in the exercise of said practices, policies and procedures considers to be fair and reasonable, recovered by the Minister pursuant to section 21 of the Defence Production Act (Canada) from any individual subcontractor of any tier. It is recognized that the practices, policies and procedures of the Government of Canada referred to above permit various rates of profit in accordance with the terms of the said practices, policies, and procedures as from time-to-time amended; however, in no case will the rate of profit be allowed to exceed any limit prescribed by statute of the Government of the United States. For the purpose of this paragraph, the Corporation will cause to be conducted such audits in accordance with the Costing Memorandum (DDP–31) of the Department of Defence Production (Canada) and such verifications of cost as are in accordance with the said practices, policies, and procedures. The Corporation will render to the Military Departments its certificate that the provisions of this paragraph have been observed.

(b) Contracts for communication and transportation services, and the supply of power, water, gas and other utilities shall be excepted from the provisions of subparagraph (a) above, provided the rate or charges for such services or utilities are fixed by public regulatory bodies; and provided further the Military Departments are accorded any special rates that may be available to the Canadian Government with respect to such contracts.

(c) The Canadian Government, its Department and Agencies, including but not limited to the Corporation and Canadian Arsenals Limited, a Crown Company wholly owned by the Canadian Government, shall not be entitled to any profit on any contract or contracts covered by this agreement. Any profits which may be realized shall be returned to the Military Departments except as hereinafter provided: Before refunding profits realized from the following sources:

(i) Net profits of the Canadian Government, its Departments and Agencies, as defined above, with respect to contracts and subcontracts covered by this agreement.

(ii) Excess profits referred to in paragraph (a) above, and

(iii) Renegotiation recoveries from subcontracts of any tier under contracts covered by this agreement, which recoveries the Military Departments would otherwise be entitled to receive in accordance with the provisions of subparagraph (a) above;

Corporation shall be entitled to deduct any losses it may sustain with respect to contracts covered by this agreement.

(d) Interim adjustments and refunds under this paragraph 2 shall be made at such time or times as may be mutually agreed upon but at least once a year as of June 30th. Such interim adjustments shall apply only to completed contracts. The final adjustment and refund shall be made as soon as practicable after the expiration of this agreement.

(e) The profit and loss provisions of this paragraph 2 shall not apply to contracts awarded to the Corporation as the result of formal competitive bidding (initiated by Invitation for Bids).

3.(a) All contracts placed by the Military Departments with the Corporation, except those placed as the result of formal competitive bidding, shall provide for prices or cost reimbursement, as the case may be, in terms of Canadian currency, and for payment to be made in such currency. Therefore, quotations and invoices shall be submitted by the Corporation to the Military Departments in terms of Canadian currency, and such cost data, vouchers, etc., as the contracts require shall also be submitted in terms of Canadian currency. However, the Corporation may elect in respect to any of such contracts to quote, submit the said cost data, vouchers, etc., and receive payment in United States currency, in which event such contracts shall provide for payment in United States currency and shall not be subject to adjustment for losses or gains resulting from fluctuations in exchange rates.

(b) All formal competitive bids shall be submitted by the Corporation in terms of United States currency and contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

4. The Military Departments and the Corporation shall avoid, to the extent consistent with the declared policies of the Military Departments and the Canadian Government, the making of any surcharges covering administration costs with respect to contracts placed with the Corporation by any of the Military Departments and contracts placed by the Military Departments in the United States for the Canadian Government.

5. To the extent that contracts placed with the Corporation by the Military Departments provide for the audit of costs and profits, such audit will be made without charge to the Military Departments by the Cost Inspection and Audit Division of the Treasury of Canada in accordance with Costing Memorandum Form DDP–31 of the Department of Defence Production, Canada.

6. The Canadian Government shall arrange for inspection personnel of the Department of National Defence (Canada) to act on behalf of the Military Departments with respect to contracts placed by the Military Departments with the Corporation and with respect to subcontracts placed in Canada by United States contractors which are performing contracts for the Military Departments, and for the use of inspection facilities of the Department of National Defence (Canada) for such purposes, such personnel and facilities to be provided without cost to the Military Departments. The Military Departments shall provide and make no charge for inspection services and inspection facilities in connection with contracts placed in the United States by the Military Departments for the Canadian Government and with respect to subcontracts placed in the United States by Canadian contractors which are performing contracts for the Department of Defence Production* (Canada). The Department of National Defence (Canada) or any Military Department may provide liaison with the other's inspection personnel in connection with the foregoing. It is understood that either the Department of National Defence (Canada) or any Military Department may in appropriate cases arrange inspection by its own inspection organization in the other's country.

7. Because of the varying arrangements made by the Canadian Government and the Military Departments in furnishing Government-owned facilities (including buildings and machine tools) to contractors, it is recognized that the matter of inclusion in contract prices of charges, through amortization or otherwise, for use of such facilities will be determined in the negotiation of individual contracts. However, there shall be avoided, to the extent consistent with the policies of the Canadian Government and Military Departments, any such charges for use of Government-furnished facilities.

8. (a) The Corporation agrees that the prices set out in fixed-price type contracts covered by this Agreement will not include any taxes with respect to first-tier

subcontracts; nor shall prices include custom duties to the extent refundable in accordance with Canadian law, paid upon the import of any materials, parts, or components incorporated or to be incorporated in the supplies, with respect to first-tier subcontracts.

(b) The Corporation agrees that under cost-reimbursement type contracts the Corporation shall, to the extent practicable with respect to first-tier subcontracts, exclude from its claims all taxes and to the extent refundable in accordance with Canadian Law, customs duties, paid upon the import of any materials, parts or components, incorporated or to be incorporated in the supplies and that any amounts included in such claims representing such taxes and duties shall be refunded or credited to the Military Departments.

(c) The Corporation agrees that to the extent that such taxes and duties can be reasonably and economically identified it will use its best endeavors to cause such taxes to be excluded from all subcontracts below the first tier and if found to be included to be recoverable and credited to the Military Departments.

9. The Corporation recognizes that existing law of the United States prohibits the use of the cost-plus-a-percentage-of-cost system of contracting.

10. Each contract covered by this agreement shall be deemed to include the provisions required by (i) Pub. L. 245, 82nd Congress of the United States (65 Stat. 700; 41 U.S.C. 153(c)) and (ii) section 719 of Pub. L. 458, 83rd Congress of the United States (68 Stat. 353) or similar provisions that may be required by subsequent legislation.

(End of Agreement)

*Now the Department of Supply and Services

T-201.2 *Cooperative Agreement with Canada.*

Memorandum of Understanding in the Field of Cooperative Development Between The United States Department of Defense and the Canadian Department of Defence Production

This Memorandum of Understanding complements the U.S.-Canadian Defence Production Sharing Program by establishing a cooperative agreement in defense research and development between the United States Department of Defense (DoD) and the Canadian Department of Defence of Production (CDDP), called the Defense Development Sharing Program.

1. *Objectives:*

The principle objectives of the Defense Development Sharing Program are:

a. To assist in maintaining the Defense Production Sharing Program at a high level by making it possible for Canadian firms to perform research and development work undertaken to meet the requirements of U.S. armed forces.

b. To utilize better the industrial scientific and technical resources of the United States and Canada in the interest of mutual defense.

c. To make possible the standardization and interchangeability of a larger amount of the equipment necessary for the defense of United States and Canada.

2. *Description of the Program:*

a. The Defense Development Sharing Program will consist of research and development projects (such program projects being here and after referred to as "projects"):

(1) Which are performed by Canadian prime contractors;

(2) Which are designed to meet specific DoD research and development requirements;

(3) In which the Military Department of DoD which is the United States party to the project agreement acts as the design authority; and

(4) Which are jointly funded by DoD and CDDP, (Where DoD undertakes the research and development of a weapons system composed of several components, work funded by CDDP on one or more of such components will be considered to be jointly funded).

b. The Defense Development Sharing Program will not include efforts referred to in paragraph 13.

3. *Funding: The financial contribution of DoD in each project will not be less than 25 percent of the costs incurred subsequent to the date of the project agreement provided that in the case of work referred to in the parenthetical sentence of paragraph 2.a(4), the financial arrangements shall be as agreed to by DoD and CDDP in the project agreement.*

4. *Selection of Projects:*

A proposal to initiate a project may be made by CDDP to any of the Military Departments of DoD or by any of the Military Departments of DoD to CDDP. Each proposal will contain a complete and detailed description of the scope of the project and work to be performed and of the suggested cost sharing arrangement. Projects will be selected by mutual agreement of CDDP in the Military Department of DoD concerned.

5. *Project Agreements:*

The specific terms and conditions of each project will be governed by a project agreement between the Military Department of DoD and CDDP. The project agreement will *inter alia* set forth the scope of the projects, the work to be performed, types of reports to be submitted, the time and funding schedules, and the cost of sharing arrangements.

6. *Selection of Prime Contractors:*

The selection of prime contractors for work to be performed under a project shall be subject to mutual agreement.

7. *Contract Clauses for Projects:*

The Canadian Government agencies responsible for placing and administering research and development contracts with Canadian firms, will insert suitable provisions in such contracts obtaining for DoD the same production rights, data, and information that DoD would obtain for itself if DoD were solely funding and placing the contract under its Armed Services Procurement Regulation.

8. *Competitive Research and Development:*

DoD will not engage in research and development which duplicate the work being carried out under any project unless DoD considers such research and development to be in the United States national interest. The appropriate DoD agency will notify CDDP before undertaking such duplicative research and development and will, if requested by CDDP, promptly enter into consultations with CDDP.

9. *DoD Procurement of Researched Developed Items:*

Procurement by DoD from Canadian firms of items developed in a project will be made under the Defense Production Sharing Program and in accordance with the DoD Armed Services Procurement Regulation. Pursuant to that Regulation, procurement of items developed by Canadian firms under the Defense Development Sharing Program will not be "set aside" for small business or for labor surplus areas.

10. *Security:*

a. Information and materials developed within projects will be considered to be jointly developed, and classification and declassification thereof will be determined jointly.

b. Classified information and materials exchanged in connection with or developed within projects will be safeguarded in accordance with the United States-Canadian Security Agreement of January 30, 1962, in the United States-Canadian Industrial Security Agreement effected by an exchange of letters dated February 6 and March 31, 1952, as amended.

11. *Disclosure of Classified Information:*

a. Classified information and materials received by either Government under the Defense Development Sharing Program but not developed within a project will not be disclosed or transferred to third countries, or nationals of third countries, without the consent of the originating Government.

b. Jointly developed classified information materials will not be transferred or disclosed to any third party by either Government or nationals thereof without the consent of the other Government.

12. *Sales:*

a. Sales or transfers to any third party of items developed in a project containing classified information or materials will be subject to the provisions of paragraph 11.

b. Sales or transfers to NATO, Commonwealth, and SEATO countries, or nationals thereof, of jointly developed unclassified items may be made in accordance with any applicable arrangements between Canada and the United States regarding munitions control. Sales or transfers to any other third party of jointly developed unclassified items will not be made without the consent of both parties to this agreement.

c. Sales or transfers to any third party of jointly developed unclassified rights, information, or data necessary for the production of an item developed in a project will not be made without the consent of both parties to this agreement.

13. *Other Research and Development Efforts not in Defense Development Sharing Program:*

a. Consistent with normal DoD source selection procedures, Canadian firms may bid for DoD research and development contracts which are to be funded solely by the United States. DoD will evaluate proposals from qualified Canadian firms on a

parity with proposals received from United States firms. CDDP undertakes to ensure that Canadian firms comply with DoD procurement procedures.

b. CDDP may award and solely fund research and development contracts to Canadian firms for the purpose of satisfying existing or anticipated DoD requirements. DoD and its Military Departments will not act as Design Authority for such contracts. In the event that the results of any such contract become of sufficient interest to DoD to warrant joint funding, the contract work may, upon mutual agreement, be made the subject of the Defense Development Sharing Program project.

14. *Canadian Access to United States Information:*

Subject to United States legislation and national policy, the Government of Canada will have access to information on the future requirements of DoD research and development programs and Canadian firms will have the same access to DoD research and development program information as United States firms.

15. *Supersession of Prior Arrangements:*

This Memorandum of Understanding supersedes the memoranda between CDDP and the United States Departments of the Army, and Air Force, respectively, dated July 26, 1960 and December 22, 1961, except with respect to projects already entered into thereunder.

16. *Effect and Duration:*

This Memorandum of Understanding will remain in force indefinitely, subject to modification or termination at any time by mutual agreement or to termination six months after receipt by either party of written notice of the intention of the other party to terminate it.

Charles M. Drury,

Minister of Defence Production.

Dated: November 21, 1963.

Robert S. McNamara,

Secretary of Defense.

Dated: November 16, 1963.

T-202 United Kingdom Memorandum of Understanding

Memorandum of Understanding Between the Government of the United States and the Government of the United Kingdom of Great Britain and Northern Ireland Relating to the Principles Governing Cooperation in Research and Development, Production, Procurement and Logistic Support of Defense Equipment (Short Title: Cooperation Memorandum)

Introduction

The Government of the United States of America (USG) and the Government of the United Kingdom of Great Britain and Northern Ireland (HMG). (Hereinafter referred to as the Governments),:

noting that the Governments established and have maintained understandings relating to reciprocal defense procurement since 1975; and

noting that the Governments already have an Arrangement dated May 1963 for Joint Military Development; and

are seeking to achieve greater co-operation in research, development, production, procurement and logistic support of defense equipment in order to:

—make the most cost-effective and rational use of their respective industrial, economic and technological resources to the extent permitted by national policies; and

—promote the widest possible use of standard or interoperable equipment; and

—develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding.

Then, seeking to further the above aims, the Governments have sought to reach certain understandings and this Memorandum sets out the understandings in regard to the guiding principles governing mutual co-operation in defense equipment production and purchasing.

The Governments intend the understanding of this Memorandum of Understanding ("MOU") to strengthen the North Atlantic Alliance. In so doing, the Governments recognize the efforts of the Independent European Program Group (IEPG) to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They, therefore, agree that in the event of a possible conflict between understandings entered into between the IEPG and the USG, and this MOU, the parties hereto will consult with a view to amend this MOU.

The Governments will regard this MOU as being part of the arrangements, in the larger context, for co-operation between Europe and North America within the Alliance.

Section 1—Principles Governing Reciprocal Defense Purchasing

1.1. Both Governments intend to facilitate the mutual flow of the defense procurement for their armed services, aiming at a long term equitable balance in their exchanges, consistent with their national policies and taking into consideration the relative technological level of such procurement and each country's financial, industrial, economic and commercial possibilities.

1.2. This MOU is intended to cover areas in which, in the view of both Governments, bilateral co-operation could be achieved in defense equipment production and procurement. This co-operation is intended to complement the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG) and the Senior NATO Logisticians Conference (SNLC).

1.3. To facilitate these objectives the following principles will be observed by the Governments:

1.3.1. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to implement the provisions of this MOU. Within 120 days of the effective date of this MOU, each government will provide to the other copies of such guidance and procedures.

1.3.2. The Governments will identify and nominate for consideration by each other, items of defense equipment believed suitable to satisfy their respective requirements. The Governments will decide between them to which items of defense equipment purchases this MOU will apply and whether the items may be procured on a Government-to-Government or Government-to-Industry basis.

1.3.3. In the interests of standardization and the effective utilization of scarce resources, each Government will, to the extent practical, adopt qualified defense items that have been developed or produced in the other country.

1.3.4. The implementing procedures for this MOU (Annex I) will incorporate the following:

(i) Consistent with national laws and regulations, offers or proposals will be evaluated without applying price differentials under 'Buy National' laws and regulations, and without applying the cost of import duties;

(ii) Full consideration will be given to all qualified sources in each other's country in accordance with the policies and criteria of the relevant purchasing office. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

(iii) Offers or proposals will be required to satisfy requirements of the purchasing office including performance, quality, delivery and costs;

(iv) Consistent with national laws and regulations provision will be made for duty-free certificates and related documentation.

1.3.5. To facilitate programs set in implementation of this MOU, the Governments understand that subject to their laws, regulations, established policies and procedures and subject to privately owned proprietary rights, each Government will, so far as it is able, release to the other and to its agents information and technology necessary to implement such programs.

1.3.6. The Governments, through their appropriate representatives, will consult concerning the effective implementation of this MOU. Such consultations will be conducted on the basis of section 2 of this MOU.

1.3.7. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Section 2—Implementation Machinery

2.1. The Governments will appoint representatives to a US–UK Defense Equipment Rationalization Committee (DERC), to discuss and review progress in implementing this MOU.

2.2. The Assistant Secretary of Defense of Acquisition and Logistics in conjunction with the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Policy in co-ordination, as appropriate, with other DoD offices, will be the responsible authority in the United States of America.

2.3. The Head of Defence Export Services MOD, under the policy guidance of the Secretary of State for Defence, and in consultation, as appropriate, with the Chairman and members of the MOD Equipment Policy Committee, will be the responsible authority in the United Kingdom of Great Britain and Northern Ireland.

Section 3—Industrial Participation

3.1. Implementation of this MOU will involve full industrial participation. Notwithstanding the governmental procedures to implement this MOU, it will be the basic responsibility of the industries in each country to identify and market their respective capabilities and to carry out the necessary actions to bring about industrial participation.

3.2. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding or this MOU, together with appropriate guidance on its implementation.

3.3. The Governments will arrange that their respective procurement and requirements offices are made familiar with the principles and objectives of this MOU and will, consistent with their normal practice and procedures with their country's industry, assist sources in the country of the other Government to obtain information concerning proposed purchases, necessary qualification and appropriate documentation.

Section 4—Security

4.1. Any classified information or material exchanged under the terms of this MOU will be protected in accordance with the 1961 US–UK General Security Agreement, as amended, and including the Industrial Security Annex thereto.

4.2. Each Government will take all lawful steps available to it to keep information exchanged in confidence under this MOU free from disclosure under any legislative provision unless the other Government consents to such disclosure.

4.3. To assist in providing the desired protection, each Government will mark such information furnished to the other in confidence with a legend indicating the country of origin, the security classification, the conditions of release, and it unclassified the fact that the information relates to this MOU and that it is furnished in confidence.

4.4. Unclassified information provided by either Government to the other in confidence, and information produced by either government pursuant to this MOU requiring confidentiality will be safeguarded in a manner that ensures its proper protection from unauthorized disclosure. Each government will provide appropriate protection for unclassified but sensitive technical data which is at least equal to the protection provided by the originating government.

4.5. Technical Data Packages (TDPs) shall not be transferred between the two countries without the prior written permission of those owning or controlling any associated proprietary rights. Each Government will ensure that any TDPs which it may receive from the other are not used for any purpose other than for the purpose of offering or bidding on or performing prospective defense contract, without the prior written agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they may contain.

4.6. The Governments will maintain full and comprehensive lists of Technical Exchange Agreements to which both are party. These Agreements will be taken into account when applications from the Government of either country including Government supported industry applications; are made for the disclosure of information relating to co-operation under the terms of the MOU.

4.7. Bearing in mind the close co-operation of the two Governments to ensure the maintenance of NATO's technological superiority over the Warsaw Pact, they confirm that in considering each co-operative project carried out under this MOU, they will pay specific attention to exercising control both bilaterally and within multi-national bodies over the transfer to proscribed countries of technologies and associated manufacturing processes involved in defense programs.

4.8. A security review of all co-operative programs carried out under this MOU will be conducted annually by Project Managers to ensure government and industry compliance with the security regulations of both governments for the protection of classified and unclassified but sensitive technology.

Section 5—Duration

5.1. This MOU including Annexes I, II, III, IV and V listed below will come into effect upon signature by the Governments and will terminate on 1 January 1995.

I. Principles Governing Implementation
II. Mutual Acceptance of Test and Evaluation
III. Reciprocal Audits of Contracts and Subcontracts
IV. Principles Governing Logistics Support of the Defense Equipment
V. Reciprocal Quality Assurance Services

5.2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this MOU before 1 January 1995, any such proposal will be the subject of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of co-operation, to agree upon such actions as may be necessary to alleviate problems that may result from termination

5.3. It is intended that contracts entered into as a result of the co-operation fostered by the understandings in this MOU will not be terminated solely because of the termination of this MOU.

Section 6—Annexes

6.1. Further Annexes to this MOU may be negotiated by the responsible officers and approved by the appropriate authorities of each Government and will treated as an integral part thereof.

The foregoing represents the understandings reached between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland upon the matters referred to therein.

Signed in duplicate at _____ this _____ day of December 1985.

_____ _____,

For the Government of the United States.

December 30, 1985

_____ _____,

For the Government of the United Kingdom of Great Britain and Northern Ireland.

Date: December 18, 1985.

Annex I—Principles Governing Implementation

Section 1—Introduction

This Annex sets forth the procedures by which the Governments of the United States of America (USG) and United Kingdom of Great Britain and Northern Ireland (HMG) will implement the Memorandum of Understanding on co-operation in Research and Development, Production, Procurement and Logistic Support of Defense Equipment (hereinafter referred to as "the MOU").

Section 2—Major Principles

2.1. Each Government will consider for its defense requirements qualified defense items (and associated services included in a procurement contract) developed and/or produced in the other country. In addition, the responsible purchasing agencies of each Government will seek to inform themselves of the defense items which might be available from the other country to meet specific requirements.

2.2. It will be the responsibility primarily of industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations of the purchasing country.

2.3. Each Government will, consistent with normal practice and procedures with their own country's industry, ensure that the responsible Government authorities in each country will assist sources in the other country by responding promptly to requests for appropriate information concerning:

2.3.1. Plans and programs for production and acquisition of defense items and services.

2.3.2. Requirements for the qualification of sources.

2.3.3. Specifications, quality assurance standards and other appropriate documentation.

2.4. Full consideration will be given to all qualified industrial and/or Government sources in both the US and UK, in accordance with the policies and criteria of the respective purchasing agencies. In addition, each Government will give full consideration to all applications for qualification by sources in the other country.

2.5. Offers will be required to satisfy requirements including performance, quality, delivery and cost. In preparing Invitations for Bids and Requests for Proposals, and in evaluating Offers, where applicable and

consistent with national laws and regulations, full consideration will be given to potential NATO savings and/or increased NATO combat capability expected to result from the procurement of items that are standardized or interoperable with those of the Allies.

2.6. Consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying price differentials under 'Buy National' laws and regulations and without applying the cost of import duty.

2.7. Consistent with national laws and regulations provision will be made for duty-free entry certificates and related documentation.

Section 3—Actions

3.1. Both Governments will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of the MOU, which are intended to be compatible with the broad aims of NATO Rationalization, Standardization and Interoperability, are taken into account.

3.2. Recognizing that factors such as delivery date requirements, the interests of security, and the timely conduct of the contracting process must be considered, the following arrangements will be made to ensure free and full competition for the award of contracts:

3.2.1. Each Government will ensure that as a minimum the following are familiar with the principles, objectives and terms of the MOU, which are complemented by the Arrangement for Joint Military Development dated May 1963:

—Its respective defense planning, programming and procurement offices.
—Its respective research and development offices.
—Its respective agencies and industries responsible for the development and production of defense items and associated services.

3.2.2. Each Government may assist industries in its country to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial participation in the implementation of the MOU.

3.2.3. Each Government will consider defense items and associated services offered by the Government or industry of the other country as candidates for their respective requirements. In meeting their procurement requirements, the Governments will, as far as practicable, ensure that the industries of each country are afforded adequate time to be able to participate in the production and procurement process.

3.2.4. Both Governments will use all reasonable endeavours to assist in negotiating licenses, royalties and technical information exchanges among their respective industries.

3.2.5. Each Government will ensure that those items and/or services excluded from consideration under the arrangements made as a result of this MOU, for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. Each country will also consult the other, in advance, about any proposed addition to the excluded list. Such defense items and/or services, together with those items and/or services that must be excluded from such consideration under the MOU because of legally imposed restrictions on acquisition from non-national sources, will be identified as soon as possible by both Governments. Lists of these items and/or services will be prepared and kept under review by both Governments.

3.2.6. To the extent feasible, both Governments will ensure that their respective action under the MOU, in working toward an equitable balance in defense trade, take into consideration the level of technology as well as the contractual value.

Section 4—Counting Procedures

4.1. The purchases and other transactions to be counted against the goals of the MOU will be identified jointly by the Governments. In principle, all defense items (and associated services included in a procurement contract) purchased by either country will be counted against the goals of the MOU as long as they meet the following criteria:

That the defense items (and associated services included in a procurement contract) are:

4.1.1. Direct purchase by the defense agencies of each Government, one from the other.

4.1.2. Purchases by the defense agencies of either Government from the industry of the country of the other Government.

4.1.3. Purchases by industry from the Government of industry of the other country, in the framework of Government defense contracts.

4.1.4. Purchases by a third country Government from either US or UK Government or the industry of the country of either Government as a direct result of the effort of the other (non-vendor) country.

4.1.5. Purchases resulting from projects jointly funded by both countries, to be credited in proportion to each country's financial contribution to the project, and to work completed in each country. The applicability of such purchases to the MOU will be agreed between MOD/DoD in each case.

4.1.6. License fees, royalties and other associated income resulting from orders placed by industry or Government of either country with a licensed company in the other country.

Section 5—Administration

5.1 Each Government will designate points of contact within their respective Ministry of Defence/Department of Defense, as well as within other relevant departments and agencies, for the purpose of carrying out those actions necessary to implement the MOU.

5.2. Each Government will designate representatives for its country to the Defense Equipment Rationalization Committee which will meet at agreed intervals to review progress in implementing the MOU. The representatives will discuss development, production and procurement needs of each country and the likely area of co-operation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU. The agenda will be agreed upon and made final 30 days prior to the date set for the meeting.

5.3. A financial statement ("Annual US/UK Statement") of the current balance, and long term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. The Statements will be reviewed during the meetings referred to in 5.2 above. Both countries will submit their proposed financial statement to one another in final form 30 days prior to the meeting.

Annex II—Mutual Acceptance of Test and Evaluation

Introduction

1. In furtherance of the principles governing reciprocal defense purchasing, as defined in the subject Memorandum of Understanding (MOU) and in accordance with the Implementing Procedures for MOU (Annex I thereto), representatives of the US Department of the Defense (DoD) and the UK Ministry of Defense (MOD) have engaged in discussions and presentations on Test and Evaluation (T&E) in Defense procurement. The discussions were aimed at facilitating the implementation of the MOU by:

a. Bringing about a thorough, mutual understanding of the two governments' policies, organizations and procedures for T&E.

b. Identifying the main differences between the two governments' organizations and procedures for T&E.

c. Determining the actions required to overcome any difficulties arising from the identified differences, in order to assure complete mutual acceptability of T&E procedures.

2. The purpose of this Annex, is to record the concurrence reached by the two governments concerning the mutual acceptability of their respective T&E procedures for those systems that are developed in one country and are candidates for procurement by the other. Two categories of Defense systems are considered:

a. Those still under development.

b. Those for which development is complete.

Points of Concurrence

3. The objective is to avoid redundant testing. Neither government will duplicate tests where acceptable data is available from the other government's official test program.

4. Existing T&E organizations and procedures of both governments are adequate to satisfy the purposes of the MOU. Differences are not such as to justify changes being made to the present procedures of either government.

5. To achieve a more widespread understanding of the two governments' T&E organizations and procedures in the US DoD, in the UK MOD, and in the Industries of both countries, the two governments will produce guidance information necessary to meet the purpose of this Annex, including:

a. The relationship between their respective T&E organizations and procedures.

b. A US DoD-UK MOD communications matrix for initial contacts.

6. The focal point for all T&E aspects of procurement relating to development testing will be the US Program Manager or the UK Project Manager for the equipment being offered. For operational testing aspects, it will be the applicable US Services independent operational test agency and in the UK, the Project Manager.

Mutual Acceptance Procedures

7. All proposals for consideration of equipment of one country for procurement by the other will require a review of T&E data reflecting test conditions, test results and success criteria on a case-by-case basis. The following procedures will therefore be observed in all procurement considerations:

a. To facilitate the exchange of T&E data, a common documentation format will be adopted. This format will be similar to the US Navy's Test and Evaluation Master Plan (TEMP) as outlined in OPNAV Instruction 3960.10.

b. For systems under development, the offering government will invite participation by the other early in the T&E program. Should the other government not choose to participate in the testing, the offering Government, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, will arrange for the release to the other of information necessary for the purpose of such T&E.

c. For systems for which development is complete, the offering government will ensure, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, that all pertinent T&E data is made available to the other.

d. Should one government adjudge the T&E which has been completed or planned by the other to be inadequate for its procurement procedures, the two governments will decide by mutual agreement on any additional testing to be carried out. Such additional testing may be conducted by either country as mutually agreed. In addition, before such additional testing commences, concurrence will be reached by the two governments regarding payment of costs, allocation of resources, scheduling and the evaluation criteria which will apply.

e. When either government releases T&E data to the other, it is understood that, in the absence of any specific agreement to the contrary, such data is made available in confidence to the receiving government for the purpose of information and evaluation within such government and for no other use.

f. Each government will make data transmitted to the other with a legend that will indicate the country of origin and the conditions of release, that the data relates to this MOU, and that it is furnished in confidence. Where appropriate the security classification will be shown. Corresponding arrangements will be made for records of data transmitted orally.

g. Each government will make its best effort to protect data submitted in confidence by the other government. In the event of any request under domestic legislation to make available to the public such data furnished by the other government, the recipient government will take all legal steps available to it to withhold the data from disclosure.

8. In any case where agreement cannot be reached between the focal points or their Service superiors concerning the acceptability of T&E, or when it is felt that adequate data and information on T&E have not been provided, the matter will be referred to the appropriate higher authority. For the US this will be the Director Defense Test and Evaluation and for the UK this will be the appropriate Systems Controller.

Annex III—Reciprocal Audits and Contracts and Subcontracts

I. General

The US/UK Memorandum of Understanding on Co-operation Arrangements envisages the need for detailed implementing procedures to be decided upon. This Annex deals with reciprocity in the handling of auditing activity related to contracts and sub-contracts falling within the scope of the MOU.

The participating Governments recognize the mutual benefit of undertaking reciprocally for each other in their respective countries price proposal audits and contract cost audits in connection with the acquisition of defense equipment. As used in this Annex the term "audit" may include, but is not limited to, the following services including Field Pricing Support as appropriate to the contract or sub-contract concerned:

—Survey of contractor's capability;
—Pre-contract audit;
—Audit during contract performance;
—Audit after contract performance, e.g. termination, before payment of final price in respect of fixed price contract or cost type contract;
—Verification of compliance with requirements set forth by the purchasing government for accounting of contract costs or pricing;
—Verification after contract award of the currency, accuracy and completeness of data supporting a contractor's price proposal.

II. Purpose and Scope of Audits

The purpose of these audits will be to examine proposed or incurred costs and supporting date in sufficient detail to enable the cognizant contracting officer to determine their acceptability during negotiations with the relevant contractor or sub-contractor.

Audits peformed under the provisions of this Annex will cover all elements of the cost and identify profit amounts. The auditors will use to the fullest extent possible previously available data pertinent to the intended or actual contract or sub-contract.

III. Audit Agencies

The audits will be performed pursuant to the provisions of this Annex by the following agencies:

—For audits in the United States when requested by the United Kingdom Government, the Defense Contract Audit Agency (DCAA).
—For audits in the United Kingdom when requested by the United States Government, the Accountancy Services (AS (PE)) of the Ministry of Defence.

IV. Audit Request Procedures

Requests for audits will be transmitted as follows:

Requests by the United Kingdom Government:

—Cognizant Procuring Contracting Office for Acquisitions under U.S. Foreign Military Sales (FMS) procedures.
—The Director of Defense Contract Audit Agency, Cameron Station, Alexandria, Virginia 22314, for all other acquisitions.

Requests by the United States Government:

—Head of Contracts Policy, Procurement Executive, Ministry of Defence.

These requests will be transmitted with all the supporting documents and required format of the audit report.

V. Operating Rules

Before any relevant contract action commences, representatives of each Government will consult with one another as necessary to define the goals and the scope of the audits required.

The audits will pay regard to the Government accounting conventions applicable to the supplier's business and be performed in accordance with the terms of the contract or subcontract as required by the law and policy of the purchasing Government.

Each Government will accept auditing services performed on its behalf by the other as if it had performed those services itself as long as these reflect the particular or specific interest of the purchasing authority.

Each Government will make available to the other data pertinent to the relevant contract or sub-contract, including that associated with disclosed accounting practices, in support of the contracting officer's negotiation activity.

Applicable contracts or sub-contracts will invoke the provisions of this Annex.

Each audit report will respond to the question contained in the request for audit and will detail any problems encountered during the audit. The report should enable the contracting officer to evaluate independently the acceptability of the price proposals or costs.

Upon request of the contracting officer, additional information, supporting data, and explanations or clarifications will be provided to him or to his duly authorized representatives. The contracting officer will have the final authority to determine when adequate audit information has been provided for negotiation purposes.

Each Government will endeavor that in all possible cases its agencies will perform audits under the provisions of this Annex. If due to extraordinary circumstances, a Government is unable to perform an audit, or to perform it in a reasonable time, the contracting country's agencies would have a right to perform the audit themselves.

VI. Protection of Information

Each audit report will be prepared by the audit agency and submitted in confidence. No

report, or data therein will be disclosed to third parties unless the cognizant authorities of both parties and the audited supplier deem this to be appropriate. However, the contracting officer will normally release the final results of audits of sub-contractors to higher tier contractors for negotiation purposes. Specific information or extracts from the report may only be given to higher tier contractors in accordance with any directions or qualifications contained in the audit report.

Data obtained through the implementation of this Annex will receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which receives it.

VII. National Security

Access to classified information involving the national security of each country will be governed by the provisions of the MOU.

Annex IV—Concerning the Principles Governing Logistic Support of the Defense Equipment

In implementing Section I, para 1.2 the MOU, the two Parties shall be governed by the following:

1. When developing or procuring equipment, both Parties will agree upon the basis for joint follow-on logistic support in areas such as configuration control, interchangeability of spare parts/components, maintenance, conversion, storage, and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistics support and other forms of logistic cooperation, eg, joint utilization of facilities.

3. In the contracting procedure for logistic support, paragraph 1.3.7. of Section I of the MOU shall apply.

4. Both parties will issue directives and guidelines to their respective armament and logistics agencies to achieve their described goals of this MOU.

Annex V—Reciprocal Quality Assurance Services

1. *Scope.* This Annex sets forth the terms under which the participating Governments shall provide one another with quality assurance services in support of Defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU).

2. *Application.* Quality assurance services will be provided under this Annex free-of-charge, for all contracts, sub-contracts and FMS Letters of Offer and Acceptance entered into on or after the date of the last signature on this MOU.

3. Quality Assurance services will be provided free of charge in accordance with the procedures of STANAG 4107, not limited by the Reservations of the US and UK authorities presently entered in the STANAG.

4. *Designated Focal Points.*

a. Requests for Government Quality Assurance (GQA) in UK shall be directed to: DGDQA, QA/FP2A, Ministry of Defence (PE), Building 2, Royal Arsenal (West), Woolwich SE18 6ST.

b. Requests for Government Quality Assurance in US shall be directed to: Department of Defense Central Control Point, DCASR New York, 201 Varrick Street, New York, NY 10014–4811.

5. *Additional Information.* The requests for GQA shall be on the forms described in Annex A to STANAG 4107, with the following information:

a. In Block 7, the type of equipment which the material or service pertains to, and the Armed Force (Army, Navy, or Air Force) that employees the equipment.

b. In Block 8, the desired services, if less than comprehensive support is needed.

c. In Block 10, address for correspondence if different from Focal Point.

6. *Protection of Information.* Data obtained through implementation of this Annex shall receive the same protection against unauthorized disclosure as such data would normally received under the laws and rules of the country which possesses it.

7. *Termination.* This Annex may be terminated in writing by either participant, to become effective after not less than one year from the date of notification.

T–203 Norway Memorandum of Understanding

Memorandum of Understanding Between the Government of Norway and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment

Preamble

The Government of the United States of America and the Government of Norway hereinafter referred to as the Governments:

• Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production and procurement of defense equipment, in order to:

—Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies; and

—Promote the widest possible use of standard or interoperable equipment; and

—Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

• Noting that no general agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past; and

• Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles government mutual cooperation in defense equipment research and development, production and procurement.

The Government of the United States of America and the Government of Norway conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The two Governments agree that this Memorandum of Understanding should be incorporated in the large context of the cooperation between Europe and North America within the Alliance.

All agreements or the relevant provisions of such agreements between the Independent European Program Group (IEPG) and the United States of America shall take precedence over this Memorandum of Understanding, assuming Norway is a party to such agreements.

Article I—Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to achieve and maintain a long-term equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. Equitable balance, in principle, shall be achieved when the two Governments have exhausted all means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent permitted by the size and nature of each country's technological and industrial base.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production and procurement, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with the laws, regulations, and practices having the force of law of each Government, give full consideration to all requests for cooperative R&D, to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their relevant industries.

5. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of equipment that might be suitable for use by the other Government. Indicative lists are provided in the annexes.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurement or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit. This includes the removal of customs duties and other discriminatory levies as well as the waiver of protectionist provisions.

9. Normal competitive contracting procedures shall be used in acquiring items of conventional defense equipment developed in each other's country for use by either country's defense establishment.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Government.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

14. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for a Norwegian-American Committee for Reciprocal Procurement, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be responsible authority in the United States Government for the Development of implementing procedures under this Memorandum of Understanding.

3. The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Government of Norway for any matter relating to the procedures for implementing this Memorandum of Understanding.

Article III—Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

Article IV—Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security of Information Agreement dated 26 February 1970 between the United States Department of Defense and the Norwegian Ministry of Defense apply to activities under this Memorandum of Understanding.

Article V—Duration

1. This agreement will remain in effect for a ten-year period following its signing, unless otherwise agreed by both Governments.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreeement shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VI—Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Norway Statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statements will take account of any United States-Norway offset agreements in force when the Memorandum of Understanding was signed, and will be reviewed during the meetings referred to in paragraph 2 above.

Article VII—Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this Memorandum of Understanding and made an integral part thereof.

Article VIII—Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Norway upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Norwegian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the Government of Norway, the Minister of Defense.

Rolf Hansen.

For the United States Government, the Secretary of Defense.

Date May 19, 1978.

Harold Brown.

Date May 19, 1978.

Annex 1

I. Introduction

On 19 May 1978 the Governments of the United States (US) and Norway signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment." The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II. Major Principles

A. The US Department of Defense (DoD) and the Ministry of Defence of Norway (MOD) will each consider for their defense requirements qualified defense items (and

ssociated services included in a procurement contract) developed or produced in the other country. (See also Paragraph III of this Annex). MOD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the Memorandum of Understanding and this Annex.

B. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

III. Action

In implementing the MOU, DoD and MOD will review and, where considered necessary revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and the MOD agree that having taken the measures listed below, they will have fulfilled their obligation under Paragraph 1, Article I, of the MOU, to exhaust all means at their disposal to maximize defense R&D cooperation and reciprocal procurement. These measures will be utilized in a reasonable manner recognizing among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

A. Ensure that their respective requirements offices are familar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Ensure that, consistently with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation.

F. Assist industries in their respective countries to identify and advise the other government of their capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to participate in the development or production procurement process.

H. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

I. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements such as the maintenance of a defense mobilization base are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from non-national sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

J. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

K. Both DoD and MOD will from time to time arrange visits by relevant personnel to the other country in order to actively explore possibilities for R&D cooperation and procurement.

IV. Counting Procedures

The purchases to be counted against the goals of the MOU will be identified jointly by DoD and MOD. In principle: (1) All items procured by the overseas Base Exchanges and Commissary Operations for resale overseas shall be counted and (2) all defense items and associated services included in a procurement contract) purchased by DoD and MOD from the other country will be counted against the goals of the MOU as long as such purchases meet the following criteria:

A. Direct purchases by the MOD or DoD, including their respective agencies, from one another.

B. Direct purchases by either the MOD or DoD from the industry of the other country.

C. Purchases by industry from the government or industry of the other country in aid of government defense contracts.

D. Purchases by a third country government from the governments of the United States or of Norway or from industries of the two countries as a direct result of efforts of the other (non-supplying) country.

E. Purchases resulting from common funded defense projects to which the United States and/or Norway are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MOU will be agreed between MOD and DoD in each case.

F. License fees, royalties and other associated income resulting from orders placed by industry and/or DoD or MOD with a licensed company in the other country.

V. Administration

A. Each country will designate points of contact at the Ministry of Defence level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agrees to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual United States/Norway Statement of the current balance and long-term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B. above.

D. Quality Assurance procedures outlined in STANAG 4107 and 4108 will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the National laws and regulations of each country.

United States Government.

For the Government of Norway.

T–204 Netherlands Memorandum of Understanding

Memorandum of Understanding Between the Government of the Kingdom of the Netherlands and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment

Preamble

The Government of the United States of America and the Government of the Kingdom of the Netherlands, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research and development, production and procurement in order to:

—Make the most cost-effective and rational use of the resources available for defense,

—Ensure the widest possible use of standard or interoperable equipment,

—Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Recalling that they had agreed, as members of the Alliance, to maximum cooperation in procurement as set forth in Annex A to NATO Document C–M(73)51 (revised), dated 20 August 1973,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research and development, production and procurement of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware

that the Independent Europe Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance and that this cooperation will be carried out pursuant to the Mutual Defense Assistance Agreement between the Government of the United States of America and the Government of the Kingdom of the Netherlands, signed 27 January 1950.

Article I—Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research and development, production and procurement of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organization to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid for proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement of those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

13. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Netherlands-U.S. Committee for Procurement Cooperation.

2. The Under Secretary of Defense for Research and Engineering, in cooperation with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementating procedures under this MOU.

3. The Director General for Materiel in the Ministry of Defense, in cooperation with other appropriate government authorities, will be the responsible authority of the Government of the Netherlands for the development of the implementing procedures under this MOU.

Article III—Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

Article IV—Security

To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this MOU are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

Article V—Administration

1. The Netherlands-U.S. Committee for Procurement Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Netherlands statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed. Such statement will take account of United States-Netherlands purchases of defense equipment and services and related offset agreements effected in the years from 1973 onwards and will be periodically reviewed.

Article VI—Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

Article VII—Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, and contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

3. The Parties hereto agree that, for the purposes of this MOU, references to the Kingdom of the Netherlands shall apply only to its territory in Europe.

Article VIII—Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the Kingdom of the Netherlands.

Willem Scholten,

The Minister of Defense.

Dated: August 24, 1978.

For the Government of the United States of America.

Harold Brown,

The Secretary of Defense.

Dated: July 25, 1978.

Annex I—Principles Governing Implementation

1. Introduction

On 24 August 1978, the Governments of the United States and the Kingdom of the Netherlands signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production and procurement of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MOU.

2. Major Principles

A. The U.S. Department of Defense (DoD) and the Ministry of Defense of the Netherlands (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

B. It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning, intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. Action

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. DoD and MoD agree that the following measures shall be taken, recognizing that among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, are considerations related to insured free and full competition for the award of contracts:

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

B. Ensure that their respective research and development offices and institutes are familiar with the principles and objectives of this MoU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MoU.

D. Ensure wide dissemination of the basic understanding of this MoU to their respective industries producing and/or developing defense items and/or services.

E. Ensure that, consistent with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations, or the cost of import duties. Full consideration will be given to all qualified industrial and/or governmental sources in each other's country. Provisions will be made for duty-free entry certificates and related documentation to the extent that existing laws and regulation permit.

F. Assist industries in their respective countries to identify and advise the other government of their production capability and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items and requests for services submitted by the other country as candidates for respective requirements. Identify requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research and development production and procurement processes.

H. Use best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

I. Ensure that those items and services excluded from consideration under this MoU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on procurement from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

J. Insure that the balance of reciprocal purchases takes into consideration the levels of technology involved, as well as the monetary value of purchase hereunder.

k. DoD and MoD will from time to time arrange visits in order to actively explore possibilities for cooperation on research and development, procurement, and logistical support.

4. Counting Procedures

The following purchases, to be identified jointly by DoD and MoD will be included in the counting procedures:

A. Purchases of items and services funded from appropriate funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense and which, either/are:

(1) Directly purchased by the MoD or DoD from one another; or

(2) Directly purchased by the MoD or DoD from the industry of the other country; or

(3) Purchased by the industry of one country from the Government or industry of the other country; or

(4) Purchased as a result of jointly funded defense projects to which the United States and the Netherlands are the only contributors to be credited in proportion to each other country's financial contributions to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MoU will be agreed upon between MoD and DoD in each case;

(5) License fees, royalties and other associated income, when separately contracted, by industry and/or DoD or MoD with a licensor in the country.

B. Purchases by the MoD or DoD from the industry of the other country, on half of other governmental departments and agencies.

C. Purchases by a third country government from the MoD or DoD or from industries of these two countries as direct result of the efforts of the government of the other country.

5. Administration

A. Each government will designate points of contact (procurement and logistics) at the Ministry of Defense level and in each purchasing service/agency and major acquisition activity.

B. Quality Assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reserve concerning reimbursement) will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement of services provided shall be afforded in accordance with the national laws and regulations of each country.

C. The terms of reference of the Netherlands/United States Committee of Procurement Cooperation is contained in Annex III.

For the Government of the United States of America.

Dr. William J. Perry.

Dated: December 22, 1978.

For the Government of the Netherlands.

Lt. General Hensen.

Dated: December 22, 1978.

(Appendices to Annex 1 not included.)

Annex II—Principles Governing Logistic Support of Common Equipment

In implementing Article I, para 13, of the MoU, the two Parties shall be governed by the following:

1. When developing or procuring defense equipment, both Parties will agree upon the basis for joint follow-on logistic support in areas such as configuration control, interchangeability of spare parts/components, maintenance, conversion, storage, and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistic support and other forms of logistic cooperation, e.g., joint utilization of facilities.

3. In the contracting procedure for logistic support, paragraph 9 of Article I of the MoU shall apply.

4. Both Parties will issue directives and guidelines to their respective armament and logistics agencies to achieve the described goals of this MoU.

For the Government of the United States of America.

Dr. William J. Perry.

Dated: December 21, 1978.

For the Government of the Netherlands.

Lt. General Hensen.

Dated: December 21, 1978.

Annex III—Terms of References

1. The Netherlands/U.S. Committee for Procurement Cooperation (hereafter to be called "the Committee") will serve, under the direct responsibility of the authorities, listed in Article II sub 2 and 3 of the MoU respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring that the guiding principles of the MoU governing the mutual cooperation in research and development, production, procurement and logistic support of conventional defense equipment are being implemented to facilitate a mutual flow of defense equipment. To this end the Committee will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

A. They will discuss research, development, production, procurement and logistic support needs of such country and the likely areas of cooperation including joint activities in those fields.

B. They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

C. They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

D. They will consider any other matters relevant to the MoU.

E. They will report after each meeting and advise as appropriate.

F. The Committee will alternately meet in the United States and in the Netherlands. The country in which a particular meeting will take place will provide the Chairman and the secretariat for that meeting.

For the Government of the United States of America.

Dr. William J. Perry.

Dated: December 21, 1978.

For the Government of the Netherlands.

Lt. General Hensen.

Dated: December 21, 1978.

Annex IV to Memorandum of Understanding between the Government of the Kingdom of the Netherlands and the Government of the United States of America concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment, signed at The Hague on 24 August 1978

Principles Governing Contract Administration Services

I. Introduction

This annex sets forth the terms, conditions, and procedures under which the governments will provide each other with selected contract administration services and related information in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU). It is recognized that in the event conflicts arise between any aspect of this annex and the laws of either government, the laws shall prevail.

II. Major Principles

The objective of this annex is to insure each government is able to employ the most effective and efficient contract administration support possible when acting under the MOU. Nothing is to be construed as impairing a purchasing government's access to its contractors and their records as may be contractually authorized.

For the purpose of this annex, contract administration shall include all those necessary actions, other than contract pricing and audit, to be accomplished at, or in proximity to, a firm's place of business to assist the purchasing office in evaluating a prospective contractor's capabilities and in monitoring and enforcing awarded contracts. This annex supplements NATO Standardization Agreement (STANAG) 4107, hereby incorporated by reference in regard to reciprocal quality assurance.

III. General

The purchasing government may request specific services and information selected from those listed in Appendix 1 to this annex which it considers appropriate to the circumstances. The purchasing government may elect to obtain additional support through its own on-site representatives provided there is no duplication of work performed by the host government. In addition, the host government will use its best efforts to supply information requested by the purchasing government but not listed in this annex when necessary to support contract award, enforcement, or termination. The purchasing government may modify a request for support during contract performance after consultation with the host government.

The host government shall accept requests for services to the extent resources are available and carry them out according to the procedures that government uses for its own contracts.

Contracts shall contain suitable provisions for the host government to act for and on behalf of the purchasing government and shall authorize access to contractor facilities and records and use of contractor assets as necessary for the performance of contract administration services.

Where representatives of either government deal with a contractor at the same location in support of the same contract or separate contracts, they shall act in full concert according to terms of reference mutually agreed or to be agreed upon.

Each government shall designate a single office to receive requests for contract administration services. In addition, each government may elect to designate an office in or near the other's country to act as a focal point through which requests for support will be forwarded. The host government will endeavor to keep the purchasing government's focal point apprised of current contract administration practices and resources to help insure requests for services are reasonable and prudent. The focal point shall advise the host government concerning contract requirements and clarify requests for services as necessary.

IV. Procedures

Requests for contract administration in The Netherlands shall be directed to the Ministry of Defense, Directorate-General Materiel, Procurement Policy Office, Kalvermarkt 32, P.O. Box 20701 2500 ES THE HAGUE The Netherlands. Requests for contract administration in the United States shall be directed to The Department of Defense Central Control Point, DCASR New York, 60 Hudson St., New York, NY 10013.

Contract administration requests will be accompanied by the number of copies of the request for proposal or awarded contract, as appropriate, prescribed in STANAG 4107 and will specify the contract administration services desired. Every effort will be made to forward support requests simultaneously with the forwarding of awarded contracts to the contractor. The format shall be as described in Annex A to STANAG 4107, with desired services other than quality assurance specified in Block 10. If less than comprehensive quality assurance is needed, the desired services selected from AQAP 10 shall be specified in Block 10. Requests shall reference this annex to the MOU and shall be processed according to the procedures in STANAG 4107 with due regard to section VII of this annex. In principle, acceptance or rejection shall be made within 30 calendar days of receipt by the host government.

Direct communications between the purchasing office and the assigned contract

administration office in resolving contract problems are authorized and encouraged. The purchasing government shall retain final authority over contract interpretations and enforcement actions, and shall advise the contract administration office on such matters as needed.

In the event the purchasing government envisions the assignment of inplant representatives, proposed terms of reference describing an appropriate working relationship with host government representatives will be suggested to the host government as early as possible.

V. Responsibility and Liability

Nothing in this annex shall relieve the contractor of any responsibilities under the contract. No liability will attach to the government, its officers or agents, acting under this annex on behalf of the other government.

VI. Protection of Information

Data obtained through the implementation of this annex shall receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which possesses it.

VII. Charges

Service provided under this annex will be free of charge, subject to a joint review of the services being exchanged at not less than three year intervals. If, as a result of such a joint review, either government determines that charges will be necessary, they may be imposed after not less than one year advance notice. Should charges by the U.S. Government become necessary, Foreign Military Sales Procedures then in effect will apply.

VIII. Duration

This annex will remain in effect for a period as set forth in ARTICLE VII of the MOU, and may be terminated under the conditions as set forth in that article.

IX. Implementation

This Annex will come into effect on the date of the last signature.

For the Government of the Kingdom of the Netherlands.

———— ————,

Date 9th April 1982.

For the Government of the United States of America.

———— ————,

Date 9 April 1982.

Appendix 1. Services to be Exchanged.

Appendix 1 to Annex IV—Services to be Exchanged

In accordance with the principles and procedures as set forth in this annex the following services will be performed by the host government within its national boundaries upon requests by and on behalf of the purchasing government:

1. Support evaluations of contractor capabilities prior the award.

a. Supply available information concerning design, production, and quality control capabilities as appropriate; for example, the amount of available floor space, plant equipment, skilled and unskilled workers, past production of similar items, and the NATO Allied Quality Assurance Publications (AQAP's) against which the firm has been assessed.

b. Evaluate the financial strength of the prospective contractor, estimate the likelihood that financial resources will be sufficient to accomplish the contract, and report the monetary value (in local currency) of host government capital assets furnished or made available to the contractor which may be used in the contract.

c. Provide access to available accounting system disclosure statements and assistance in determining the systems's ability to meet contractual requirements.

2. Perform government quality assurance, as defined in STANAG 4107, in whole or in part as requested.

3. Report potential or actual slippages in contract delivery schedules or any other contractor difficulties which might affect contract performance.

4. Assess contract progress if needed by the purchasing office to authorize financial payments, and recommend approval or disapproval of contractor payment requests.

5. Evaluate the feasibility and practicality of contractor production plans.

6. Verify contractor management reports furnished to the purchasing office during contract performance.

7. Evaluate and monitor contractor compliance with contract requirements governing technical data, especially the propriety of any restrictive markings on data offered for delivery under the contract.

8. Monitor contractor costs under cost reimbursement contracts, and insure the purchasing office is advised of any anticipated overruns or underruns of estimated costs.

9. Advise the purchasing office if supporting contract administration is needed at subcontractor plants to verify the adequacy of prime contractor management, and assist the purchasing government obtain desired support within the host country.

Annex V to Memorandum of Understanding Between the Government of the Kingdom of the Netherlands and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment, Signed at The Hague on 24 August 1978

Protection of Information

The Security Procedures For Industrial Operations Between The Ministry of Defense of the Netherlands and the Department of Defense of the United States of America, developed to implement the provisions of the U.S./Netherlands General Security of Information Agreement, dated April 6, 1981, apply to the safeguarding of classified military information exchanged under this Memorandum of Understanding.

Such procedures are applicable in those cases in which contracts, subcontracts, precontract negotiations, or other government approved arrangements, involving classified military information of either or both governments, are placed or entered into by or on behalf of one government with industry in the country of the other government.

For the government of the Kingdom of The Netherlands.

———— ————,

Date 9th April 1982.

For the Government of the United States of America.

———— ————,

Date 9 April '82.

Annex VI to Memorandum of Understanding Between the Government of the Kingdom of the Netherlands and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment, Signed at The Hague on 24 August 1978

Principles Governing Defense Contract Audit Services

I. Introduction

This annex sets forth the terms, conditions and procedures under which the participating governments will provide one another with contract audit defense services upon request in support of defense contracts, subcontracts and FMS Letters of Offer and Acceptance contemplated or executed under the Memorandum of Understanding (MOU). It is recognized that in the event conflicts arise between any aspect of this annex and the laws of either participating government, the laws shall prevail. Nothing in this annex affects the U.S. Government's statutory rights concerning access to records of its contractors.

II—Major Principles

For purposes of this annex, defense contract audit services shall include:

1. Evaluating proposed prices or costs in sufficient detail to enable the cognizant contracting officer to determine their acceptability during negotiations with the relevant contractor or subcontractor.

2. Examining contractor accounting records and procedures to determine their accuracy, currency, completeness, and compliance with contract requirements.

3. Evaluating contractor cost estimating systems.

4. Verifying after contract award the currency, accuracy, and completeness of cost or pricing data submitted in support of contractor proposals.

5. Verifying reimbursement vouchers submitted under cost reimbursement contracts or other contracts with cost reimbursement features (e.g., material reimbursement) and recommending cost disallowances when appropriate after consultation with the contractor.

6. Monitoring compliance with disclosed accounting practices and contractual accounting requirements during contract performance.

7. Verifying overhead cost records prior to overhead settlements, and contract cost records prior to termination settlements.

8. Other audit services as considered necessary by contracting country.

The objective of this annex is to improve the effectiveness and efficiency of the audit

services available to the participating governments. Nothing in this agreement is to be construed as impairing a purchasing government's access to its contractors and their records as may be contractually authorized.

III. General

Contract audit reports shall be advisory. The purchasing government shall retain authority and responsibility for negotiating acceptable prices and contract settlements with contractors. Purchases by The Netherlands under the Foreign Military Sales Program will be handled under the U.S. FMS procedures in existence at the time of acceptance of the FMS agreement.

The particular governments shall perform requested services to the maximum extent permitted by available resources and according to the terms of the contract or subcontract involved. The Netherlands agrees to use US cost principles when performing an audit for the U.S. The Netherlands also agrees that the US will use its own cost principles and cost accounting standards when performing an audit for The Netherlands. Consistent with these standards and principles the performing government may use the same audit methods it customarily uses for its own contracts, and shall determine the organizations and personnel to be involved.

In the event a particular government is unable to provide requested services, or to perform them within a reasonable time, the purchasing government shall be entitled to perform the needed services itself. Audit representatives of the governments may attend the audit activities as observer, when the contract is only for that country's requirements. In addition, with advance notice to the other participating government, the purchasing government may elect to audit a specific contractor/subcontractor proposal or a specific contract. Neither participating government shall duplicate or review the work of the other on any particular proposal or contract except under the circumstances set out above. However, the governments shall hold periodic discussions to evaluate the operational effectiveness of the reciprocal agreement. In addition, each government shall insure that its contract audit operations are periodically evaluated by its own appropriate review and oversight organization.

The participating governments shall provide one another with access to available information concerning contractor costs estimating systems and disclosed accounting practices when needed to support contract negotiations or enforcement. It is expected that contracts requiring the disclosure of accounting practices shall normally authorize contractors to file such disclosures with their own government. In the United States, the files shall be maintained by: the Office administering the contract.

In The Netherlands, the files shall be maintained by: The Ministry of Defense, Director Audit Agency, Postbus 20701, 2500 ES, The Hague, The Netherlands.

Contracts and subcontracts shall contain suitable provisions to enable the participating governments to act for and on behalf of one another under this annex and shall authorize access to contractor facilities and records as necessary.

Recognizing that requests for support and contract terms may occasionally require clarification, each of the participating governments may designate an office in or near the other participating country to provide such clarifications and to act as a focal point through which requests for services will be forwarded. Each participating government shall also designate an office, listed elsewhere in this annex, to receive requests for services.

IV. Procedures

Requests for contract audit services in The Netherlands shall be sent to: The Ministry of Defense, Director Audit Agency, Postbus 20701, 2500 ES, The Hague, The Netherlands, through: The Royal Netherlands Embassy, 4200 Linnean Avenue, Washington, D.C. 20008-3896, U.S.A.

Requests for contract audit services in the United States shall be sent to: The Defense Contract Audit Agency (DCAA), Cameron Station, Alexandria, Virginia 22314, U.S.A.

In order that the equity of this annex may be periodically appraised, information copies of all requests for audit made by procurement officials, auditors, and prime and subcontractors of both countries will be sent to Defense Contract Audit Agency, European Branch Office, Lindsey Air Station, APO New York 09633.

Requests shall specify the services needed, identify any items of special interest to the purchasing government, and indicate the desired due date. Acceptance of requests shall be acknowledged in writing by the performing government. Requests originating from the Office of the Comptroller General of the United States shall be clearly identified as such.

Contract audit reports describe the scope and depth of the evaulation performed and indicate the methods used. Supporting evaluations by technical and other specialists shall be included in the reports. The information supplied should be sufficiently detailed to permit the purchasing government to determine acceptable prices or costs and to defend its position in negotiations with the contractor or in taking contractual action. The purchasing government may request additional clarifications or supporting data if necessary, and shall have the final authority to determine when the information provided is adequate for its purpose.

V. Protection of Information

Information obtained through the implementation of this annex shall receive the same protection against unauthorized disclosure as it would normally receive under laws and rules of the participating government which possesses it.

VI. Charges

Services will be provided under this annex free of charge, for all contracts, subcontracts, and FMS Letters of Offer and Acceptance entered into on or after the date of implementation of this annex provided that a joint review of the services being exchanged between the participating governments performed at not less than three year intervals indicates that general reciprocity is being maintained. If after such joint review either government determined that charges will be necessary, they may be imposed after not less than one year advance notice. Should charges by the U.S. Government become necessary, Foreign Military Sales procedures then in effect will apply.

VII. Exclusions

This audit annex does not cover audits for architecture and engineering, base support, banking, operation and maintenance, government owned and company operated facilities, universities, and contractors solely in the business of supporting U.S. presence in The Netherlands.

VIII. Duration

This annex will remain in effect for a period as set forth in aticle VII of the MOU and may be terminated under the conditions as set forth in that article.

For the Government of the United States of America.

———— ————,

Dated: April 18, 1985.

For the Government of the Kingdom of The Netherlands, on behalf of the Director General for Material.

———— ————,

Dated: March 14, 1985.

T-205 Federal Republic of Germany Memorandum of Understanding

Memorandum of Understanding Between the Federal Minister of Defense of the Federal Republic of Germany and the Secretary of Defense of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement and Logistic Support of Defense Equipment

The Secretary of Defense of the United States of America and the Federal Minister of Defense of the Federal Republic of Germany:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support of defense equipment, in order to:

—Make the most cost-effective and rational use of the resources allocated to defense; and

—Promote the widest possible use of standard or interoperable equipment; and

—Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding; and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, production, procurement and logistic support.

The Parties hereto conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Parties are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They therefore agree that in the event of a possible conflict between understandings entered into between the IEPG and the Government of the United States, and this Memorandum of Understanding, the Parties hereto will consult with a view to amending this Memorandum of Understanding.

The Parties further agree that this Memorandum of Understanding should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

Article 1—Principles Governing Mutual Defense Cooperation

1.1 Both Parties intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

1.2 This Memorandum of Understanding is intended to cover areas in which, in the view of both parties to the Agreement, bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement and logistic support. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

1.3 Each Party may propose to the other any particular project that might be suitable for cooperation or for use by the other Party.

1.4 Both Parties will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production, procurement and logistic support which are intended to optimize Alliance standardization and/or interoperability.

1.5 In the interests of standardization within the Alliance and the effective utilization of scarce resources, both Parties shall, to the extent possible, select qualified defense items that have been developed and produced in the other country to meet their requirements. Necessary decisions should be taken on the basis of joint comparative trials according to criteria to be jointly established.

1.6 Both Parties will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

1.7 Both Parties will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement to the aims described herein.

1.8 The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following,

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duty; customs and import duties should not be charged as far as this is admissible under current laws.

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Party for performance, quality, delivery and costs.

1.9 Competitive contracting procedures shall normally be used in acquiring items of conventional defense equipment developed or produced in each other's country for use by either country's defense establishment.

1.10 Both Parties will ensure that the technical data packages (TDPs) made available under this Memorandum of Understanding are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Party.

1.11 Both Parties will undertake their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two contracting parties will mutually make available to each other, to the extent possible, all information and proprietary rights required to implement cooperation under this agreement. The two contracting parties will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements, between the industries of the two countries.

1.12 Arrangements and procedures will, at the request of the purchasing Party, be established concerning follow-on logistic support for items of defense equipment acquired pursuant to this Memorandum of Understanding. Both Parties will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

2.1 The DoD and MoD will appoint representatives to determine in detail the procedures for implementing this Memorandum of Understanding and the terms of reference for a German-American Committee for Mutual Cooperation.

2.2 The Under Secretary of Defense for Research and Engineering will be the responsible authority of the United States Department of Defense for the development of implementing procedures under this Memorandum of Understanding.

2.3 The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Ministry of Defense of Germany for the development of implementing procedures under this Memorandum of Understanding.

Article III—Industry Participation

3.1 Implementation of this Memorandum of Understanding will involve full industrial participation. Primary responsibility for finding business opportunities shall rest with the industries of each country.

3.2 Each Party will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Parties will take all appropriate implementing guidance. Both Parties will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3 Also, the Parties will arrange to familiarize their respective procurement and requirements offices with the principles and objectives enunciated herein.

Article IV—Security

4.1 The operating procedures for the implementation of the General Security of Information Agreement dated 23 December 1960 between the two Parties, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4.2 To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Party for security purposes, the other Party shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Party throughout the period during which the classifying Party may maintain such classification.

4.3 Information that has been provided by either of the Parties to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Party will mark such information furnished with a legend indicating the origin of information, that the information relates to the MOU and Annexes thereto, and that the information is furnished in confidence.

Article V—Administration

5.1 Each Party will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

5.2 The German-American Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Party to review progress in implementing the Memorandum of Understanding. It will discuss development, production, procurement and logistic support needs of each country and the likely areas of

cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this Memorandum of Understanding.

Article VI—Duration

6.1 This Memorandum of Understanding will remain in effect for a six-year period following its signing. Unless otherwise agreed by both Parties, the duration will be extended for another six years.

6.2. If, however, either Party considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the six-year period, or any extension thereof, written notification of its intention will be given to the other Party six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Party to enable the Parties fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the Parties, any contract entered into consistent with the terms of this Memorandum of Understanding shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VII—Implementation

7.1 Each Party must agree in writing to any amendment of this Memorandum of Understanding.

7.2 Details pertaining to implementation of the principles set forth herein will be set out in annexes to this Memorandum of Understanding.

7.3 Any differences of opinion over the interpretation and implementation of this Agreement and its Annexes shall be resolved by consultation between the DoD and MoD.

7.4 This Memorandum of Understanding will come into effect on the date of the last signature.

The Secretary of Defense of the United States of America.

Harold Brown.

Dated: October 17, 1978.

The Federal Minister of Defense of the Federal Republic of Germany.

Hans Apel.

October 17, 1978.

Annex—Reciprocal Contract Audit Defense Services Under the Memorandum of Understanding Between the United States of America and the Federal Republic of Germany Regarding Defense Research and Development, Production, and Procurement

I. Preamble

This annex sets forth the procedures under which the participating governments will provide one another with contract audit defense services upon request in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU). It is recognized that in the event conflicts arise between any aspect of this annex and the laws of either participating government, the laws shall prevail. Nothing in this annex affects the statutory rights of the US General Accounting Office (GAO)/ Bundersrechnumgshof (BRH) concerning access to records of contractors.

For purposes of this annex, defense contract audit services shall include:

1. Evaluating proposed prices or costs in sufficient detail to enable the cognizant contracting officer to determine their acceptability during negotiations with the relevant contractor or subcontractor.

2. Examing contractor accounting records and procedures to determine their accuracy, currency, completeness, and compliance with contract requirements.

3. Evaluating contractor cost estimating and accounting systems.

4. Verifying after contract award the currency, accuracy, and completeness of cost or pricing data submitted in support of contractor proposals.

5. Verifying reimbursement vouchers submitted under cost reimbursement contracts or other contracts with cost reimbursement features (e.g., material reimbursement) and recommending cost disallowances when appropriate after consultation with the contractor.

6. Monitoring compliance with disclosed accounting practices and contractual accounting requirements during contract performance.

7. Verifying overhead cost records prior to overhead settlements, and contract cost records prior to termination settlements.

8. Other usual and customary contract audit services considered necessary by contracting country.

The objective of this annex is to improve the effectiveness and efficiency of the audit services available to the participating governments.

II. General

Contract audit reports shall be advisory. The purchasing government shall retain authority and responsibility for negotiating acceptable prices and contract settlements with contractors.

The participating governments shall perform requested services to the maximum extent permitted by available resources and according to the terms of the contract or subcontract involved. The performing government shall apply the cost principles and cost accounting standards as specified in the contract. Consistent with these standards and principles the performing government may use the same audit methods it customarily uses for its own contracts, and shall determine the organizations and personnel to be involved. Both parties shall issue national implementing guidelines which will be provided to their auditors and made available to the contractors for their information. Appendix I is a comparative guide of expressly covered costs, which is provided for ready reference purpose only. Therefore, the Appendix should not be considered as being complete, authoritative, substantive, or interpretive of existing cost regulations of the participating governments.

In the event a participating government is unable to provide requested services, or to perform them within a reasonable time, the purchasing government shall be entitled to perform the needed services itself. In addition, with advance notice to the other participating government, the purchasing government may elect to audit a specific contractor/subcontractor proposal or a specific contract; this should be limited to exceptional cases. Neither participating government shall duplicate or review the work of the other on any particular proposal or contract except under the circumstances set out above. However, the governments shall hold periodic discussions to evaluate the operational effectiveness of the reciprocal agreement. In addition, each government shall insure that its contract audit operations are periodically evaluated by its own appropriate review and oversight organizations.

The participating governments shall provide one another with access to available information concerning contractor cost estimating systems and disclosed accounting practices when needed to support contract negotiations or enforcement. It is expected that contracts requiring the disclosure of accounting practices shall normally authorize contractors to file such disclosures with their own government. In the United States, the files shall be maintained by the office administering the contracts. In the Federal Republic of Germany the Disclosure Statement shall be in accordance with FAR 30.201–1(e) (2) and shall be maintained by the Federal Office for Military Technology and Procurement (BWB), Koblenz.

Contracts and subcontracts shall contain suitable provisions to enable the participating governments to act for and on behalf of one another under this annex and shall authorize access to contractor facilities and records as necessary.

Recognizing that requests for support and contract terms may occasionally require clarification, each of the participating governments may designate an office in or near the other participating country to provide such clarification and to act as a focal point through which requests for services will be forwarded. Each participating government shall also designate an office, listed elsewhere in this annex, to receive requests for services.

III. Procedures

Requests for contract audit services in the Federal Republic of Germany shall be sent to BWB.*

Requests for contract audit services in the United States shall be sent to the cognizant Defense Contract Audit Agency (DCAA) Field Audit Office.

In order that the reciprocity of this annex may be periodically appraised, information copies of all requests for audit made by procurement officials, auditors, and prime and subcontractors of both countries will be sent to Defense Contract Audit Agency.

*Requests for audits by BWB should be sent to: Bundesamt Fuer Wehrtechnik und Beschaffung-BWB, Referat AW II, 5400 Koblenz, Postfach 7360, Federal Republic of Germany. This request should set out time period and any special requirements of the requestor.

European Branch Office, Lindsey Air Station, APO New York 09633.

Requests shall specify the services needed, identify any items of special interest to the purchasing government, and indicate the desired due date. Audit reports issued shall be responsive to audit requests and shall include coverage of the expressly unallowable cost's** to permit the purchasing government to successfully use the audit results. Acceptance of requests originating from the Office of the Comptroller General of the United States and the Bunderscrechnungshof shall be clearly identified as such.

Contract audit reports shall describe the scope and depth of the evaluations performed and indicate the methods used. Supporting evaluations by technical and other specialists shall be included in the reports. The information supplied should be sufficiently detailed to permit the purchasing government to determine acceptable prices or costs and to defend its position in negotiations with the contractor shall be acknowledged in writing by the performing government. Requests orgin taking contractural action. The purchasing government may request additional clarifications or supporting data if necessary, and shall have the final authority to determine when the information provided is adequate for its purposes.

IV. Protection of Information

Information obtained through the implementation of this annex shall receive the same protection against unauthorized disclosure as it would normally receive under the laws and rules of the participating government which possesses it.

V. Charges

Services will be provided under this annex free of charge, for all contracts, subcontracts, and FMS Letters of Offer and Acceptance entered into on or after the date of implementation of this annex provided that a joint review of the services being exchanged between the participating governments performed at not less than three year intervals indicates that general reciprocity is being maintained. If after such joint review either government determines that charges will be necessary, they may be imposed after not less than one year advance notice. Should charges by the U.S. Government become necessary, Foreign Military Sales procedures then in effect will apply. Purchases by the Federal Republic of Germany under the Foreign Military Sales Program will be handled under the U.S. FMS procedures in existence at the time of the FMS Agreement.

VI. Excluded

This audit annex does not cover audits for base support operation and maintenance, banking, government owned and company operated facilities, universities, and contractors solely in the business of supporting U.S. presence in the Federal Republic of Germany. (Construction contracts are not subject to this agreement.)

** For information purposes see Appendix I.

VII. Termination

The annex may be terminated in writing by either participant, to become effective the last day of the sixth month after notice of termination is given.

VII. Validity of Text

This annex has been drawn up in the German and the English language; both texts being equally authoritative.

IX. Effective Date

This agreement shall become effective on the day of the last signature of the English version.

X. Prior Audit Agreement

The 1966 audit agreement and annex to same between US DoD and FRG MOD is rescinded by the execution of this agreement.

For the Government of the United States of America.

———— ————,

Dated: November 29, 1985.

For the Government of the Federal Republic of Germany.

———— ————,

Dated: December 6, 1985.

T-206 Italy Memorandum of Understanding

Memorandum of Understanding Between the Government of Italy and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research, Development, Production and Procurement of Defense Equipment

Preamble

The Government of the United States of America and the Government of Italy, hereinafter referred to as "the Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement, and logistic support of defense equipment, in order to:

—Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies, assuring the most satisfactory level of reciprocal balance; and

—Promote the widest possible use of standard or interoperable equipment; and

—Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

Noting that no agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past, and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles governing mutual cooperation in defense equipment research and development, production, procurement and logistic support.

The Government of the United States of America and the Government of Italy conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North America within the Alliance.

All agreements, or the relevant provisions contained therein, between the Independent European Program Group (IEPG) and the United States of America, shall take precedence over this Memorandum of Understanding, provided that Italy is a party to the specific agreement.

Article I—Principles Governing Mutual Defense Cooperation

1. Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base. Items procured under offset agreements by either Government with an industry of the other will apply to the achievement of the balance contemplated by this agreement.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement, and logistic support complementing the work of the Conference of National Armament Directors (CNAD), Senior NATO Logisticians Conference (SNLC) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their laws and regulations give full consideration to all requests for cooperative R&D and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their defense industries.

5. In the interests of standardization and the effective utilization of scarce resources the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of defense equipment that might be suitable for use by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurements or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit, such as not applying customs duites and other discriminatory levies in evaluating bids submitted in accordance with this MOU as well as the waiver of protectionist provisions. Defense items or services are those items or services which may be procured utilizing appropriated funds of the US Department of Defense or budgeted funds of the Italian Ministry of Defense.

9. Competitive contracting procedures normally shall be used in acquiring items of conventional defense equipment developed in each other's country.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations, and arms transfer policy. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the extent to which a proposed transfer may damage or infringe upon licensing arrangements whereby commercial firms in the US or Italy have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third-country.

13. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferees without the prior written consent of the originating Government.

14. Both Governments will undertake their best efforts to assist in negotiating licenses, ties and technical information exchanges with their respective industries.

15. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for an Italian-American Committee for Mutual Cooperation, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary for Defense of Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be responsible in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The National Armament Director in the Ministry of Defense, in coordination with the other appropriate governmental bodies, will be the responsible authority of the Government of Italy for the development of implementing procedures under this Memorandum of Understanding.

Article III—Industry Participation

1. Each Government will be responsible for calling to the attention of the defense industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to familiarize their respective procurement and requirements offices with the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

Article IV—Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security Information Agreement dated 4 August 1964 between the United States Department of Defense and the Italian Ministry of Defense apply to activities under this Memorandum of Understanding.

3. Information that has been provided by the GOI to the United States in Confidence, or produced by the United States pursuant to a written joint arrangement with GOI requiring confidentiality, shall either retain its original classification designation or be assigned a United States classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the GOI. To assist in providing the desired protection, the GOI will mark such information furnished to the U.S. Government with a legend indicating that the information is of Italian Government origin, that the information relates to this MOU, and that the information is furnished in confidence.

Article V—Duration

1. This Agreement will remain in effect for a ten-year period following its signing. Unless otherwise agreed by both Governments, the duration will be extended for another ten years.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Government fully to evaluate the consequences of such termination and in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VI—Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review and promoting any correction step, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Italy statement of the current balance, and long-term trends of R&D cooperation and purchases between the two countries will be prepared on a basis

to be mutually agreed. Such statement will take account of any United States/Italy offset agreements in force when the Memorandum of Understanding was signed and will be reviewed during the meetings referred to in paragraph 2 above.

Article VII—Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this agreement and made an integral part thereof.

Article VIII—Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Italy upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Italian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the United States Government.

Harold Brown.

Dated: September 11, 1978.

For the Government of the Italian Republic.

Attilio Ruffini.

September 11, 1978.

Annex 1 to the Memorandum of Understanding Between the Government of the United States of America and the Government of Italy Concerning Mutual Cooperation in Defense Equipment Research and Development, Production and Procurement, Dated 11 September 1978

Principles Governing Implementation

1. Foreword

On 11 September 1978 the Governments of the United States and Italy signed a Memorandum of Understanding (MOU) relating to the principles governing mutual cooperation in the Research, Development, Production, Procurement, and Logistic Support of Defense Equipment. This annex sets forth mutually agreed implementing procedures for carrying out the MOU.

2. Basic Principles

With the aim already expressed in the text of the MOU to achieve the greatest practicable degree of standardization/interoperability in defense equipment, the two Governments shall cooperate in the field of Research, Development, Production, Procurement, and Logistic Support in order to implement programs of common interest and to strengthen their respective industrial defense efforts. This goal can be attained through both the joint participation in mutually agreed research, development and production programs, through an interchange of studies, materials and services, as well as through offset agreements between governments and industries.

The U.S. Department of Defense (DoD) and the Italian Ministry of Defense (MoD) will each consider for procurement for their defense requirements qualified defense items (and associated services) developed or produced in the other country. (See also paragraph 3 of this Annex). MoD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the MOU and this Annex. It will be the responsibility of government and/or industry representatives in each country to obtain timely information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain timely information concerning proposed purchases, necessary qualifications and appropriate documentation.

3. Action

A. In implementing the foregoing, the two Governments shall in accordance with mutual laws and regulations consider the following:

1. Cooperation in R&D for specified projects. Said cooperation may take place also in the framework of projects already undertaken by both countries.

2. Co-production of defense equipment both for the requirements of the two countries and for export.

3. Supply of logistic and administrative materials and facilities.

4. Maintenance and overhauling of items of military equipment, including supply of spares.

B. DoD and MoD will individually review and, where considered necessary, revise their respective internal policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and MoD agree that, upon respectively taking the measures listed below, they will have fulfilled their obligation under paragraph 1, Article 1 of the MOU, to implement all practical means at their disposal to optimize defense R&D cooperation and procurement. These measures will be undertaking in a reasonable manner, recognizing among other factors, delivery date requirements for supplies, the interest of security, the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

1. Ensure that their respective requirements offices are familiar with the principles and objectives of this MOU.

2. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU.

3. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

4. Ensure wide dissemination of the basic understanding of this MOU to their respective defense industries.

5. Ensure that to the extent permitted by national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties. Provisions will be made for duty free certificates and related documentations to the extent consistent with national laws and procedures.

6. Assist industries in their respective countries to identify and advise the other government of their capabilities and assist such industries in carrying out the support actions to maximize industrial participation.

7. Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to participate in the development of production procurement processes.

8. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

9. Permit the sales of equipment produced under license to allied countries and to appropriate third countries, subject to the policy outlined in Article 1, paragraph 12 of the basic MOU.

10. Ensure that those items excluded from consideration under this MOU for reasons of protecting overriding national interests, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items as well as those items which would not be qualified as a defense item under this MO because of legally imposed restrictions on procurement from non-national sources should be identified as soon as possible in lists drawn up by MoD and DoD for their respective countries, and that the lists should be kept under review at this level.

11. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value, in accordance with the policy outlined in Article 1, paragraph 1 of the basic MOU.

12. Arrange visits between appropriate government personnel from time to time in order actively to explore possibilities for R&D cooperation, procurement, and logistic support.

4. Counting Procedures

A. The purchases to be counted against the goals of the MOU will be identified jointly by DoD and MoD. In principle all defense items or components thereof, as defined in the basic MOU, (and associated services included in a procurement contract) purchased by MoD and DoD from the other country will be counted against the goals of the MOU as long as such purchases meet the following criteria:

1. Direct purchases by the MoD and DoD, including their respective agencies, one from the other.

2. Direct purchases by either the MoD or DoD from the industry of the other country.

3. Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4. Purchases by a Third Country Government from either US or Italian Governments or industrial sources as a direct result of commercial efforts of the other, non-supplying Country.

5. Procurements by either country of defense items resulting from common funded projects to which the US and Italy are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such procurements will be counted against the goals of this MOU will be, at the time of procurement, mutually agreed between MoD and DoD on a case by case basis.

6. License fees, royalties and other associated income resulting from orders placed by DoD or MoD and/or industry in one country with a licensed company in the other country; or in MoD-DoD transactions.

B. The following non-defense items also will be counted against the goals of the MOU:

1. Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

2. Purchases by a Third Country Government from the MoD or DoD or from industries of these two countries as a direct result of the efforts of the MoD/DoD of the other country.

5. Administration

A. Each country will designate points of contact at the Ministry of Defense level.

B. MoD and DoD representatives will meet periodically, alternatively in each country, to review the projects undertaken in implementing the MOU. They will discuss development, production, procurement, and logistic support needs of each country and the likely areas of cooperation; they will update the financial statement referred to in Paragraph C below as a means of judging the progress of activity in the period under review; and they will consider other matters relevant to this MOU. Specific tasks of the representatives are:

1. Review of the status of the exchanges on the basis of the data, in comparable terms, to be agreed upon by the other party.

2. Consider additional steps necessary to facilitate the actions called for in paragraph 3.

C. An annual US/Italy statement consolidating the current balance of defense equipment research, development, production, procurement, and logistic support between the two countries, as well as the long term trends, will be prepared on a basis to be mutually agreed. Such statement shall take account of any US/Italy offset agreements in force at the time this MOU is signed, and shall be reviewed during the meetings referred to in Paragraph 5B above.

D. Quality assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reserve concerning US reimbursement) will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be in accordance with National laws and regulations of each country.

E. This annex, in two original texts in the Italian and English languages, both texts being equaly authentic, will come into effect at the date signed by both Governments.

For the United States Government.

———— ————,

Dated: January 2, 1979.

For the Government of Italy.

———— ————,

January 2, 1979.

Annex II

To the Memorandum of Understanding Between the Government of the United States of America and the Government of Italy Concerning Mutual Cooperation in Defense Equipment Research and Development, Production and Procurement, Dated 11 September 1978

Principles Governing Logistic Support of Common Equipment

In implementing Article 1, paragraph 15 of the MOU, the two Parties shall be governed by the following:

1. When developing or procuring defense equipment, both Parties will agree upon the basis for joint follow-on logistic support in areas such as configuration control, interchangeability of assemblies, components and spare parts, maintenance, conversion, storage, and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistic support and other forms of logistic cooperation, e.g., joint utilization of facilities.

3. In the contracting procedures for logistic support, paragraph 9, Article 1 of the MOU normally shall apply. Coproduction, licensed production, or jointly developed equipment may be excluded from this policy at the option of the contracting Party or Parties.

4. Both Parties will issue directives and guidelines to their respective armaments and logistics agencies to achieve the described goals of this MOU.

5. This annex, in two original texts in the Italian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the United States Government.

For the Government of Italy.

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Dated: January 2, 1979.

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January 2, 1979.

Annex III

To the Memorandum of Understanding Between the Government of the United States and the Government of Italy Concerning Mutual Cooperation in Defense Equipment Research and Development, Production and Procurement, Dated 11 September 1978

Italian/American Committee for Mutual Cooperation

Terms of Reference

1. The Italian/American Committee for Mutual Cooperation (hereinafter referred to as "the Committee") will operate, under the direct responsibility of the Authorities listed respectively at Article II, paragraphs 2 and 3 of the basic MoU, as the main agency tasked for the appropriate implementation of the MoU.

In particular, the Committee will ensure that the guiding principles of the MoU, governing mutual cooperation in the field of research and development, production, procurement and logistic support of conventional defense equipment are followed.

To this purpose, the Committee will meet annually, or more often when requested by the Government which deems it appropriate.

2. In particular, the Committee has been established in order to discuss problem areas hindering cooperation under the Agreement. Specifically, the Committee's charter is to:

2.1 Verify, through the exchange of information, the status of implementation of the MoU, and propose possible amendments if necessary;

2.2 Recommend, in order to facilitate a mutual flow of defense equipment, appropriate actions to pursue opportunities for cooperation in areas of research and development, production, procurement and logistic support to the maximum extent possible in accordance with national acquisition regulations;

2.3 Agree upon counting procedures and criteria for determining the current balance;

2.4 Prepare a yearly financial report on the interchange between the two countries, and on its trend at medium and long term;

2.5 Draw conclusions from the financial report, and promote possible corrective actions, as provided for by Article VI, paragraph 2–3 of the MoU;

2.6 Consider cases which one side or the other believes might involve improper refusals to requests for special transfers of defense articles and/or technical data to third countries, in order to verify whether it is a deviation from the policy defined in Article I, paragraph 12 of the MoU; in this case, forward immediately a joint report on the subject to the competent Authorities of both Governments;

2.7 Examine, in compliance with paragraph 3.B.10 of Annex I, the problems resulting from the carrying out of Enclosure A to this Annex, relevant to the preservation of the mobilization base of the defense industry;

2.8 Recommend visits by Authorities from time to time in order to explore actual possibilities for cooperation in research and development, production, procurement and logistic support;

2.9 Prepare, at the end of each regular or extraordinary meeting, a joint report for the respective Governments;

2.10 Examine any other subject of interest to the MoU.

3. Furthermore, the Committee will review the steps taken to:

3.1 Ensure that the responsible Government offices and the national industries concerned are informed of meetings of interest to them, and that all important information resulting from the meetings is distributed in timely fashion;

3.2 Ensure that the objectives of collaboration on technology as implied in the basic MoU and stated in Enclosure B to this Annex, are met.

4. The regular meetings of the Committee will take place alternately in Italy and in the United States; the location of the extraordinary meetings will be agreed upon each time.

The National acting as host for a regular meeting, or requesting an extraordinary

meeting, will provide the Chairman and the Secretariat.

5. This Annex, in two original texts in the Italian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the United States Government.

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For the Government of italy.

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Enclosures: As Stated.

T–207 Portugal Memorandum of Understanding

Memorandum of Understanding Between the Government of Portugal and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research, Development, Production, Procurement and Logistic Support of Defense Equipment

Preamble

The Government of the United States of America and the Government of Portugal, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research, development, production, procurement, and logistic support in order to:

—Make the most cost-effective and rational use of the resources available for defense,

—Ensure the widest possible use of standard or interoperable equipment,

—Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America with the Alliance.

Article I—Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement, and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data package (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent to the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Portugal-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Director General of Armaments and the Secretary of State for Light Industry will be the responsible authorities of the Government of Portugal for the development of implementing procedures under the MOU.

Article III—Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and

objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with his industries in each nation.

Article IV—Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information, that the information relates to the "Memorandum of Understanding" and Annexes thereto, and that the information is furnished in confidence.

Article V—Administration

1. The Portugal-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each national and the likely areas of cooperation; agree to the basis of and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Portugal statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on basis to be mutually agreed.

Article VI—Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

Article VII—Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VIII—Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America.

The Secretary of Defense.

Harold Brown.

Dated: March 28, 1979.

For the Government of Portugal.

The Minister of Defense.

José Alberto Loureiro dos Santos.

December 18, 1978.

Annex I to the Memorandum of Understanding Between the Government of the United States of America and the Government of Portugal Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement, and Logistic Support of Defense Equipment, Dated 28 March 1979

Principles Governing Implementation

1. Introduction

On 28 March 1979, the Government of the United States and the Government of Portugal signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production, procurement, and logistic support of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MoU.

2. Major Principles

2.1 The U.S. Department of Defense (DoD) and the Ministry of Defense of Portugal (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

2.2 It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed acquisition procedures and regulations of the purchasing nation. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. Action

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MoU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interests of security, and the timely conduct of the contracting process are considerations, DoD and MoD agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1 Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

3.2 Ensure that their respective research and development offices are familiar with the principles and objectives of this MoU.

3.3 Ensure that their respective acquisition offices are familiar with the principles and objectives of this MoU.

3.4 Ensure wide dissemination of the basic understanding of this MoU to their respective defense industries.

3.5 Ensure that, to the extent permitted by national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers either price differentials under buy-national laws and regulations, or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation to the extent consistent with national laws and procedures.

3.6 Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to optimize industrial participation.

3.7 Review defense items and requests for services submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their industries to participate in the acquisition process.

3.8 Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

3.9 Permit the sales of equipment produced under license to Allied countries, and to appropriate third countries, subject to the policy outlined in Article I, paragraph 12 of the basic MoU. Each agreement for a joint development or coproduction will address transfers of items or technology to Allied or third countries.

3.10 Ensure that those items and services excluded from consideration under this MoU for reasons of protecting overriding national requirements, such as the maintenance of a defense mobilization base (Appendix 1), are limited to a small percentage of total annual defense acquisition spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on acquisition from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

3.11 Ensure that the balance of reciprocal purchasing within the areas of this MoU take into consideration the levels of technology involved, as well as the contractual value, in accordance with the policy outlined in Article I, paragraph 1 of the basic MoU.

3.12 Arrange visits between appropriate government personnel from time to time in order actively to explore possibilities for acquisition and logistic support.

4. Counting Procedures

4.1 The purchases to be counted against the goals of the MoU will be identified jointly by DoD and MoD. In principle, all defense items or components thereof, as defined in the basic MoU, and associated services included in a procurement contract, purchased by MoD and DoD from the other country will be counted against the goals of the MoU as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the MoD and DoD, including their respective agencies, one from the other.

4.1.2 Purchases by either the MoD or DoD from the industry of the other country.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from either US or Portuguese Government or industrial sources as a direct result of commercial efforts of the other, non-supplying country.

4.1.5 Acquisitions by either country of defense items resulting from common funded projects to which the US and Portugal are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such acquisitions will be counted against the goals of the MoU will be, at the time of procurement, mutually agreed between MoD and DoD on a case-by-case basis.

4.1.6 License fees, royalties and other associated income resulting from orders placed by DoD or MoD and/or industry in one country with a licensed company in the other country; or in MoD-DoD transactions.

4.2 The following non-defense items also will be counted against the goals of the MoU:

4.2.1 Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

4.2.2 Purchases by a third country government from the MoD or DoD or from industries of these two countries as a direct result of the efforts of the MoD/DoD of the other country.

5. Administration

5.1 Each country will designate points of contact at the Ministry of Defense level.

5.2 MoD and DoD representatives will meet periodically, alternately in each country, to review the projects undertaken in implementing the MoU. They will discuss acquisition and logistic support needs of each country and the likely areas of cooperation; they will update the financial statement referred to in paragraph 5.3 below as a means of judging the progress of activity in the period under review; and they will consider other matters relevant to this MoU. Specific tasks of the representatives are:

5.2.1 Review the status of acquisitions on the basis of the date available concerning such acquisitions, in comparable terms to be agreed upon by both Parties.

5.2.2 Consider additional steps necessary to facilitate the actions called for in paragraph 3.

5.3 An annual US/Portugal statement consolidating the current balance of defense equipment acquisition and logistic support between the two countries, as well as the long term trends, will be prepared on a basis to be mutually agreed.

5.4 Quality assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reservation concerning US reimbursement) will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be in accordance with national laws and regulations of each country.

5.5 This annex will come into effect on the date of the last signature.

For the Government of the United States of America.

Dated: July 7, 1980.

William J. Perry.

For the Government of Portugal National Armament Director and Ministry of Sec. State Industry.

Brig. Jose Maria da Costa Alvares.

Cardoso Cunha.

December 12, 1979.

Annex II to the Memorandum of Understanding Between the Government of the United States of America and the Government of Portugal Concerning Mutual Cooperation in Defense Equipment Research and Development, Production, Procurement, and Logistic Support, Dated 28 March 1979

Principles Governing Logistic Support of Common Equipment

In implementing Article 1, paragraph 14 of the MoU, the two Governments shall be governed by the following:

1. When developing or procuring defense equipment, both Governments will agree upon the basis for joint follow-on logistic support in areas such as configuration control; interchangeability of assemblies, components and spare parts; maintenance; conversion; storage, spare parts provisioning; etc.

2. Arrangements and procedures for logistic support, paragraph 9, Article 1 of the MoU normally shall apply.

4. Both Governments will issue directives and guidelines to their respective armaments and logistics agencies to achieve the described goals of this MoU

5. This annex will come into effect on the date of the last signature.

For the Government of the United States of America.

Dated July 7, 1980.

William J. Perry.

For the Government of Portugal National Armament Director & Ministry of Sec. State Industry.

Brig. Jose Maria da Costa Alvares.

Cardoso Cunha.

December 12, 1979.

Annex III to the Memorandum of Understanding Between the Government of the United States of America and the Government of Portugal Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement, and Logistic Support of Defense Equipment, Dated 28 March 1979

Terms of Reference

1. The Portugal/U.S. Committee for Mutual Cooperation (hereafter to be called "the Committee") will serve under the direct responsibility of the authorities listed in Article II, sub 2 and 3 of the MoU, respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring implementation of the MoU governing the mutual cooperation in research and development, production, acquisition and logistic support of conventional defense equipment. To this end the Committee members will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

2.1 They will discuss research, development, production, acquisition, and logistic support needs of each country and the likely areas of cooperation, including joint activities in those fields.

2.2 They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

2.3 They will agree to the financial statement of the current balance, given guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

2.4 They will consider any other matters relevant to the MoU

2.5 They will report after each meeting and advise as appropriate.

2.6 The Committee will alternately meet in the United States and in Portugal. The country in which a particular meeting will take place will provide the chairman and the secretariat for that meeting.

For the Government of the United States of America.

Date July 7, 1980.

William J. Perry.

For the Government of Portugal National Armament Director & Ministry of Sec. State Industry.

Brig. Jose Maria da Costa Alvares.

Cardoso Cunha.

December 12, 1979.

T-208 Belgium Memorandum of Understanding

Memorandum of Understanding Between the Government of the Kingdom of Belgium and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research, Development, Production, Procurement and Logistic Support of Defense Equipment

Preamble

The Government of the United States of America and the Government of the Kingdom of Belgium duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

—Make the most cost-effective and rational use of their respective resources allocated to defense,

—Promote the widest possible use of standard or interoperable equipment,

—Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU),

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Mindful of the objectives described in Art. 3 of the North Atlantic Treaty and para. 4 of the final communique of the North Atlantic Summit Council of May 1977 with regard to Alliance cooperation in view of safeguarding Western Security,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment. The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. The two Governments further agree that this MOU should be viewed in the larger context of the cooperation within the Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) want to enhance equipment collaboration by more comprehensive and systematic arrangements among the indivudual member nations.

The parties hereto also agree that in the event of a possible conflict between this MOU and other agreements, they will consult with a view to amending this MOU.

Article I—Principles Governing Reciprocal Defense Cooperation

I. a. Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long term equitable balance in their exchanges, taking into consideration the relative technological level of such procurement, and consistent with their national policies.

b. Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense services and equipment to include components, subsystems, spare parts and major systems at all technological levels.

c. A long term equitable balance will not imply an equal monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities.

d. In order to assess the mutual flow of defense articles and services, the two Governments will jointly determine the counting procedures to be set down in an annex to this MOU that will apply to all defense articles and defense services purchased by them directly or through their respective industries under this MOU.

2. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to optimize standardization and/or interoperability within the Alliance. They will do likewise with regard to offers of services.

3. In the interest of standardization and the effective utilization of scarce resources, the two Governments will, to the extent possible, select qualified defense articles and defense services that have been developed or produced in the other country to meet their requirements, in accordance with the procedures of paragraph 7 below. Defense articles or defense services are those articles or services which may be procured utilizing appropriated funds to the U.S. Department of Defense or budgeted funds of the Belgian Ministry of Defense.

4. Each Government will from time to time notify the other Government of defense articles and services that may only be acquired by the notifying Government from domestic sources, well as those defense articles and services that may be particularly suitable for acquisition by the other Government. Indicative lists of the latter will be provided in an annex to this MOU.

5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

6. Competitive contracting procedures will normally be used in acquiring defense articles developed or produced in or defense services provided by each country for use by the other country's defense establishment.

7. The detailed implementing procedures to be agreed will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals of defense articles produced in or defense services provided by each country will be evaluated without applying price differentials under buy-national laws and regulations, and without applying the cost of applicable import duties. In the event that either party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

b. Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

d. Provisions for duty-free certificates and related documentation;

e. Arrangements concerning quality control and audits of incurred costs and price proposals.

8. Both Governments will review defense articles and defense services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

9. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on or performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

10. a. Transfers to third parties of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

b. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and defense policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Third country transfers approved in accordance with this agreement will count in the calculation of the balance of exchanges as a purchase by the Government authorizing the transfer.

c. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the extent to which a proposed transfer may damage or infringe upon known licensing arrangements whereby commercial firms in the US or Belgium have granted to firms in the other country licenses for the

manufacture of the articles proposed to be transferred to a third country.

11. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two Governments will mutually make available to each other, to the extent possible and in a timely fashion, all information and the proprietary rights required to implement cooperation under this MOU. The two Governments will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements and on fair and reasonable terms, between the industries of the two countries.

12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment covered by this MOU. Both Governments will make their defense logistic system and resources available for this purpose if required and mutually agreed.

Article II—Implementation Procedures

1. Mutually agreed implementing procedures for this MOU will be established and be a part thereof.

2. Representatives of the two Governments will be appointed as the responsible authorities for the implementation of this MOU. The Under Secretary of Defense for Research and Engineering will be the representative for the United States Government. The National Armaments Director will be the representatives for the Government of Belgium.

3. The establishment of a Belgian-United States Committee for Mutual Cooperation and its rules of procedure and competence will be agreed upon in an annex to be made a part of this MOU.

4. Each Government will designate points of contact at the Ministry of Defense level and in the procurement offices under the Ministry of Defense. They will be listed in an annex to be made a part of this MOU.

Article III—Industry Participation

1. Each Government will be responsible for calling to the attention of its respective industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that their industries comply with the regulation pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve maximum industrial participation. Accordingly, the Governments will arrange that their respective acquisition and requirements offices be made familiar with the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas covered by this MOU shall rest with the industries in each country.

Article IV—Security

The General Security of Information Agreement, dated 9 August 1960 and the Agreement for Security Procedures for Industrial Operations, dated 24 July 1979, between the two Governments, apply to activities under this Memorandum of Understanding.

Article V—Annual Statement

An annual United States-Belgium statement of the current balance and long-term trends of R&D cooperation, procurement, maintenance and logistic support of defense equipment between the two nations will be prepared on a basis to be mutually agreed in an annex to this MOU and reviewed during the meetings of the Belgian-United States Committee for Mutual Cooperation, in accordance with its terms of reference.

Article VI—Annexes

Annexes negotiated by the responsible officials and approved by the appropriate government authorities will be incorporated into this MOU and become an integral part thereof as of the date of the last signature.

Article VII—Duration

1. This MOU will remain in effect for a ten-year period. Unless the Governments mutually decide otherwise, the duration will be extended for successive five-year periods.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination.

3. Although the MOU may be terminated by the parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VIII—Implementation

1. The agreements in this MOU represent the understanding reached between the Government of the United States of America and the Government of the Kingdom of Belgium upon the matters referred to herein. Each Government may propose amendments; both Governments must agree in writing to any amendment of this MOU.

2. Any difference of opinion over the interpretation and implementation of this MOU and its annexes will be resolved by consultation between the two Governments.

3. This MOU, in three original texts in the English, French and Dutch languages, all three texts being equally authentic, will come into effect on the date of the last signature.

For the Government of the United States of America.

Harold Brown,

The Secretary of Defense.

Date: 12 December 1979.

For the Government of the Kingdom of Belgium.

Jose Desmarets,

The Minister of Defense.

12 December 1979.

Annex I—Memorandum of Understanding Between the Government of the Kingdom of Belgium and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement and Logistic Support of Defense Equipment Dated 12 December 1979

Principles Governing Implementation

1. Introduction

On 12 December 1979, the Governments of the United States and the Kingdom of Belgium signed a Memorandum of Understanding (MOU) relating to the principles governing mutual cooperation in the research, development, production, procurement and logistic support of defense equipment. This Annex sets forth the agreed implementing procedures for carrying out the MOU.

2. Major Principles

a. The U.S. Department of Defense (DoD) and the Ministry of Defense of Belgium (MOD) will consider for their defense requirements qualified defense items developed or produced in the other country.

b. It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible governing agencies in each country will assist sources in the other country to obtain information concerning intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. Action

DoD and MOD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Standardization and Interoperability, are taken into account. DoD and MOD agree that the following measures shall be taken, recognizing that among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, are considerations related to ensure free and full competition for the award of contracts:

1. Ensure that their respective requirements offices are familiar with the principles and objectives of the MOU.

2. Ensure that their respective research and development offices and institutes are familiar with the principles and objectives of this MOU.

3. Ensure that their respective acquisition offices are familiar with the principles and objectives of this MOU.

4. Ensure wide dissemination of the basic understanding of the MOU to their respective

industries producing and/or developing defense items and/or services.

5. Ensure that, consistent with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such officers, either price differentials under buy-national laws and regulations, or the cost of applicable import duties. Also, provisions will be made for duty-free entry certificates and related documentation to the extent that existing laws and regulations permit.

6. Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

7. Full consideration will be given to all qualified industrial and/or governmental sources in each other's country and to all applications for qualification by sources in the other country.

8. Review defense items submitted by the other country as candidates for respective requirements. Identify requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research and development, production and procurement processes.

9. Use best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries, or other owners of such rights.

10. Ensure that those items and services excluded from consideration under this MOU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MOU because of legally imposed restrictions on procurement from non-national sources, be identified as soon as possible by the MOD and the DoD, and that such defense items and services be kept under review at this level.

11. Ensure that the balance of reciprocal purchases takes into consideration the levels of technology involved, as well as the monetary value of purchases hereunder and each country's financial, industrial, economic and commercial possibilities.

12. DoD and MOD will from time to time arrange visits in order to actively explore possibilities for cooperation on research and procurement, and logistical support and to examine any issues related to counting reports or procedures.

4. Counting Procedures

a. The purchases and other transactions to be counted against the goals of this MOU will be identified jointly by the DoD and MOD. In principle, all defense items and services purchased by the DoD and MOD from the other country will be counted as long as such purchases meet the following criteria:

1. Contracts resulting from direct purchases by the DoD or MOD, including their respective Agencies, one from the other.

2. Contracts resulting from purchases by either the MOD or DoD from the industry of the other country. When such purchases involve offset agreements between the Government of either country and the industry of the other country, the amount of such offset shall be applied in calculating the balance.

3. Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4. Purchases by a third country government from the US or Belgian Government or the industry of either country when either of the following circumstances occur:

—The sale requires the prior agreement of the non-vendor Government.

—The sale is a direct result of the promotional efforts by the Government or industry of the non-vendor country, which fact has been previously acknowledged and agreed by the vendor party.

5. Acquisitions by either country of defense items or services resulting from projects jointly funded by both countries.

6. License fees, royalties and other associated income resulting from orders placed by DoD or MOD and/or industry in one country with a licensed company in the other country; or in DoD-MOD transactions.

7. Transfers of technology, and production, testing and quality control equipment required to achieve the goals of this MOU.

8. Contributions by one country in research, development and demonstration programs in the other country that have been agreed by both Governments.

9. Purchases of non-defense items and services by the Government or industry of either country from the Government or industry of the other, provided that both Governments agree that any particular purchase is to be counted against the goals of this MOU.

b. The following transactions will *not* be counted:

1. Maintenance and logistic support activities in either country under contracts in effect before the effective date of this MOU.

2. Any transaction being carried out under contracts and agreements in effect before the effective date of this MOU.

3. Operational expenses of either Government to achieve the goals of this MOU.

c. Transactions listed in paragraph 4.a.1., and any others that both Governments agree, will be credited in the following manner:

1. At the value of the contract on its effective date.

2. Purchases by third countries of defense items or services from the US or Belgian Government or the industry of either country as described in paragraph 4.a.4. above, will be credited as a sale by the non-vendor country, as follows:

—When authorization by the non-vendor Government is required; the value of the item(s) directly related to the authorization will be credited.

—When the sale is the direct result of promotional efforts by the Government or industry of the non-vendor country; the value of parts, sub-assemblies, assemblies, equipment and services supplies by either the US or Belgian Government or their respective industries will be credited.

d. The following transactions will be credited in the manner and amounts agreed by both Governments:

1. License fees, royalties, and any other income resulting from transfer of technology, and production, testing and quality control equipment between both countries.

2. Orders placed by DoD or MOD and/or industry in one country with a licensed company in the other country, or from DoD-MOD transactions.

3. Contributions by one country in research, development and demonstration programs in the other country.

e. Transactions will be credited according to the exchange rate of the respective currencies on the effective date of the transaction.

f. Each Government will prepare an annual calendar year counting report. These reports will summarize the data counted pursuant to each of the categories above. Supporting data for each category included in the summary will indicate the item supplied, the parties to the transaction, transaction date, and credited value. Both Governments will exchange the summary reports and supporting data sufficiently in advance of the annual meeting to permit review and comment or agreement by the other at least two (2) weeks prior to the meeting. Any disagreement concerning the reports will be settled by the Belgian-US Committee for Mutual Cooperation established pursuant to paragraph 3 of Article II of the MOU.

5. Administration

a. Each Government will designate points of contact at the Ministry of Defense level, as well as within other relevant Departments and Agencies, for the purpose of carrying out those actions necessary to implement this MOU.

b. The Belgian-US Committee for Mutual Cooperation will be responsible for the general administration of this MOU. Its terms of reference are contained in Annex II.

c. Quality assurance procedures outlined in STANAGs 4107 and 4108 will apply, unless other provisions are mutually agree upon. Reimbursement for services provided shall be afforded in accordance with the national laws and regulations of each country.

For the Government of the United States of America.

———— ————,

Dated: 25 April 1983.

For the Government of the Kingdom of Belgium.

———— ————,

Dated: 25 April 1983.

Annex II—Memorandum of Understanding Between the Government of the Kingdom of Belgium and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement and Logistic Support of Defense Equipment Dated 12 December 1979

Terms of Reference for the U.S./Belgian Committee for Mutual Cooperation

1. The Belgian-US Committee for Mutual Cooperation, hereinafter called "the Committee", referred to in paragraph 3 of Article II of the MOU, will operate under the direct responsibility of the Authorities cited in paragraph 2 of the same Article, or their respective representatives. It will be the main body responsible for implementation of the MOU.

2. To this end, the Committee will meet not less than once in each calendar year. The meetings will be devoted to reviewing the progress in implementing and accomplishing the MOU. In particular, it will review progress in removing obstacles to achievement of the MOU goals, and the effectiveness of definite actions that may be mutually agreed to reach these goals. Furthermore, the Committee will:

a. Discuss each country's requirements of research, development, production, procurement and logistic support of defense items, as well as the evaluation of possible areas for cooperation and activities to be jointly developed.

b. Exchange information as to the way the stipulations of the MOU have been implemented and carried out, and, if need be, prepare proposals for amendments to the MOU and/or its Annexes.

c. Review and approve the annual counting report on the trade balance to be prepared in accordance with the guidance contained in Annex I to this MOU. Formulate conclusions and recommendations from it, to include any long-term trends which may be established.

d. Consider any other matters relevant to the MOU.

3. The Committee will alternatively meet in Belgium and in the United States. Each country will appoint a Project Officer, who will jointly prepare the agenda for each subsequent meeting. The country in which a particular meeting takes place will provide the chairman and the secretariat who will be responsible for preparing the minutes of the meeting.

For the Government of the United States of America.

———— ————,

Date 25 April 1983.

For the Government of the Kingdom of Belgium.

———— ————,

Date 26–04–1983.

Annex III—Memorandum of Understanding Between the Government of the Kingdom of Belgium and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement and Logistic Support of Defense Equipment Dated 12 December 1979

Principles Governing Contract Administration Services

1. Introduction

This Annex sets forth the terms, conditions, and procedures under which the Governments will provide each other with selected contract administration services and related information in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU). It is recognized that in the event conflicts arise between any aspect of this Annex and the laws of either Government, the laws shall prevail.

2. Major Principles

The objective of this Annex is to insure each Government is able to employ the most effective and efficient contract administration support possible when acting under the MOU. Nothing is to be construed as impairing a purchasing Government's access to its contractors and their records as may be contractually authorized.

For the purpose of this Annex, contract administration shall include all those necessary actions, other than contract pricing and audit, to be accomplished at, or in proximity to, a firm's place of business to assist the purchasing office in evaluating a prospective contractor's capabilities and in monitoring and enforcing awarded contracts. This Annex supplements NATO Standardization Agreement (STANAG) 4107, hereby incorporated by reference in regard to reciprocal quality assurance.

3. General

The purchasing Government may request specific services and information selected from those listed in Appendix 1 to this Annex which it considers appropriate to the circumstances. The purchasing Government may elect to obtain additional support through its own on-site representatives provided there is no duplication of work performed by the host Government. In addition, the host Government will use its best efforts to supply information requested by the purchasing Government but not listed in this Annex when necessary to support contract award, enforcement, or termination. The provision of any services and information other than those defined in Appendix 1 will be on a cost reimbursable basis. The purchasing Government may modify a request for support during contract performance after consultation with the host Government.

The host Government shall accept requests for services to the extent resources are available and carry them out according to the procedures that Government uses for its own contracts.

Contracts shall contain suitable provisions for the host Government to act for and on behalf of the purchasing Government and shall authorize access to contractor facilities and records and use of contractor assets as necessary for the performance of contract administration services.

Where representatives of either Government deal with a contractor at the same location in support of the same contract or separate contracts, they shall act in full concert according to terms of reference mutually agreed or to be agreed upon.

Each Government shall designate a single office to receive requests for contract administration services. This office shall arrange for the required services to be performed by the appropriate national organization. In addition, each Government may elect to designate an office in or near the other's country to act as a focal point through which requests for support will be forwarded. The host Government will endeavor to keep the purchasing Government's focal point apprised of current contract administration practices and resources to help insure requests for services are reasonable and prudent. The focal point shall advise the host Government concerning contract requirements and clarify requests for services as necessary.

4. Procedures

Requests for contract administration in the Kingdom of Belgium shall be directed to: Commission Interforces d'Evaluation, en Assurance de la Qualite, Quarter Reine Elisabeth—Bloc 11, Rue d'Evere 1, B 1140 Brussel, Belgium, Tel 2/243 40 21. TWX 21339CTRMODB.

Requests for contract administration in the United States shall be directed to: The Department of Defense Control Point, DCASR New York, 201 Varrick Street, New York, New York 10014, Tel 212/374–3446.

Contract administration requests will be accompanied by the number of copies of the request for proposal or awarded contract, as appropriate, prescribed in STANAG 4107 and will specify the contract administration services desired. Every effort will be made to forward support requests simultaneously with the forwarding of awarded contracts to the contractor. The format shall be as described in Annex A to STANAG 4107, with desired services other than quality assurance specified in Block 10. If less than comprehensive quality assurance is needed, the desired services selected from Allied Quality Assurance Publication (AQAP) 10 shall be specified in Block 10. Requests shall reference this Annex to the MOU and shall be processed according to the procedures in STANAG 4107 with due regard to Section VII of this Annex. In principle, acceptance or rejection shall be made within 30 calendar days of receipt by the host Government.

Direct communications between the purchasing office and the assigned contract administration office in resolving contract problems are authorized and encouraged. The purchasing Government shall retain final authority over contract interpretations and enforcement actions, and shall advise the contract administration office on such matters as needed.

In the event the purchasing Government envisions the assignment of in-plant representatives, proposed terms of reference describing an appropriate working relationship with host Government representatives will be suggested to the host Government as early as possible.

5. Responsibility and Liability

Nothing in this annex shall relieve the contractor of any responsibilities under the contract. No liability will attach to the Government, its officers or agents, acting under this Annex on behalf of the other Government.

6. Protection of Information

Data obtained through the implementation of this Annex shall receive the same protection against unauthorized disclosure as such data would normally receive under the

laws and rules of the country which possesses it.

7. Charges

Services defined in Appendix 1 and provided under this Annex will be free of charge, subject to a joint review of the services being exchanged at not less than three-year intervals. If, as a result of such a joint review, either Government determines that charges will be necessary, they may be imposed after not less than one year advance notice. Should such charges by the U.S. Government become necessary, or should the USG provide services other than those defined in Appendix I, Foreign Military Sales Procedures then in effect will apply.

8. Duration

This Annex will remain in effect for a period as set forth in ARTICLE VII of the MOU, and may be terminated under the conditions as set forth in that Article.

9. Implementation

This Annex will come into effect on the date of the last signature.

For the Government of the United States of America.

———— ————,

Date April 26, 1983.

For the Government of the Kingdom of Belgium.

———— ————,

Date 04–26–1983.

Appendix 1. Services to be Exchanged.

Appendix 1 to Annex III—Services To Be Exchanged

In accordance with the principles and procedures as set forth in this Annex the following services will be performed by the host Government within its national boundaries upon requests by and on behalf of the purchasing Government:

1. Support evaluations of contractor capabilities prior to award.

a. Supply available information concerning design, production, and quality control capabilities as appropriate; for example, the amount of available floor space, plant equipment, skilled and unskilled workers, past production of similar items, and the NATO Allied Quality Assurance Publications (AQAPs) against which the firm has been assessed.

b. Evaluate the financial strength of the prospective contractor, estimate the likelihood that financial resources will be sufficient to accomplish the contract, and report the monetary value (in local currency) of host Government capital assets furnished or made available to the contractor which may be used in the contract.

c. Provide access to available accounting system disclosure statements and assistance in determining the system's ability to meet contractual requirements.

2. Perform Government quality assurance, as defined in STANAG 4107, in whole or in part as requested.

3. Report detected potential or actual slippages in contract delivery schedules or any other contractor difficulties which might affect contract performance.

4. Assess contract progress if needed by the purchasing office to authorize financial payments, and recommend approval or disapproval of contractor payment requests.

5. Evaluate the feasibility and practicality of contractor production plans.

6. Verify contractor management reports furnished to the purchasing office during contract performance.

7. Evaluate and monitor contractor compliance with contract requirements governing technical data, especially the propriety of any restrictive markings on data offered for delivery under the contract.

8. Monitor contractor costs under cost reimbursement contracts, and insure the purchasing office is advised of any anticipated overruns or underruns of estimated costs.

9. Advise the purchasing office of supporting contract administration is needed at subcontractor plants to verify the adequacy of prime contractor management, and assist the purchasing Government to obtain desired support within the host country.

T–209 Denmark Memorandum of Understanding

Memorandum of Understanding Between the Government of the Kingdon of Denmark and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research, Development, Production, Procurement and Logistic Support of Defense Equipment

Preamble

The Government of the United States of America and the Kingdom of Denmark duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

—Make the most cost-effective and rational use of the resources available for defense,

—Ensure the widest possible use of standard or interoperable equipment,

—Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

Article I—Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified and cost-effective defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funded of the Danish Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under by national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Danish-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Armaments Director in the Ministry of Defense will be the responsible authority of the Kingdom of Demark for the development of the implementing procedures under this MOU.

Article III—Industry Participation

1. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

Article IV—Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information that the information relates to the Memorandum of Understanding and Annexes thereto, and that the information is furnished in confidence.

Article V—Administration

1. The Danish-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement and logistics support needs of each nation and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Denmark statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

Article VI—Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU and made an integral part thereof.

Article VII—Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VIII—Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America.

Harold Brown,

The Secretary of Defense.

Date: 30 January 1980.

The Kingdom of Denmark.

Poul Sogaard,

The Minister of Defense.

Date: 2 January 1980.

Annex—Reciprocal Quality Assurance Services Under the Memorandum of Understanding Between the United States and Denmark Regarding Defense R&D, Production, and Procurement

I. Preamble

This annex sets forth the terms, conditions and procedures under which the participating governments shall provide one another with quality assurance services in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU). The procedures of STANAG 4107 and AQAP 10 shall apply as supplemented by this annex to the extent consistent with the laws of both governments.

If special quality assurance arrangements are made for international cooperative projects in which the United States and Denmark participate, those special arrangements shall have precedence over this annex. Purchases by Denmark under the Foreign Military Sales (FMS) Program will be handled under U.S. FMS procedures in existence at the time of acceptance of the FMS agreement. Normally, FMS purchases will be afforded the same quality assurance that is provided for similar DoD procurements for use by the U.S. DoD.

Similar provisions will apply, to be changed if necessary, to U.S. Government purchases from the Danish Government.

The objective of this annex is to insure each participating government is able to employ the most effective and efficient quality assurance support possible when acting under this MOU. Nothing is to be construed as impairing a purchasing government's access to its contractors and their records as may be contractually authorized.

II. General

A flexible arrangement is envisioned under which a purchasing government may, on a case-by-case basis, request full quality assurance support as described in AQAP–10 or, alternatively, request specified services listed in AQAP 10 as it considers appropriate to the circumstances, for the purchase of defense items made outside of government-to-government channels. The purchasing government may elect to perform other necessary services through its own on-site representative and will inform the host government in such cases, in order to avoid duplication of the work performed by the host government. The purchasing government may modify a request for support during contract performance after consultation with the host government.

The participating governments shall accept requests for services to the extent resources are available and carry them out according to the procedures each government uses for its own contracts.

—Contracts shall contain suitable provisions for the host governments to act for and on behalf of the purchasing government and shall authorize access to contractor facilities and records and use of contractor assets as necessary for the performance of contract administration services.

Where representatives of both participating governments deal with a contractor at the same location in support of the same or separate contracts, they shall operate in full concert according to terms of reference mutually agreed or to be agreed upon.

The participating governments shall each designate a single office to receive requests for quality assurance services. This office shall arrange for the required services to be performed by the appropriate national organization. In addition, each participating government may elect to designate an office in or near the other participating country to act as focal point through which requests for quality assurance will be forwarded. The host government will endeavor to keep the purchasing Government's focal point appraised of current quality assurance practices and resources to help insure that requests for services are reasonable and prudent. The focal point shall advise the host government concerning contract requirement and clarify requests for services as necessary.

III. Procedures

Request for government quality assurance in Denmark shall be directed to (name and address of receiving focal point).

Requests for government quality assurance in the United States shall be directed to (address).

The format for requests for quality assurance shall be as described in Annex A to STANAG 4107, with the following additional information:

—in block 7, the type of equipment which the material or spare parts pertaining to, and the Armed Forces (Army, Navy, and Air Force) that employs the equipment;

—in block 10, desired services, if less than comprehensive support is needed.

The requests shall reference STANAG 4107 and this annex to the MOU, and shall be processed according to the procedures in the STANAG. Acceptance or rejection shall be made within 30 calendar days of receipt by the performing government. The STANAG procedures shall be followed in regard to notifying the purchasing office of unsatisfactory conditions, processing deviations and waivers, and issuing certificates of conformity.

Direct communications between the purchasing office and the assigned quality assurance office are authorized and encouraged in resolving contract problems. The purchasing government shall retain final authority over contract interpretations and enforcement actions, and shall advise the quality assurance office in a timely fashion on such matters as needed.

In the event the purchasing government envisions the assignment of on-site representatives, proposed terms of reference describing an appropriate working relationship with host government representatives will be suggested to the host government as early as possible.

IV. Responsibility and Liability

Nothing in this annex shall relieve the contractor of any responsibilities under the contract. No liability will attach to the Government, its officers or agents, acting under this Annex.

V. Protection of Information

Data obtained through implementation of this annex shall receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which possesses it.

VI. Charges

Services will be provided under this annex free of charge, for all contracts, subcontracts, and FMS Letters of Offer and Acceptance entered into on or after the date of implementation of this annex, provided that a joint review of the services being exchanged between the participating governments performed at not less than three year intervals indicates that general reciprocity is being maintained. If, as a result of such a joint review, either government determines that charges will be necessary, they may be imposed for future services after not less than one year advance notice. Should charges by the United States become necessary, Foreign Military Sales procedures then in effect will apply.

VII. Duration

This annex will remain in effect for a period as set forth in Article VII of the MOU, and may be terminated under the conditions as set forth in that Article.

VIII. Validity of Text

The English language and Danish language versions of this text have equal validity.

IX. Implementation

This Annex will come into effect on the date of the last signature.

For the Government of the United States of America.

———— ————,

Date 19 Sep 1984.

For the Government of the Kingdom of Denmark.

———— ————,

3/4/1985.

T–210 Luxembourg Memorandum of Understanding

Memorandum of Understanding on Reciprocal Defense Procurement

Preamble

The Government of the United States of America and the Government of the Grand Duchy of Luxembourg, hereinafter referred to as the "Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the areas of research and development, production, procurement and logistic support of defense equipment, in order to:

—Make the most cost-effective and rational use of the resources allocated to defense;

—Promote the widest possible use of standard or interoperable equipment; and,

—Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the Parties to this Agreement;

Noting the potential for increased purchases of defense items by the United States from Luxembourg and from the United States by Luxembourg, and recognizing the desirability of working toward a long term equitable balance in defense trade between the two countries;

Recognizing that suppliers in each country should be afforded the opportunity to compete, on a reciprocal basis, for the procurement of defense products, equipment, materials and services, hereinafter referred to as "defense items and services";

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment. The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment.

Article 1—Principles Governing Mutual Defense Cooperation

1.1.1. Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long-term equitable balance in their exchanges, taking into consideration the relative technological level of such

procurement, and consistent with their national policies. A long-term equitable balance will not imply an equitable monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities.

1.1.2. Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense items and services to include systems, subsystems, components, and spare parts at all technological levels.

1.1.3. In order to assess the mutual flow of defense procurement, the Governments have jointly determined counting procedures which are set down in Annex 1 to this Agreement, and which will apply to all defense items and services purchased by them directly or through their respective industries under this Agreement. Defense items and services are those items and services which may be procured utilizing appropriated funds of the United States Department of Defense or budgeted funds of the Ministry of Defense of Luxembourg.

1.2. The Governments will, consistent with their relevant laws and regulations, give full and prompt consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Atlantic Alliance.

1.3. In the interests of standardization and the effective utilization of scarce resources, each Government shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet the requirements of the Government of such country.

1.4. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

1.5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to achieve and maintain the equitable balance mentioned in Article 1.1.1. of this Agreement, as well as the other aims of this Agreement.

1.6. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each country for use by the other country's defense establishment.

1.7. Both Governments agree that consistent with and to the extent permitted by national laws and regulations, mutually agreed implementing procedures will incorporate the following:

1.7.1. Offers or proposals of defense items produced in or defense services provided by each country will be evaluated without applying price differentials under "buy national" laws and regulations, and without applying the cost of applicable import duties. In the event that either party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

1.7.2. Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

1.7.3. Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

1.7.4. Provisions for duty-free certificates and related documentation;

1.7.5. Arrangements concerning quality control and audits of incurred costs and price proposals.

1.8. Both Governments will review defense items and services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify as eligible suppliers and to submit a bid or proposal.

1.9. Technical Data Packages (TDPs) shall not be transferred between the two countries without the written permission of those owning or controlling any associated proprietary rights. Each Government will ensure that any TDPs which it may receive from the other are not used for any purpose other than for the purpose of offering or bidding on or performing a prospective defense contract, without the prior written agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain.

1.10.1 Transfers to third parties of defense articles or technical data made available under this Agreement, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments or in multilateral agreements to which both Governments are parties.

1.10.2. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commerical advantage, a request from the other for a third country transfer of such defense articles or technical data.

1.11. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. Consistent with its laws and regulations, each Government will make available to the other all information necessary to implement cooperative arrangements under this Agreement. To the extent feasible, both Governments will seek an understanding with their respective industries that, in the interest of standardization and defense industrial cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements between the industries of the two countries.

1.12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Agreement. Each Government will make its defense logistic systems and resources available to the other for this purpose as required and mutually agreed.

Article 2—Implementing Procedures

2.1. Both Governments agree to create a Joint United States-Luxembourg Committee for Defense Industrial Cooperation.

2.2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Department of Defense for the development of implementing procedures under this Agreement.

2.3. The Director of Foreign Trade, in cooperation with the appropriate bodies of the Ministry of Defense, will be the responsible authority to the Government of Luxembourg for the development of implementing procedures under this Agreement.

2.4. The United States-Luxembourg Committee for Defense Industrial Cooperation will be co-chaired by the authorities referred to in paragraphs 2.2 and 2.3, above, or their designated representatives. The Committee will meet as agreed at the request of either Government, but a minimum of once a year to review progress in implementing this Agreement. It will discuss the research, development, production, procurement and logistics support needs of each country and the likely areas of cooperation; agree to the basis of and keep under review the financial statement referred to in paragraph 2.6, below; and consider any other matters relevant to this Agreement.

2.5. Each Government will designate points of contact at the Ministry/Department of Defense level, in each purchasing Service/Agency under the Ministry/Department of Defense, and with other Government Departments and Agencies as appropriate.

2.6. An annual United States-Luxembourg statement of the current balance and long-term trends of R&D cooperation, production, and purchases between the two countries will be prepared on a basis to be mutually agreed.

Article 3—Industry Participation

3.1. Implementation of this Agreement will involve maximum industrial participation. Notwithstanding the governmental procedures to facilitate the implementation of this Agreement, it will be the basic responsibility of the industries in each country to identify and advise their Government of their respective capabilities for cooperation and to carry out the supporting actions to bring industrial participation to consummation.

3.2. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this Agreement and the appropriate implementing guidance. Both Governments will take all necessary steps to ensure that their industries comply with the regulations pertaining to

security and to safeguarding classified information.

3.3. The Governments will arrange that their respective defense acquisition organizations are made familiar with the principles and objectives of this Agreement, and will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

3.4. To encourage the exchange of information in accordance with the purpose of this Agreement, each Government will, pursuant to its national laws and regulations, take action to facilitate participation by properly cleared officials and representatives of the other country in informational symposia, program briefings and prebid conferences, as well as access to publications and visits to installations.

Article 4—Security

4.1. The General Security of Information Agreement dated 17 September 1981, between the two Governments, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4.2. To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government.

4.3. Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Agreement, and that the information is furnished in confidence.

Article 5—Duration

5.1. This Agreement will enter into force when signed, and will remain in force for a period of ten (10) years from the last date of signature.

5.2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination.

5.3. Notwithstanding the expiration or termination of this Agreement, any contract entered into consistent with the terms of this Agreement will continue in effect, unless the contract is terminated in accordance with its own terms.

5.4. Articles 1.9, 1.10 and Article 4 of this Agreement will continue in full force and effect after, and notwithstanding the expiration or termination of this Agreement.

Article 6—Annexes

6.1. Annexes which may be negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this Agreement and made an integral part thereof.

Done in Luxembourg, this 2 day of December —, in duplicate.

For the United States of America.

———— ————,

For the Grand-Duchy of Luxembourg.

———— ————,

Memorandum of Understanding on Reciprocal Defense Procurement

Annex 1—Principles Governing Implementation

Article 1—Introduction

This Annex sets forth the procedures agreed upon by the Governments of the United States and the Grand-Duchy of Luxembourg to implement the Memorandum of Understanding on Reciprocal Defense Procurement, hereinafter referred to as "The MOU".

Article 2—Major Principles

2.1 Each Government will consider for its defense requirements qualified defense items and services developed or produced in the other country.

2.2 The responsible Government authorities in each country will assist sources in the other country to obtain appropriate information concerning:

2.2.1 Plans and programs for research, development, production and acquisition of defense items and services.

2.2.2 Requirements for the qualification of sources.

2.2.3 Specifications and quality assurance standards.

Both Governments will respond promptly to requests for information that comply with their respective regulations and procedures. However, notwithstanding the governmental procedures established to facilitate the Agreement, it will be the responsibility of Government and/or industry representatives in each country to acquire information concerning the other country's research, development and procurement plans and to respond to solicitations in accordance with the prescribed acquisition regulations and procedures of the purchasing country.

Article 3—Actions

3.1 Both Governments will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this Agreement, which are intended to be compatible with the broad aims of NATO Standardization and Interoperability, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interest of security, and the timely conduct of the contracting process must be considered, both Governments agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1.1 Ensure that, as a minimum, the following entities are familiar with the principles, objectives and terms of the Agreement:

—Their respective defense planning, programming, and contracting offices.

—their respective offices responsible for defense imports and exports.

—Their respective agencies and industries responsible for the research, development, and production of defense items and/or services.

3.1.2 Ensure that, consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying to such offers either price differentials under "buy-national" laws and regulations, or the cost of import duties.

3.1.3 Consistent with national laws and regulations, provisions will be made for duty-free entry certificates and related documentation.

3.1.4 Assist industries in their respective countries to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial participation in the implementation of the Agreement.

3.1.5 Consider defense items and service offered by the Government or industry of the other country as candidates for their respective requirements. Identify specific requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research, development, production and procurement processes.

3.1.6 Use their best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

3.1.7 Permit the sale of defense equipment produced under license, coproduction agreements and/or joint development projects to allied countries and to appropriate third countries, subject to the policy outlined in Article 1.10 of the Agreement. Each agreement for a joint development or coproduction will address transfers of items or technology to allied or third countries.

3.1.8 Ensure that those items and services excluded from consideration under this Agreement for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. Such defense items and services, together with those items and services that must be excluded from consideration under this Agreement because of legally imposed restrictions on acquisition from non-national sources, will be identified as soon as possible by both Governments. Lists of these items and services will be prepared and kept under review at this level.

3.1.9 Pursuant to its national laws and regulations, facilitate arrangements for visits by properly cleared Government officials and

industry representatives of the other country to explore and actively promote cooperation possibilities for research, development, production, procurement and logistic support of defense equipment.

3.2 Both Governments will ensure that their respective actions under the Agreement in working toward an equitable balance in defense trade, take into consideration the level of technology involved as well as the contractual value of the items being purchased.

Article 4—Counting Procedures

4.1 The purchases and other transactions to be counted against the goals of this Agreement will be identified jointly by the two Governments. In principle, all defense items and services purchased by one Government from the other country will be counted as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the defense agencies, one from the other.

4.1.2 Purchases by defense agencies of either country from the industry of the other country.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from the Government of the United States or the Government of Luxembourg or the industry of either country when either of the following circumstances occur:

—The sale requires the prior agreement of the non-vendor Government.

—The sale is a direct result of the promotional efforts by the Government or industry of the non-vendor country, which fact has been previously acknowledged and agreed by the vendor party.

4.1.5 Acquisitions by either country of defense items or services resulting from projects jointly funded by both countries.

4.1.6 License fees, royalties and other associated income resulting from orders placed by defense agencies of one country with a licensed company in the other country; or in Government-to-Government transactions.

4.1.7 Transfer of technology, and production, testing and quality control equipment required to achieve the goals of this Agreement.

4.1.8 Contributions by one country in research, development and demonstration programs in the other country that have been agreed by both Governments.

4.1.9 Purchases of non-defense items and services by the Government or industry of either country from the Government or industry of the other, provided that both Governments agree that any particular purchase is to be counted against the goals of this Agreement.

4.2 The following transactions will *not* be counted:

4.2.1 Maintenance and logistic support activities in either country under contracts in effect before the effective date of this Agreement.

4.2.2 Any transaction being carried out under contracts and agreements in effect before the effective date of this Agreement.

4.2.3 Operational expenses of either Government to achieve the goals of this Agreement.

4.3 Transactions listed in Article 4.1 of this Annex, and any others that both Governments agree, will be credited in the following manner:

4.3.1 At the value of the contract on its effective date.

4.3.2 Purchases by third countries of defense items or services from the United States Government or the Government of Luxembourg or the industry of either country as described in paragraph 4.1.4. of this Annex, will be credited as a sale by the non-vendor country, as follows:

—When authorization by the non-vendor Government is required; only the value of the item(s) directly related to the authorization will be credited.

—When the sale is the direct result of promotional efforts by the Government or industry of the non-vendor country; only the value of parts, subassemblies, assemblies, equipment and services supplied by either the Government of the United States or the Government of Luxembourg or their respective industries will be credited.

4.4 The following transactions will be credited in the manner and amounts agreed by both Governments:

—License fees, royalties, and any other income resulting from transfers of technology, and production, testing and quality control equipment between both countries.

—Orders placed by defense agencies in one country with a licensed company in the other country, or from Government-to-Government transactions.

—Contributions by one country in research, development and demonstration programs in the other country.

4.5 Transactions will be credited according to the exchange rate of the respective currencies on the effective date of the transaction.

4.6 Each Government will prepare an annual counting report. These reports will summarize the data counted pursuant to each of the categories above. Supporting data for each category included in the summary will indicate the item supplies, the parties to the transaction, transaction date, and credited value. Both Governments will exchange the summary reports and supporting data sufficiently in advance of the annual meeting to permit review and comment or agreement by the other at least two (2) weeks prior to the meeting. Any disagreement concerning the reports will be settled by the Committee established pursuant to Article 2.1 of the Agreement.

Articles 5—Administration

5.1 Each Government will designate points of contact at their respective Ministry/Department of Defense levels, as well as within other relevant departments and agencies, for the purpose of carrying out those actions necessary to implement the Agreement.

5.2 The Committee for Defense Industrial Cooperation will be responsible for the general administration of the Agreement.

5.3 Quality assurance procedures outlined in STANAGS 4107 and 4108 will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the national laws and regulations of each country.

T–211 France Memorandum of Understanding

Synopsis—U.S./France Memorandum of Understanding

Memorandum of Understanding (MOU) Between the Government of the French Republic and the Government of the United States of America Concerning the Principles Governing Reciprocal Purchase of Defense Equipment

On May 22, 1978, the Minister of Defense of France and the Secretary of Defense of the United States signed an MOU for reciprocal defense procurement. The purpose of this MOU, which is classified, CONFIDENTIAL, is the seek balanced cooperation in defense equipment, research, development, production, and purchasing.

In accordance with the U.S./France MOU, contracting authorities of each country will:

—Evaluate offers without applying price differentials resulting from buy national laws (in the United States, the Buy American Act).

—Consistent with the laws and policies of each country, attempt to obtain exemptions from customs, duties, taxes, or other restrictions designed to limit participation by industries of the other country.

—Take into consideration all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office, it being understood that offers will satisfy requirements for performance, quality, delivery, and cost.

—Assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications, and appropriate documentation.

Both countries agree that in general the principles of this MOU will apply to defense purchases of both Governments on the broadest possible basis. Items and services will be excluded from consideration under this MOU in order to protect the defense mobilization base; because of legally imposed restrictions; and for other reasons to be discussed by the parties from time to time in meetings between the MOD and the DoD. A Franco-American Committee for Defense Equipment (FACDE) will be established for this purpose. Both countries will ensure that those items and services excluded from consideration under this MOU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending.

Each Government will be responsible for bringing to the attention of the defense industries within its country, the basic understanding of this MOU, together with appropriate guidance on its implementation. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and classified information safeguarding.

Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange that their respective procurement and requirements

offices will be made familiar with the principles and objectives of this MOU and, where considered necessary, revise policies, procedures and regulations to ensure MOU principles are taken into account. Notwithstanding the governmental procedures to facilitate implementation, it will be the basic responsibility of industry in each country to isolate, identify, and advise its Government of capabilities and to carry out the supporting actions to bring industrial participation to consummation.

Yvon Bourges,

Minister of Defense, Republic of France.

Harold Brown,

Secretary of Defense, United States of America.

Annex II to the Memorandum of Understanding Between the Government of the French Republic and the Government of the United States of America Concerning the Principles Governing Reciprocal Purchases of Defense Equipment of May 22, 1978

Item I

The parties to this agreement agree to perform for each other in their own country price proposal audits and postaward audits in connection with the acquisition of defense equipment.

Item II

The audits will be performed pursuant to the provisions of this agreement by the following authorities:

—For the U.S. Government: the Defense Contract Audit Agency (DCAA)

—For the French Government, by a contract audit bureau of the "Ministere de la Defense" appointed by the Chairman of the "Comite de Coordination des Services d'Enquete des prix (CCSEP) for audits requested by the U.S. Department of Defense and, by the Government Commissioner entrusted with the firm to which the contract or subcontract has been awarded for audits requested by the General Accounting Office (GAO).

Each party will make available to the other party all data, including disclosed accounting practices, in support of the contracting officer's negotiation activity, currently available to its own contracting agencies.

Each government will accept auditing services performed on its behalf by another government as if it had performed those services itself.

It is understood that this agreement limits the direct (on-site, on-book) examination of contractor records to the cognizant agencies of the country in which the audit is performed. This does not limit requests for information necessary to determine the acceptability of proposed prices or incurred costs.

Item III

The audit request will be forwarded to the following authorities:

—Cognizant Procuring Contracting Office for acquisitions under U.S. Foreign Military Sales (FMS) procedures and to Director of Defense Contract Audit Agency, Cameron Station, Alexandria, Virginia 22314 for all other acquisitions (for request by French Government agencies).

—Le President du Comite de Coordination des Services d'Enquetes de Prix, Delegation Generale pour l'Armement, 14 rue St. Dominique 75997 Paris-Armees (for the DoD audits).

—Le Chef du Groupe de Controle de la Realisation des Materiels d'Armements, 14 rue St. Dominique 75997 Paris-Armees (for request by GAO).

These requests will be forwarded with all the needed documents (offers, estimates, contracts, annexes, etc. . . .).

Item IV

Audits of contracts in a country will be based on the governing accounting principles and customs of that country.

The object of these audits will be to examine proposed or actual costs in sufficient detail to enable the cognizant contracting officer to determine if particular elements of costs should be specifically dealt with during negotiations with the contractor or subcontractor.

The contracts or subcontracts placed by each country in the other country will take into account the provision of this item.

Item V

Before each acquisition program commences, representatives of each country will meet or consult with one another when necessary to define the goals and the scope of the audits. These preparatory meetings could include contractors' representatives and visits to the contractors' sites and plants.

The audits fulfilled under the terms of this agreement will cover all costs and identify profit amounts. The procuring parties should use to the fullest extent possible previously available information obtained by the agency entrusted with the audit.

The contracting officer or the audit agency will report to the other party the problems encountered during the audit and will call for a new meeting if needed. The audit reports will respond to the questions contained in the request for audit. The report should enable the requester to evaluate independently the acceptability of the price proposals or cost under the respective national regulations.

Upon request of the contracting officer, additional information, supporting data, and explanations or clarifications will be provided to him or to his duly authorized representatives. The contracting officer shall have the final authority to determine when adequate audit information has been provided for negotiation purposes.

Item VI

Each party must assure that in all possible cases its agencies will perform the audits under the terms of Item II of this agreement and pursuant to the terms and conditions agreed during consultation meetings defined in Item V. If, due to extraordinary circumstances, one of the governments states that it is unable to perform the audits, partially or totally, or to perform them in a reasonable time, the contracting country's agencies would have a right to complete the unperformed part of the audits themselves.

Such a right may be exercised only after consultations between the competent offices of the two countries.

In case of a persisting disagreement, the matter will be appealed to the supreme authorities of the two countries. Such audits will be performed in accordance with principles of the performing country.

Item VII

Each party agrees that proprietary data and audit reports should not be disclosed to third parties, but only to the authorities they are answerable to, without the clear agreement of the other country's cognizant authorities and the audited company.

However, the contracting officer generally will release the final results of audits of subcontractors to higher tier contractors for negotiation purposes. Specific information or extracts of the report may only be given to higher tier contractors in accordance with direction and qualifications contained in the audit report. Unreasonable restrictions upon disclosures will be discouraged.

The data (and their extracts) obtained through the implementation of this agreement will receive the same protection against unauthorized disclosure as such data would normally receive under the law and rules of the country which receives them.

The two parties agree that this agreement will not be used for the disclosure of proprietary data which could impair the competitive abilities of the contractors and subcontractors.

Item VIII

Access to classified information involving the National Security of each country will be governed by the provisions of the bilateral agreements in force between the two governments.

Item IX

This agreement is drawn up in four copies, two in English and two in French; each one of these documents in authoritative.

———— ————,

For the Government.

———— ————,

For the French Government.

Concurred in by the Comptroller General of the United States.

Annex III to the Memorandum of Understanding of May 22, 1978, Between the Government of the French Republic and the Government of the United States of America Concerning the Principles Governing Reciprocal Purchases of Defense Equipment

Principles Governing Contract Administration Services

1. Purpose

This annex sets forth the terms, conditions, and procedures which the participating Governments will provide each other with selected contract administration services and related information in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU) of May 22, 1978. Price audit operations are excluded; they are the subject of Annex II of the basic MOU. It is recognized that in the event conflicts arise between any aspect of this Annex and the laws of either Government, the laws shall

prevail. In the event such conflict interferes with the objectives of this annex, the parties agree that they will consult and exercise their best efforts to resolve such conflict.

2. Major Principles

The objective of this annex is to insure each participating Government acting under the MOU is able to employ the most effective and efficient contract administration support for contracts awarded by one country to one of the other country's contractors including contracts awarded on behalf of France by the United States under the Foreign Military Sales (FMS) procedures. Nothing is to be construed as impairing a purchasing Government's access to its contractors and their records as may be contractually authorized.

This annex supplements NATO Standardization Agreement (STANAG) 4107, hereby incorporated by reference, in regard to reciprocal quality assurance.

For the purpose of this Annex, contract administration shall include all those necessary actions, to be accomplished at, or in proximity to, a firm's place of business to assist the purchasing office in evaluating a prospective contractor's capabilities and in monitoring and enforcing awarded contracts.

3. General Rules

A purchasing Government may request specific services and information selected from among those listed in Appendix 1 hereto which it considers appropriate to the circumstances. The purchasing Government may elect to obtain additional support through its own on-site representatives provided there is no duplication of work performed by the host Government. In addition, the host Government will use its best efforts to supply information requested by the purchasing Government but not listed in this annex when necessary to support contract award, enforcement, or termination. The provision of any services and information agreed by the parties other than those defined in Appendix 1 will be on a cost reimbursable basis. The purchasing Government may modify a request for support during contract performance after consultation with the host Government.

The participating Governments shall accept requests for services to the extent resources are available and carry them out according to the procedures each Government uses for its own contracts.

Contracts shall contain suitable provisions for the host Government to act for and on behalf of the purchasing Government and shall authorize access to and use of contractor facilities and records as necessary for the performance of contract administration services.

Where representatives of both participating Governments deal with a contractor at the same location in support of the same contract or separate contracts, they shall act in full concert according to terms of reference mutually agreed or to be agreed upon.

The participating Governments shall each designate a single office to receive requests for contract administration services. This office shall arrange for the required services to be performed by the appropriate national organization. In addition, each participating Government may elect to designate an office in or near the other participating country to act as a focal point through which requests for support will be forwarded. The host Government will endeavor to keep the purchasing Government's focal point apprised of current contract administration practices and resources to help insure requests for services are reasonable and prudent. The focal point shall advise the host Government concerning contract requirements and clarify requests for services as necessary.

4. Procedures

Requests for contract administration in France shall be directed to Monsieur le Directeur du Service de la Surveillance, Industrielle de l'Armement, 10, rue Sextius Michel, 75732 Paris Cedex 15—France (tel.: No. 554.92.11 and telex No. 270 857).

Requests for contract administration in the United States shall be directed to The Department of Defense Control Point, DCASR New York, 201 Varrick Street, New York, NY 10014, Tel. 212/374–3446.

Contract administration requests will be accompanied by a copy of the request for proposal or awarded contract, as appropriate, and will specify the contract administration services desired. Every effort will be made to forward requests for support simultaneously with the forwarding of the awarded contract to the contractor. The format for requests shall be as described in Annex A to STANAG 4107, with desired services other than quality assurance specified in Block 10. Requests shall reference this annex to the MOU, and shall be processed according to the procedures in STANAG 4107. In principle, acceptance or rejection shall be made within 30 calendar days of receipt by the host Government.

Direct communications between the purchasing office and the assigned contract administration office in resolving contract problems are authorized and encouraged. The purchasing Government shall retain final authority over contract interpretations and enforcement actions; and shall inform the contract administration office on such matters as needed.

In the event the purchasing Government envisions the assignment of inplant representatives, proposed terms of reference describing an appropriate working relationship with host Government representatives will be suggested to the host Government as early as possible.

5. Liability

Nothing in this annex shall relieve the contractor of any responsibilites under the contract. No liability will attach to a participating Government, its officers or agents, acting under this annex on behalf of the other participating Government.

6. Protection of Information

Data obtained through the implementation of this annex shall receive the same protection against unauthorized disclosure as such data would normally receive under the law and rules of the country which possesses it.

7. Charges

Services defined in Appendix 1 and provided under this annex will be free of charge, subject to a joint review, performed at not less than three year intervals, of the services being exchanged between the participating Governments. If as a result of such review, either Government determines that charges will be necessary, they may be imposed after not less than one year advance notice. Should charges by the U.S. Government become necessary, or should the U.S. Government provide services other than those defined in Appendix I, Foreign Military Sales procedures then in effect will apply.

8. Protections, Rights, and Privileges of Foreign Contact Administration Personnel

Visiting foreign contract administration personnel acting under this annex shall receive the protection normally extended by visiting military officials of the participating Governments.

9. Implementation

This annex shall come into effect the day of the last signature.

10. Duration

The annex will remain in effect for a period as set forth in Article IV of the MOU, and may be terminated earlier in writing by either participant, to become effective on the last day of the sixth month after notice of termination is given.

11. Validity of Text

This annex will be drafted in French and English, both versions to have equal validity.

———— ————,

For the Government of the Republic of France.

———— ————,

For the Government of the United States of America.

Appendix 1 to Annex III—Services To Be Exchanged

In accordance with the principles and procedures as set forth in this Annex the following services will be performed by the host Government within its national boundaries upon requests by and on behalf of the purchasing Government:

1. Support evaluations of contractor capabilities prior to award.

a. Supply available information concerning design, production, and quality control capabilities as appropriate; for example, the amount of available floor space, plant equipment, skilled and unskilled workers, past production of similar items, and the NATO Allied Quality Assurance Publications (AQAPs) against which the firm has been assessed.

b. Evaluate the financial strength of the prospective contractor, estimate the likelihood that financial resources will be sufficient to accomplish the contract, and report the monetary value (in local currency) of host Government capital assets furnished or made available to the contractor which may be used in the contract.

2. Perform Government quality assurance, as defined in STANAG 4107, in whole or in part as requested.

3. Report detected potential or actual slippages in contract delivery schedules or any other contractor difficulties which might affect contract performance.

4. Assess contract progress if needed by the purchasing office to authorize financial payments, and recommend approval or disapproval of contractor payment requests.

5. Evaluate the feasibility and practicality of contractor production plans.

6. Verify contractor management reports furnished to the purchasing office during contract performance.

7. Evaluate and monitor contractor compliance with contract requirements governing technical data, especially the propriety of any restrictive markings on data offered for delivery under the contract.

8. Monitor contractor costs in the exceptional case of cost reimbursement contracts, and insure the purchasing office is advised of any anticipated overruns or underruns of estimated costs.

9. Advise the purchasing office if supporting contract administration is needed at subcontractor plants to verify the adequacy of prime contractor management, and assist the purchasing Government to obtain desired support within the host country.

T-212 Spain Memorandum of Understanding

Complementary Agreement Four—Defense Industrial Cooperation

Preamble

The Government of the United States of America and the Government of Spain, hereinafter referred to as the "Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the areas of research and development, production, procurement and logistic support of defense equipment, in order to:

—Make the most cost-effective and rational use of the resources allocated to defense;

—Promote the widest possible use of standard or interoperable equipment; and

—Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the Parties to this Agreement;

Noting the substantial purchases of defense items by Spain from the United States and the purchase of defense items from Spain by the United States, and recognizing the desirability of working toward an equitable balance in defense trade between the two countries;

Recognizing that suppliers in each country should be afforded the opportunity to compete, on a reciprocal basis, for the procurement of defense products, equipment, materials and services, hereinafter referred to as "defense items and services";

Seeking to improve the present situation and to strengthen their military capability and economic position through the mutual acquisition of standard or interoperable equipment and to achieve the above aims;

Enter into this Agreement, which sets out the guiding principles governing mutual cooperation in research and development, production, procurement and logistic support of conventional defense equipment.

Article 1—Principles Governing Mutual Defense Cooperation

1.1.1 Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense research and development (R&D) cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base.

1.1.2 Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense items and services to include systems, subsystems, components, and spare parts at all technological levels.

1.1.3 In order to assess the mutual flow of defense procurement, the Governments have jointly determined counting procedures which are set down in Annex 1 to this Agreement, and which will apply to all defense items and services purchased by them directly or through their respective industries under this Agreement. Defense items are services and those items and services which may be procured utilizing appropriated funds of the United States Department of Defense or budgeted funds of the Spanish Ministry of Defense.

1.2 The Governments will, consistent with their relevant laws and regulations, give full and prompt consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Atlantic Alliance.

1.3 In the interests of standardization and the effective utilization of scarce resources, each Government shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet the requirements of the Government of such country.

1.4 Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

1.5 Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to achieve and maintain the equitable balance mentioned in Article 1.1.1 of this Agreement, as well as the other aims of this Agreement.

1.6 Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each country for use by the other country's defense establishment.

1.7 Both Governments agree that consistent with and to the extent permitted by national laws and regulations, mutually agreed implementing procedures will incorporate the following:

1.7.1 Barriers to defense industrial cooperation including those to procurement of defense items developed or produced in the other country shall be removed. Specifically, offers or proposals of defense items produced in or defense services provided by each country will be evaluated without applying price differentials under "buy national" laws and regulations, and without applying the cost of applicable import duties;

1.7.2 Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

1.7.3 Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

1.7.4 Provisions for duty-free certificates and related documentation;

1.7.5 Arrangements concerning quality control and audits of incurred costs and price proposals.

1.8 Both Governments will review defense items and services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify as eligible suppliers and to submit a bid or proposal.

1.9 Technical Data Packages (TDPs) shall not be transferred between the two countries without the written permission of those owning or controlling any associated proprietary rights. Each Government will ensure that any TDPs which it may receive from the other are not used for any purpose other than for the purpose of offering or bidding on or performing a prospective defense contract, without the prior written agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain.

1.10.1 Transfers to third parties of defense articles or technical data made available under this Agreement, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments or in multilateral agreements to which both Governments are parties.

1.10.2 Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data.

1.11 Both Governments will use their best efforts to assist in negotiating licenses,

royalties and technical information exchanges with their respective industries or other owners of such rights. Consistent with its laws and regulations, each Government will make available to the other all information necessary to implement cooperative arrangements under this Agreement. To the extent feasible, both Governments will seek an understanding with their respective industries that, in the interest of standardization and defense industrial cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements between the industries of the two countries.

1.12 Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Agreement. Each Government will make its defense logistic systems and resources available to the other for this purpose as required and mutually agreed.

1.13 To the extent consistent with their respective laws and regulations and on the basis of reciprocity, each Government will waive its claims for reimbursement from the other with respect to nonrecurring research, development, and production costs.

Article 2—Implementing Procedures

2.1 Both Governments agree to create a Joint United States-Spanish Committee for Defense Industrial Cooperation to which they will appoint representatives who will develop terms of reference for this Committee and procedures for implementing this Agreement. Such implementing procedures are included in Annex 1 to this Agreement.

2.2 The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Department of Defense for the development of implementing procedures under this Agreement.

2.3 The Director General de Armamento y Material of the Ministry of Defense will be the responsible authority of the Government of Spain for the development of implementing procedures under this Agreement.

Article 3—Industry Participation

3.1 Implementation of this Agreement will involve maximum industrial participation. Notwithstanding the governmental procedures to facilitate the implementation of this Agreement, it will be the basic responsibility of the industries in each country to identify and advise their Government of their respective capabilities for cooperation and to carry out the supporting actions to bring industrial participation to consummation.

3.2 Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this Agreement and the appropriate implementing guidance. Both Governments will take all necessary steps to ensure that their industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3 The Governments will arrange that their respective defense acquisition organizations are made familiar with the principles and objectives of this Agreement, and will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

3.4 To encourage the exchange of information in accordance with the purpose of this Agreement, each Government will, pursuant to its national laws and regulations, take action to facilitate participation by properly cleared officials and representatives of the other country in informational symposia, program briefings and prebid conferences, as well as access to publications and visits to installations.

Article 4—Security

4.1 Security arrangements under this Agreement will be subject to any subsequent security agreements entered into by the Governments. Until such security arrangements are agreed, the following provisions will apply:

4.1.1 To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government.

4.1.2 Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Agreement, and that the information is furnished in confidence.

4.1.3 Each Government will permit security experts of the other Government to make periodic visits to its territory, when it is mutually convenient, to discuss with its security authorities its procedures and facilities for the protection of classified military information furnished to it by the other Government. Each Government will assist such experts in determining whether such information provided to it by the other Government is being adequately protected.

4.1.4 The recipient Government will investigate all cases in which it is known or there are grounds for suspecting that classified military information from the originating Government has been lost or disclosed to unauthorized persons. The recipient Government shall also promptly and fully inform the originating Government of the details of any such occurrences, and of the final results of the investigation and corrective action taken to preclude recurrences.

Article 5—Defense Production Projects

5.1 The Government of the United States shall use its best efforts to furnish the Government of Spain such assistance as may be mutually agreed upon in light of the latter's priorities for the development, production, maintenance, repair and overhaul of Spanish defense equipment and materials, including arms and ammunition.

5.2 As a contribution to increasing the productive capacity of the Spanish military industry, defense production projects shall be designated by mutual agreement. A list of those projects under consideration shall be developed as soon as feasible; this list shall become part of this Agreement. Each Government shall from time to time notify the other of defense industrial cooperation projects it considers particularly suitable for addition to the list. These projects may be carried out by Spain alone, or as cooperative joint production projects by Spain and the United States, or as multilateral projects with the participation of one or more NATO countries as mutually agreed.

5.3 The Government of the United States will provide to the Government of Spain, or will assist the Government of Spain to obtain wherever possible at no cost, or on terms no less favorable then those extended by the Government of the United States to other NATO countries, the industrial property rights requested by the Government of Spain to develop its own defense production or to promote standardization and interoperability of equipment manufactured in Spain with that of the United States, and with other members of the NATO Alliance.

5.4 In accordance with the objectives set forth in Article 1.1.1 of this Agreement and the other goals of this Agreement, the Governments may enter into specific Government-to-Government or Government-to-industry agreements for cooperation in developing, producing, coproducing or procuring defense items.

Article 6—Administration

6.1 The United States-Spanish Joint Committee for Defense Industrial Cooperation will be co-chaired by the authorities referred to in Article 2 of this Agreement, or their designated representatives. The Committee will meet as agreed at the request of either Government, but a mimimum of once a year to review progress in implementing this Agreement. It will discuss the research, development, production, procurement and logistics support needs of each country and the likely areas of cooperation; develop the list of defense industrial cooperation projects mentioned in Article 5.2 of this Agreement; agree to the basis of and keep under review the financial statement referred to in Article 6.3 of this Agreement; and consider any other matters relevant to this Agreement.

6.2 Each Government will designate points of contact in the Ministry/Department of Defense level, in each purchasing Service/Agency under the Ministry/Department of Defense, and with other Government Departments and Agencies as appropriate.

6.3 An annual United States-Spanish statement of the current balance and long-term trends of R&D cooperation, production, and purchases between the two countries will be prepared on a basis to be mutually agreed.

Article 7—Effect of Termination

7.1 Notwithstanding the expiration of termination of this Agreement, any contract entered into consistent with the terms of this Agreement will continue in effect, unless the

contract is terminated in accordance with its own terms.

7.2 Articles 1.9, 1.10 and Article 4 of this Agreement will continue in full force and effect after, and notwithstanding the expiration or termination of this Agreement.

Article 8—Entry into Force

8.1 This Agreement, including its Annexes, will enter into force and remain in force in accordance with the provisions of Article Six of the Agreement on Friendship, Defense and Cooperation.

8.2 Supplementary protocols which may be negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this Agreement and made an integral part thereof.

Done in Madrid, this 2nd day of July, 1982, in duplicate, in the English and Spanish languages, both texts being equally authentic.

For the United States of America.

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For the Kingdom of Spain.

———— ————,

Complementary Agreement Four—Defense Industrial Cooperation

Annex I—Principles Governing Implementation

Article 1—Introduction

This Annex sets forth the procedures agreed upon by the Governments of the United States and Spain to implement Complementary Agreement Four, hereinafter referred to as "The Agreement," to the Agreement on Friendship, Defense and Cooperation between the two countries.

Article 2—Major Principles

2.1 Each Government will consider for its defense requirements qualified defense items and services developed or produced in the other country.

2.2 The responsible Government authorities in each country will assist sources in the other country to obtain appropriate information concerning:

2.2.1 Plans and programs for research, development, production and acquisition of defense items and services.

2.2.2 Requirements for the qualification of sources.

2.2.3 Specifications and quality assurance standards.

Both Governments will respond promptly to requests for information that comply with their respective regulations and procedures. However, notwithstanding the governmental procedures established to facilitate the Agreement, it will be the responsibility of Government and/or industry representatives in each country to acquire information concerning the other country's research, development and procurement plans and to respond to solicitations in accordance with the prescribed acquisition regulations and procedures of the purchasing country.

Article 3—Actions

3.1 Both Governments will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of the Agreement, which are intended to be compatible with the broad aims of NATO standardization and interoperability, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interests of security, and the timely conduct of the contracting process must be considered, both Governments agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1.1 Ensure that, as a minimum, the following entities are familiar with the principles, objectives and terms of the Agreement:

—Their respective defense planning, programming, and contracting offices.

—Their respective offices responsible for defense imports and exports.

—Their respective agencies and industries responsible for the research, development, and production of defense items and/or services.

3.1.2 Ensure that, consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying to such offers either price differentials under "buy-national" laws and regulations or the cost of import duties.

3.1.3 Consistent with national laws and regulations, provisions will be made for duty-free entry certificates and related documentation.

3.1.4 Assist industries in their respective countries to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial participation in the implementation of the Agreement.

3.1.5 Consider defense items and services offered by the Government or industry of the other country as candidates for their respective requirements. Identify specific requirements and proposed purchases to the other country in a timely fashion to ensure that agencies and industries of such country are afforded adequate time to be able to participate in the research, development, production, and procurement processes.

3.1.6 Use their best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

3.1.7 Permit the sale of defense equipment produced under license, coproduction agreements and/or joint development projects to allied countries and to appropriate third countries, subject to the policy outlined in Article 1.10 of the Agreement. Each agreement for a joint development or coproduction will address transfers of items or technology to allied or third countries.

3.1.8 Ensure that those items and services excluded from consideration under the Agreement for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense acquisition spending. Such items and services, together with those that must be excluded from consideration under the Agreement because of legally imposed restrictions on acquisition from non-national sources, will be identified as soon as possible by the Department of Defense as well as by the Ministry of Defense. Lists of these items and services will be prepared and kept under review at this level.

3.1.9 Pursuant to its national laws and regulations, facilitate arrangements for visits by properly cleared Government officials and industry representatives of the other country to explore and actively promote cooperation possibilities for research, development, production, procurement and logistic support of defense equipment.

3.2 Both Governments will ensure that their respective actions under the Agreement in working toward an equitable balance in defense trade, take into consideration the level of technology involved as well as the contractual value of the items being purchased.

Article 4—Counting Procedures

4.1 The purchases and other transactions to be counted against the goals of the Agreement will be identified jointly by the Department of Defense and Ministry of Defense. In principle, all defense items and services purchased by the Department of Defense or Ministry of Defense from the other country will be counted as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the Department of Defense or Ministry of Defense, including their respective agencies, one from the other.

4.1.2 Purchases by either the Department of Defense of Ministry of Defense from the industry of the other country. When such purchases involve offset agreements between the Government of either country and the industry of the other country, the amount of such offset shall be applied in calculating the balance.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from the Government of the United States or the Government of Spain or the industry of either country when either of the following circumstances occur:

—The sale requires the prior agreement of the non-vendor Government.

—The sale is a direct result of the promotional efforts by the Government or industry of the non-vendor country, which fact has been previously acknowledged and agreed by the vendor party.

4.1.5 Acquisitions by either country of defense items or services resulting from projects jointly funded by both countries.

4.1.6 License fees, royalties and other associated income resulting from orders placed by the Department of Defense or the Ministry of Defense and/or industry in one country with a licensed company in the other country; or in Department of Defense-Ministry of Defense transactions.

4.1.7 Transfers of technology, and production, testing and quality control equipment required to achieve the goals of the Agreement.

4.1.8 Contributions by one country in research, development and demonstration programs in the other country that have been agreed by both Governments.

4.1.9 Purchases of non-defense items an l services by the government or industry of either country from the Government or industry of the other, provided that both Governments agree that any particular

purchase is to be counted against the goals of the Agreement.

4.2 The following transactions will not be counted:

4.2.1 Maintenance and logistic support activities in either country under contracts in effect before the effective date of the Agreement.

4.2.2 Any transaction being carried out under contracts and agreements in effect before the effective date of the Agreement.

4.2.3 Operational expenses of either Government to achieve the goals of the Agreement.

4.3 Transactions listed in Article 4.1 of this Annex, and any others that both Governments agree, will be credited in the following manner:

4.3.1 At the value of the contract on its effective date.

4.3.2 Purchases by third countries of defense items or services from the Government of the United States or the Government of Spain or the industry of either country as described in Article 4.1.4 of this Annex, will be credited as a sale by the non-vendor country, as follows:

—When authorization by the non-vendor Government is required; only the value of the item(s) directly related to the authorization will be credited.

—When the sale is the direct result of promotional efforts by the Government or industry of the non-vendor country; only the value of parts, subassemblies, assemblies, equipment and services supplied by either the Government of the United States or the Government of Spain or their respective industries will be credited.

4.4 The following transactions will be credited in the manner and amounts agreed by both Governments:

—License fees, royalties, and any other income resulting from transfers of technology, and production, testing and quality control equipment between both countries.

—Orders placed by the Department of Defense or the Ministry of Defense and/or industry in one country with a licensed company in the other country, or from Department of Defense-Ministry of Defense transactions.

—Contributions by one country in research, development and demonstration programs in the other country.

4.5 Transactions will be credited according to the exchange rate of the respective currencies on the effective date of the transaction.

4.6 Each Government will prepare an annual counting report. These reports will summarize the data counted pursuant to each of the categories above. Supporting data for each category included in the summary will indicate the item supplied, the parties to the transaction, transaction date, and credited value. Both Governments will exchange the summary reports and supporting data sufficiently in advance of the annual meeting to permit review and comment or agreement by the other at least two (2) weeks prior to the meeting. Any disagreement concerning the reports will be settled by the Joint Committee established pursuant to Article 2.1 of the Agreement.

Article 5—Administration

5.1 Each Government will designate points of contact at their respective Ministry/Department of Defense levels, as well as within other relevant departments and agencies, for the purpose of carrying out those actions necessary to implement the Agreement.

5.2 The Joint Committee for Defense Industrial Cooperation will be responsible for the general administration of the Agreement. Its terms of reference are contained in Annex 2 to the Agreement.

5.3 Quality assurance procedures outlined in STANAGS 4107 and 4108 will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the national laws and regulations of each country.

T–213 Turkey Memorandum of Understanding

Supplementary Agreement Number 2 Between the Governments of the United States of America and of the Republic of Turkey on Defense Industrial Cooperation

The Government of the United States of America and of the Republic of Turkey,

Desiring to strengthen their respective defense capabilities as well as those of the North Atlantic Alliance as a whole through efficient cooperation in the fields of research, development, production, procurement and logistic support,

Recognizing that increased defense production capability is an integral part of a strong defense effort,

Having regard to the fact that an essential security relationship is supported by harmonious economic relations,

Bearing in mind the increasing impact of the economy and the application of new technologies on defense matters,

Taking into consideration the efforts of the NATO countries to develop and maintain an advanced industrial and technological capability and to achieve a more rational use of available resources, the standardization and interoperability of equipment and services, increased exchange of information, and better coordinated procurement policies, have agreed as follows:

Article I

1. The Government of the United States of America and the Government of the Republic of Turkey will cooperate in order to increase their defense equipment production and maintenance capabilities and to enable their armed forces to acquire more economically and efficiently modern armaments and equipment needed for self and common defense.

2. To this end, both Governments will seek to facilitate the mutual flow of defense procurement and technological know-how in the field of defense. They will also seek to provide opportunities to compete for procurement of defense equipment and services and to promote and facilitate the coproduction of defense equipment and cooperation in defense research and development and to expand programs of data exchange in defense technologies.

3. This Supplementary Agreement covers areas of possible bilateral cooperation in research, development, production, procurement and logistic support of conventional defense equipment. Measures taken under this Supplementary Agreement shall complement or be consistent with the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC). They therefore agree that, in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this Supplementary Agreement, the Parties hereto will consult with a view of amending this Agreement.

4. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative research and development, and to all requests for production and procurement intended to enhance the standardization and/or interoperability of equipment and services within the Alliance.

5. Each Government shall normally use competitive contracting procedures in acquiring items of defense equipment developed or produced in the other's country.

6. The two Governments shall agree upon detailed procedures to implement this Agreement. These procedures will incorporate the following:

A. Offers or proposals will be evaluated without applying price differentials under "Buy National" laws and regulations and without applying the cost of import duties;

B. Full consideration will be given to all qualified industrial and governmental resources in each country;

C. Offers or proposals will be required to satisfy the applicable requirements of the purchasing Government for performance quality, delivery and costs.

7. Any item to be excluded from consideration of reciprocal defense procurement under this Supplementary Agreement for reasons of protecting national defense requirements should be identified as soon as possible in lists drawn up by the Turkish Ministry of National Defense and the Office of the U.S. Secretary of Defense for their respective countries. These lists will be kept under review and may be modified only at this level.

8. Each Government will ensure that Technical Data Packages (TDP's) made available under this Supplementary Agreement are not used for any purpose other than for bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information contained in TDP's. In no event shall the TDP's be transferred to a third country or any other transferee without the prior written consent of the originating Government.

9. Third party transfer of defense articles or technical data made available under this Supplementary Agreement and of defense articles produced with such data will be

subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise agreed.

10. At the request of the purchasing Government, arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Supplementary Agreement. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II

1. The Government of the United States will furnish the Government of the Republic of Turkey such assistance as may be mutually agreed upon in light of the latter's priorities for the production, maintenance, repair and overhaul of defense equipment and materials, including arms and ammunition.

2. Mutually agreed defense production projects will be designed to constitute an increment to the production capabilities of Turkish industry. Such projects may be carried out solely by Turkey, as joint United States-Turkish projects of coordinated production, or as multilateral projects with the participation of other NATO and friendly countries.

Article III

Each Government will permit the importation and exportation, free from customs duties and taxes or similar charges, of equipment and materials sent to its country for maintenance, repair or overhaul pursuant to this Agreement.

Article IV

1. The Government of the United States will provide to the Government of the Republic of Turkey, or assist the Government of the Republic of Turkey in obtaining wherever possible at no cost, or, on terms no less favorable than those extended by the Government of the United States to any other NATO country, industrial property rights for the purpose of promoting the defense equipment production and enhancing the rationalization, standardization and interoperability of equipment and services of the NATO Alliance.

2. The Government of the United States will waive its reimbursement claims from the Government of the Republic of Turkey, to the extent possible and on a reciprocal basis, with respect to research and development costs and non-recurring production costs.

Article V

1. Each Government will call this Supplementary Agreement to the attention of relevant industries within its territory and will provide appropriate implementing guidance. Both Governments will take all necessary steps to ensure that industries comply with regulations pertaining to security and to the safeguarding of classified information.

2. Implementation of this Supplementary Agreement will involve full industrial participation. Accordingly, the Governments will inform their respective procurement and requirements offices of the principles and objectives of this Supplementary Agreement.

Article VI

1. To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Supplementary Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government.

2. Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification, or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Supplementary Agreement, and that the information is furnished in confidence.

Article VII

This Agreement shall be implemented in accordance with mutually agreed programs. To this end, the two Governments, acting through their competent authorities will enter into implementing agreements. The two Governments will seek ways to implement these programs and projects, identified in an Annex to this Agreement, at the lowest possible cost to Turkey.

Article VIII

1. This Supplementary Agreement shall have an initial term of five years, and shall remain in force from year to year thereafter unless terminated. The Agreement shall be terminated at the end of its initial term or of an annual extension if either Party gives the other Party written notice of its intent to terminate it at least 90 days prior to the end of the term.

2. Should disagreement arise from the interpretation or implementation of this Agreement, the Parties shall consult in order to resolve the matter promptly.

3. Either Party may propose in writing the revision or amendment of this Agreement. In such a case, consultations shall begin immediately. If no result is reached in three months, either Party may terminate the Agreement upon 30 days notice in writing.

Article IX

Should the implementation of the contracts signed within the framework of this Supplementary Agreement not be completed at the time the present Agreement is terminated, provisions of this Agreement shall continue to cover said contracts until they are completed. Should this Agreement be terminated, Article I, Paragraphs 8 and 9, Articles VI will continue in force for those materials and data which were provided during the life of the Agreement.

Article X

Done at Ankara in duplicate, in the English and Turkish languages, each of which shall be equally authentic, on this 29th day of March 1980.

For the Government of the United States of America.

James W. Spain,

Ambassador of the United States of America.

For the Government of the Republic of Turkey.

Hayrettin Erkmen,

Minister of Foreign Affairs.

Annex to Supplementary Agreement Number 2 Between the Governments of the United States of America and the Republic of Turkey on Defense Industrial Cooperation

Projects presently under consideration:

A. *Production of Anti-Armor Ammunition.*

A separate production line is required to manufacture armor piercing ammunition. The objective of this project is to gain the capability of producing hollow-charge and hard-core ammunition for existing weapons in the Turkish Armed Forces and for more modern types of weapons.

B. *Production of Fuses.*

New facilities are required to produce various types of fuses. The objective of this project is to increase existing production capability by obtaining new technology and equipment to produce fuses for artillery ammunition, rocket and missile warheads, and various bombs and mines.

C. *Production of Propellant Powders and Explosives.*

An increase in production capacity of propellant powders is required. The objective of this project is to produce various kinds of propellant powders and high explosives to support artillery ammunition and rocket warhead production programs.

D. *Production of Various Kinds of Rockets.*

The existing manufacturing facilities are required to be supplemented by equipment and production know-how in order to produce various kinds of rockets. The objective of this project is to manufacture and supply rocket-type ammunition and rocket-assisted equipment for the requirements of the Turkish Army.

E. *Improvement of Aircraft Rebuild Capabilities and Improvements of Facilities.*

In order to improve the rebuild capability of existing aircraft in the Turkish Air Force, the development of plans and programs is required. The objective of this project is to be a complete and self-sufficient rebuild capability of engine, body, avionics and other electronic equipment for the existing aircraft, including F–4 Phantoms.

F. *Building a Modern Frigate and Improvement of Overhauling Capability.*

The program of building a modern frigate suitable for Turkish Navy requirements is to be pursued. In parallel with the construction activity the overhauling capability of Golcuk shipyard is to be improved.

G. *Tank Upgrading Program.*

The objective of this project is to convert existing M48 tanks into M48A3 and/or M48AS versions, including Turkish production of various primary components.

Supplementary Agreement Number 3 Between the Governments of the United States of America and of the Republic of Turkey on Installations

Article I

1. Pursuant to Article V of the Agreement for Cooperation on Defense and Economy between the Governments of the United States of America and of the Republic of Turkey, the Government of the Republic of Turkey authorizes the Government of the United States to participate in joint defense measures at the following Turkish Armed Forces Installations:

—Sinop (electromagnetic monitoring).

—Pirinclik (radar warning space monitoring).

—Incirlik (air operations and support).

—Yamanlar (Izmir), Sahintepe (Gemlik), Elmadag (Ankara), Karatas (Adana), Mahmurdag (Samsun), Alemdag (Istanbul), and Kurecik (Malatya) (nodal communications sites).

—Belbasi (seismic data collection).

—Kargaburun (radio navigation).

2. The Government of the Republic of Turkey also authorizes United States administrative and support organizations and activities outside the installations. Such organizations and activities shall be subject to the relevant provisions of this Agreement.

3. Where necessary, requirements specified in this Supplementary Agreement shall be elaborated in appropriate implementing agreements.

Article II

1. Technical operations and maintenance services at the installations where the primary purpose is intelligence collection, nodal communications or radio navigation shall be carried out jointly by Turkish and United States personnel. The modalities of this cooperation, including the distribution of manpower spaces for assignment by each Party and training requirement for Turkish personnel, shall be determined jointly by appropriate authorities of the two Governments. For the purposes of this cooperation, the Government of the United States shall provide access to appropriate training for Turkish personnel.

2. All intelligence information, including raw data, produced at intelligence collection installations in the Republic of Turkey shall be shared by the two Governments in accordance with arrangements determined jointly by the competent technical authorities of the two Governments.

3. Mutually agreed arrangements shall be established to enhance Turkish Armed Forces' utilization of the capability of the Defense Communications System in Turkey to the extent feasible.

4. U.S. and Turkish authorities shall consult to avoid interference between activities of the installations authorized by this Agreement and the activities of other military and civilian installations and to avoid damage to life and property.

5. Modernization, addition or importation of the equipment related to the technical operations at the installations which would increase mission capabilities shall be subject to advance approval by the Government of the Republic of Turkey.

Article III

1. The Government of the United States of America will assign an officer as Commander of the United States Forces at each installation, who also will function as the single point of contact with the Turkish Installation Commander. The Turkish Installation Commander and the officer so assigned by the Untied States shall: exercise command and control over their respective forces, including equipment and material and the premises exclusively used by them, as well as providing security therefor; maintain close contact and coordination to insure that activities are conducted in a manner consistent with the spirit and provisions of this Agreement; and be responsible to insure that activities and technical operations at the installation shall be carried out in accordance with the provisions of this Agreement.

2. Turkish civilian personnel employed by the United States Forces or contractors of the United States Forces shall be under the control, responsibility and direction of their employer.

3. The Turkish Installation Commander shall be responsible for relation with the local Turkish authorities, order and security of the intallation as a whole, including perimeter security, consistent with Paragraph 1 of this Article and modalities mutually agreed in accordance with Paragraph 1, Article II of this Agreement.

4. Access to installations shall be under the control of the Installation Commander. Members and vehicles of the United States Forces and civilian component, as well as contractors, contractor employees and Turkish civilian employees of the United States Forces, shall have access to the installations on the basis of a standard identification card issued by appropriate Turkish authorities upon request of appropriate United States authorities. Such identification cards shall be valid for all installations covered by this Agreement. Personnel awaiting receipt of a standard identification card and temporary duty personnel shall have access on the basis of official orders and United States identification. Authorized dependents and official visitors shall have access on the basis of official United States or Turkish identification. Detailed implementing arrangements for admittance to the installations will be contained in a directive for procedures regarding admittance to the installations.

5. The United States flag may be flown at the headquarters of the United States Forces at the installation.

6. The installation Commander may issue directives applicable to the installation as a whole consistent with the provisions of this Article.

Article IV

The purpose, mission, location, installation plan, authorized quantities of arms and ammunition, authorized major items of equipment and authorized personnel strengths of the United States Forces and civilian component shall be detailed by mutual agreement. Increases in such authorized quantities and strengths shall be subject to prior approval of the appropriate Turkish authorities. The appropriate authorities of the Government of the United States shall provide to the appropriate authorities of the Government of the Republic of Turkey a quarterly report of assigned personnel strengths including Turkish civilian personnel, as well as organization charts for United States units at each installation. The Parties acknowledge that the number of personnel assigned may at times temporarily exceed authorized levels because of the personnel assignment processes.

Article V

1. In accordance with the provisions of the "Agreement Between the Parties of the North Atlantic Treaty Regarding the Status of Their Forces" dated June 19, 1951, the Government of the United States may import into and export from Turkey the equipment for its forces and reasonable quantities of provisions, supplies and other goods exclusively for the use of the United States Forces, its members, civilian component, and dependents. United States authorities shall notify Turkish authorities of such imports and exports by manifest.

2. The importation into and permanent transfer within Turkey of major items of equipment, arms and ammunition shall be subject to the prior approval of appropriate Turkish authorities and transfer within Turkey of arms and ammunition shall be accomplished with safeguards and protections as mutually agreed. Special procedures shall be established for the customs control of arms and ammunition as well as equipment and material of a classified nature.

3. Arms and ammunition and major items of equipment needed for the operation of an installation, including such equipment as may be earmarked for replacement as a result of modernization, will not be removed from Turkey without prior notification.

4. The competent authorities of both Parties shall consult before either Party terminates its activities or reduces its capabilities significantly at the installations.

Article VI

For the purposes of this Agreement, material, equipment, provisions, supplies, services, and civilian labor required by the Government of the United States shall be procured in Turkey to the extent feasible.

Article VII

1. State-owned land areas including improvements, utilities, easements and rights of way already allocated by the Government of the Republic of Turkey for the purposes of this Agreement will continue to be made available without costs to or claims against the Government of the United States. This Article shall not be interpreted as giving the right of ownership to such land areas, improvements, utilities, easements and rights of way to the United States and is without prejudice to the terms of existing non-intergovernmental lease contracts under which certain property is provided to the Government of the United States for the purposes of this Agreement.

2. All non-removable property, including property incorporated in the soil, constructed

or installed by or on behalf of the United States on the land areas allocated by the Government of the Republic of Turkey for the purposes of this Agreement, shall, from the date of its construction or installation, become the property of the Government of the Republic of Turkey, and shall be so registered without prejudice to the authorization by the Turkish authorities to the Government of the United States and its personnel to use such property for the purposes of this Agreement. Upon final termination of the use by the Government of the United States of any such non-removeable property, the right of such use will be transferred to the Government of the Republic of Turkey which will compensate the Government of the United States for the residual value, if any, of the property as determined by mutual agreement, taking into account past practices. Such property shall include those basic utility systems and other fixtures which have been permanently installed in or affixed to the property.

3. The Government of the Republic of Turkey shall have the right of priority to acquire, in accordance with mutually agreed terms, any equipment, materials, and supplies imported into or procured in Turkey by or on behalf of the Government of the United States for the purposes of this Agreement, in the event such equipment, materials and supplies are to be disposed of by the Government of the United States.

4. Construction of new buildings and other property incorporated into the soil at the installations and demolition, removal, alteration and modernization which change the basic structure of existing buildings shall be subject to prior approval by the appropriate Turkish authorities.

Article VIII

1. The costs of operations and maintenance of the installations, except for the premises exclusively utilized for Turkish operations or by Turkish personnel, and the costs of mutually agreed construction, modernization, alterations and repairs at the installations shall be met by the Government of the United States.

2. Each party shall pay its own personnel costs.

3. The costs of extention of local utilities requested by the United States and provided by the Government of the Republic of Turkey to the perimeter of the installations shall be met by the Government of the United States.

Article IX

1. The deployment into or from Turkey and operations of rotational squadron aircraft of the United States authorized to be stationed at Incirlik installation in support of NATO defense plans, their related support units, and aircraft which support activities authorized by Article I, Paragraphs 1 and 2, of this Agreement, shall be carried out in accordance with implementing agreements. These agreements shall also include:

A. Procedures for the joint use of Incirlik. installation and for the provision of air traffic control services; and

B. Procedures for training of rotational squadron aircraft at Incirlik.

2. Procedures for additional training in support of NATO defense plans will be established. Implementation of this training will be accomplished through separate protocols.

3. Aircraft operating in support of these activities shall have access to designated military and civilian airfields serving such activities. Supply vessels operating in connection with these activities shall have access to Turkish seaports to be authorized by the Government of the Republic of Turkey.

4. Provisions, consistent with this Agreement, will be established to facilitate movement of United States aircraft between installations and to and from Turkey.

Article X

The provisions of the Montreux Convention are reserved.

Article XI

The installations specified in Article I, Paragraph 1 above are subject to inspection by the appropriate Turkish authorities. The inspections in question shall be on the basis of mutually satisfactory administrative arrangements between the competent authorities of the Parties.

Article XII

Nothing in this agreement shall be in derogation of the inherent right of the Government of the Republic of Turkey under international law to take all appropriate restrictive measures required to safeguard its national existence in case of emergency situations.

Article XIII

1. This Supplementary Agreement shall be valid for a period of five years from the date of its entry into force. Unless one of the Parties notifies the other Party of the termination of this Agreement three months in advance of the end of this initial five year period, it will continue to be in effect from year to year until terminated by agreement of the Parties or by either Party upon 3 months' notice prior to the end of each subsequent year.

2. In the event of termination of this Agreement, the Government of the United States shall complete the process of its withdrawal and liquidation within one year after the effective date of termination. This Agreement shall be considered to remain in force for the purpose of such withdrawal and liquidation.

Article IX

Done at Ankara in duplicate, in the English and Turkish languages, each of which shall be equally authentic, on this 29th day of March 1980

For the Government of the United States of America,

James W. Spain,

Ambassador of the United States of America.

For the Government of the Republic of Turkey,

Hayrettin Erkmen,

Minister of Foreign Affairs.

Part 3—Defense Cooperating Country Agreements and Annexes

T-300 Scope of Part. This part provides, for information purposes only, copies of Defense Cooperation Country Agreements, Memoranda of Understanding, and accompanying annexes.

T-301 Israel Memorandum of Agreement.

Memorandum of Agreement Between the Government of Israel and the Government of the United States of America concerning the Principles Governing Mutual Cooperation in Research and Development, Scientist and Engineer Exchange, and Procurement and Logistic Support of Selected Defense Equipment

Preamble

The Government of the United States of America and the Government of Israel, hereinafter referred to as the Governments:

• Noting their previous agreements on (1) Data Exchange (signed on 22 December 1970), (2) the Production in Israel of U.S. Designed Defense Equipment (signed on 1 November 1971), and (3) Principles Governing Mutual Cooperation in Research and Development, Scientist and Engineer Exchange, and Procurement and Logistics Support of Selected Defense Equipment (signed of 19 March 1979), and (4) General Security of Information (signed on 10 December 1982) and its Industrial Security Annex (signed on 3 March 1983), and

• Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support in order to:

—Promote the cost-effective and rational use of funds allocated to defense to the extent permitted by their national laws and policies, and

—Mutually benefit from selected research and development programs which satisfy each nation's defense needs in a cost effective manner, and

• Noting that Israel will continue to purchase large quantities of defense equipment from the United States and desiring to ameliorate the ensuing imbalance in defense trade between the two countries by allowing Israeli sources to compete for agreed upon procurements of the U.S. Department of Defense (DoD)

have entered into this Memorandum of Agreement in order to achieve the above aims.

This Memorandum of Agreement (MOA) sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, and procurement and logistic support of agreed upon defense supplies and services.

Article I—Principles Governing Reciprocal Defense Cooperation

1. The Governments intend to facilitate the accomplishment of the above-stated aims through operational and technical exchange leading toward understanding of military requirements and their technological solutions, through cooperation in the research and development areas, and data exchange and scientist-engineer exchange programs, all as listed in Annex A hereto; and by allowing each other's national sources to offer products and services identified in Annex B hereto. All listings of items or categories of

items in Annex B are referred to collectively in this MOA as "items." Items may be added to these annexes by agreement of the Governments. Items may be dropped from these annexes by either Government as its national policies require. The requirements applicable to additions and deletions of items are set forth in Attachment 1.

2. Both Governments, in the cases of purchases directly in support of the programs listed in Annex "A" and in the case of the items and services listed in Annex "B", will accord the following treatment to offers of services to be performed or supplies to be produced, in the other country:

a. These offers will be evaluated without applying price differentials resulting from Buy National laws and regulations, including the Balance of Payment program.

b. To the extent permitted by law and regulation, these offers will be evaluated without consideration of the cost of duties and provisions will be made for duty-free entry certificates and related documentation.

c. Full consideration will be given to all qualified industrial and/or governmental sources of the other country for items or services listed in Annexes A and B consistent with the policies and criteria of the cognizant purchasing agencies, it being understood that such offers will be required to satisfy requirements of the purchasing organization for performance, quality, delivery and costs.

d. The requirements of each Government's laws and regulations relating to purchases of property and services (including the requirements for obtaining competition for such purchases) shall be applicable to the implementation of this agreement.

e. The absence of an item from Annex B is without prejudice to the authority of the Secretary of the Military Department to determine, in any individual case, that application of the restriction of the Buy American Act to that item would be inconsistent with the public interest. The absence of an item from Annex B should not be used as a basis for refusing Israeli industry an opportunity to be placed on the bidder's list, furnished a solicitation, and provided access to pre-bid conference.

f. Whenever permitted by law, waivers of further restrictive requirements are encouraged to facilitate the participation of sources in one country in the procurements of the other country.

3. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of improved defense cooperation. Each Government will also be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Agreement, together with appropriate implementing guidance.

4. Technical information, including Technical Data Packages (TDPs), furnished to the Government or to persons in the other country for the purpose of offering or bidding on, or performing a defense contract shall not be used for any other purpose without the prior agreement of the originating government as well as the prior agreement of those owning or controlling proprietary rights in such technical information. Each Government will ensure that full protection will be given by its officers, agents, and contractors to such proprietary, or to any privileged, protected or classified data and information they contain. Each Government will also undertake its best efforts to ensure compliance with the foregoing provisions on the part of other persons in its country. In no event shall such technical information or TDPs or products derived therefrom be transferred to any third country or any other third party transferee without the prior written consent of the originating Government, other persons in its country. In no event shall such technical information or TDPs or products derived therefrom be transferred to any third country or any other third party transferee without the prior written consent of the originating Government.

5. Both Governments will undertake their best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries, when the items in Annexes A and B require such efforts. Both Governments will also facilitate the necessary export licenses required for the submission of bids or proposals or otherwise required for the performance of Annexes A and B.

6. The transfer to third countries of material or technical information and of articles derived therefrom generated from the mutual cooperative programs included in this MOA is subject to case-by-case advance agreement of the originating Government.

7. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Agreement. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

A joint U.S. DoD-Israel MOD committee shall be established to prepare and update the annexes and attachment hereto for approval by the appropriate authorities of each Government and to periodically review the progress of implementation. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, and other appropriate Department of Defense and State officials, will be responsible in the U.S. Government for the implementation of this MOA. The Director General, Israel Ministry of Defense will be the responsible counterpart authority for the Government of Israel. Other duties to be assigned this committee and the frequency of their meetings shall be further defined in Attachment 1.

Article III—Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this MOA are classified by either Government for security purposes, the General Security Information Agreement, dated 10 December 1982, between the Governments, and that Agreement's Industrial Security Annex, dated 3 March 1983, shall apply.

Article IV—Duration

1. This MOA will remain in effect for a five-year period following its signing and will be extended for successive five-year periods, if at the end of each five-year interval the Governments mutually agree to such an extension.

2. If, however, either government considers it necessary for compelling national reasons to terminate its participation under this MOA before the end of the five-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOA may be terminated by the Parties, any contract entered into consistent with the terms of this MOA shall continue in effect, unless the contract is terminated in accordance with its own terms. Moreover, Article I, Section 4 and 6 and Article III of this MOA will continue in full force and effect after, and notwithstanding, the expiration or termination of this MOA.

3. In any event, this MOA may be amended at any time upon the agreement of the parties.

Moshe Arens,

For the Government of Israel, the Minister of Defense.

Date 19 Mar 1984.

Caspar W.Weinberger,

For the United States, the Secretary of Defense.

Date 19 Mar 1984.

Attachment 1 to Memorandum of Agreement Between the Government of Israel and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in Research and Development, Scientist and Engineer Exchange, and Procurement and Logistic Support of Selected Defense Equipment

I. Terms of Reference

1. A joint U.S. Department of Defense-Israel Ministry of Defense Committee (hereafter to be called "the Committee") is hereby established to serve, under the direct responsibility of the authorities listed in Article II of the Memorandum of Agreement (MOA), as the main body responsible for implementation of the MOA.

2. In particular, the Committee will be responsible for ensuring that the guiding principles of the MOA governing mutually beneficial cooperation in agreed upon conventional defense equipment research and development, procurement and logistic support of conventional defense equipment as designated in Annexes A and B are being implemented; to this end the Committee will meet as required pursuant to the request of either Government, but not less than at least

once every year in each country, to review progress in implementing the MOA. To the extent practical, the agenda for the Committee Meeting and issues to be discussed will be mutually agreed to at least 30 days in advance of the meeting. In this review:

A. They will discuss mutually beneficial cooperation in: research, development, production, procurement and logistic support and the likely general areas to be added to Annexes A and B including joint activities in those fields.

B. They will exchange information as to the way the stipulations of the MOA have been carried out, and, if need be, prepare proposals for amendments of the MOA and/or its Annexes.

C. They will provide an annual financial statement of the current status of procurement under the MOA, give guidance for its yearly preparation, and report on the progress of MOA implementation.

D. They will consider adding to Annexes A and B items or services eligible to be produced or performed in each country and identified through direct negotiations between the industries of each nation.

E. They will consider any other additions or deletions to Annexes A and B proposed by either side of the Committee.

F. They will consider problems which impede the implementation of this MOA in accordance with the procedures in paragraphs 3 and 4 below.

G. They will meet from time to time with representatives of the industries of each country to foster the objectives of the MOA.

3. The Committee will act as a forum for the consideration of all problems arising in the operation of the MOA, including issues relating to amending and interpreting Annexes A and B, and make recommendations to the parties for the resolution of such problems. In this context the Committee will:

—Establish procedures for raising and resolving problems involving the implementation of the MOA that are brought to its attention.

—If the Committee is unable to reach a consensus, refer the matter to the Under Secretary of Defense for Research and Engineering, in the event the United States is the procuring party, or to the Director General, Ministry of Defense, in the event Israel is the procuring party, in which case, the decision of the Under Secretary or the Director General shall be final.

4. The Committee shall not constitute the exclusive forum for the resolution of problems arising in the operation of the MOA; any aggrieved person may pursue whatever legal or administrative remedies are available to it in either country.

II. Principles Governing Implementation

1. Major Principles

A. The U.S. Department of Defense (DoD) and the Ministry of Defense of Israel (MOD) will consider for their defense requirements qualified defense items and services developed or produced in the other country that are include in Annexes A and B. However, this shall not preclude the DoD or MOD from considering items not included in the Annexes as provided for in Article I, paragraph 2(e) of the MOA.

B. Pursuant to the MOA and this Attachment, items listed in Exhibit 1, Annex B to the MOA shall be reviewed by the Committee and amended, as required, at least every quarter; and shall be republished in its entirety at least annually. Acceptance or refusal of items proposed to be added to Exhibit 1 shall be provided within 30 days.

C. In reviewing an item for possible inclusion in Exhibit 1, Annex B, the following will be DoD considerations:

1. *Releasability of technology:* The technology may be released by making available to Israeli Industry a government owned Technical Data Package which is provided with an IFB or RFP. The release of technology may also take place through an export license application processed by a U.S. prime contractor for technology to be used by an Israeli subcontractor. In either case, Military Department recommendations for an item for inclusion in Exhibit 1 is tantamount to a decision by the Military Department concerned to support the release or transfer of the technology involved to an Israeli source; however, concurrence in the addition of a category or item which has been recommended by the Government of Israel does not imply a commitment to transfer or release U.S. technology.

2. *Set-Asides.* Items that have been or are planned to be totally set aside for Small or Disadvantaged Business participation shall be excluded.

3. *Mobilization Base:* The specific sustaining rate of an item that is designated as being part of the Mobilization Base shall be excluded.

D. In reviewing an item for possible inclusion in Exhibit 1, Annex B, the following will be MOD/GOI considerations:

1. *Releasability of technology:* The technology may be released by making available to U.S. Industry a government-owned Technology Data Package which is provided with a solicitation. The release of technology may also take place through an export license application processed by a GOI prime contractor for technology to be used by a U.S. subcontractor. GOI recommendation for an item for inclusion in Exhibit 1 is tantamount to a decision by the MOD to support the release or transfer of the technology involved to a U.S. source; however, concurrence in the addition of a category or item which has been recommended by the Government of the United States does not imply a commitment to transfer or release Israel technology.

2. *Set-Asides:* Items that have been or are planned to be totally set aside for designated types of Israeli business concerns shall be excluded.

3. *Mobilization Base:* The specific sustaining rate of an item that is designated as being part of a defense mobilization base requirement shall be excluded.

E. From time to time a need may arise to amend Annex B Exhibit 1 on a priority basis to allow participation in a current solicitation. These actions should be few in number and involve a significant procurement. The requesting government shall provide the request to his opposite Annex B Subcommittee chairman at least two weeks before proposals are due under the solicitation. The request will be staffed in the most expeditious manner and a decision provided by message to the requesting government, whenever possible within less than two weeks.

F. Additions to Annexes A and B will be effective immediately and will apply to all solicitations for which an award has not yet been made.

G. Committee concurrence will normally be obtained before items will be removed from Exhibit 1. However, unilateral action to remove a category or item may be taken, but only when a three-month prior notification is provided.

H. Notwithstanding that an item has not been approved for inclusion in Annex B, for items not on the list, neither Government is excluded from waiving the Buy National restrictions (including duties and tariffs) on a case-by-case basis.

I. In all instances, when a government intends to procure an item for which non-domestic sources may not compete, the procuring Government shall state in its solicitation that the procurement is limited to domestic sources only.

J. When either government declines to add an item to Annex B, the appropriate official will provide to the other Government a written explanation for the exclusion.

K. Any later, version, model, modification, replacement, interchangeable or substitutable product for an item on Annex B shall be deemed to be included in Annex B for purposes of this agreement, unless such inclusion is prohibited in accordance with Paragraph C or Paragraph D.

L. When an item is removed from Annex A and B by mutual or unilateral action, the removal shall normally not apply to outstanding solicitations for which award had not yet been made.

M. It will be the responsibility of government owned entities or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases for items or services contained in Annexes A and B and to respond to requests for proposals in accordance with the prescribed government procedures and regulation. However, the responsible government agencies in each country will assist sources in the other country, to the same degree as domestic sources, to obtain information concerning intended research and development, proposed purchases, necessary qualifications and appropriate documentation for items or services contained in Annexes A and B.

2. *Action.*

DoD and MOD will review and, where considered necessary and to the extent provided by law, revise their respective policies, procedures, and regulations, and develop implementation procedures to ensure that the principles and objectives of the MOA, which are intended to promote the cost effective and rational use of funds allocated to defense, are taken into account. DoD and MOD agree that the following measures shall be taken, recognizing that, among other

factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process are considerations that may preclude free and full bilateral competition for the award of contracts:

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MOA.

B. Ensure that their respective research and development offices and institutes are familiar with the principles and objectives of this MOA.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOA.

D. Ensure wide dissemination of the basic understanding of this MOA to their respective industries or developing approved defense items or services.

E. Ensure that, consistent with national laws and regulations, offers of defense items produced and services performed in the other country and included in Annexes A and B will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations, or the cost of import duties to the extent that existing laws and regulations permit the waiver of such import duties. Full consideration will be given to all qualified industrial or governmental sources in each other's country. Provisions will be made for duty-free entry certificate and related documentation to the extent that existing laws and regulations permit.

F. Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions for industrial participation.

G. Review defense items and requests for services submitted by the other country as candidates for additions to Annexes A and B. Identify requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research and development production and procurement processes for Annex A and B items.

H. Use best efforts to assist in negotiating licenses, royalites, and technical information exchanges among their respective industries, and research and development institutes when Annex A and B items or services are involved.

III. Membership and Points of Contact

A. Membership

United States

Deputy Under Secretary (International Programs and Technology), Chairman U.S. Side of Committee
Director, International Acquisition
Deputy Assistant Secretary of Army (Acquisition)
Deputy Assistant Secretary of Navy (Systems)
Deputy for Tactical Warfare Systems, Air Force
Assistant Director Plans, Programs, and Systems, Defense Logistics Agency
R&D Subcommittee Chairman
Acquisition Subcommittee Chairman

Israel

Director, Government of Israel Ministry of Defense Mission to the United States of America, Chairman Israeli Side of Committee
R&D Subcommittee Chairman
Acquisition Subcommittee Chairman
Economic Minister of Israeli Embassy

B. Points of Contact

The points of contact will be developed and periodically updated by the DoD and the Israeli MOD and provided under separate cover.

Moshe Arens,

For the Government of Israel.

Date: 19 Mar. 1984.

Caspar W. Weinberger,

For the Government of the United States of America.

19 Mar 1984.

T–302 Egypt Memorandum of Understanding

Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of U.S. Designed Defense Equipment

The Government of the United States of America and the Government of Egypt, hereinafter referred to as the Governments:

Noting that the Government of Egypt has requested production assistance in the manufacture of defense equipment and technical assistance in improving existing systems to extend their useful life in order to conserve its hard currency and foreign exchange, and enable Egypt to economically meet its own defense needs; intending to utilize the defense industrial capability of Egypt and achieve a more readily available source of spare parts for defense items have entered into this memorandum of understanding in order to achieve the above aims.

The memorandum of understanding (MOU) sets out the guiding principles governing mutual cooperation in conventional defense equipment, technical data transfers and procurement and logistic support of agreed-upon defense supplies and services.

Article I

Principles governing technical data release and reciprocal defense cooperation

1. The Governments intend to facilitate the accomplishment of the above-stated aims through cooperation in the transfer of technical data for mutally agreed projects and by affording each other's national sources improved opportunities to offer related products and services. Projects and items may be annexed to the MOU by agreement of the Governments.

2. The Government of Egypt may request technical data packages (TDPS) which it desires to receive, (and be licensed to use for manufacture, operation, maintenance or repair of defense equipment for the use of the Armed Forces of Egypt) and shall submit same to the Department of State of the United States Government for approval through normal channels.

3. TDPS owned by the Government of the United States and which the Government of the United States approves for transfer to the Government of Egypt will be done so in accordance with DD Form 1513, letter of offer and acceptance. In the event of an inconsistency between the term of this MOU and any such DD Form 1513, the latter shall govern. Commercially owned TDPS which have been approved by the Government of the United States for transfer to the Government of Egypt under a commercial licensing agreement shall be done so through normal commercial channels.

4. Both Governments, in furtherance of projects carried out under this MOU will accord the following treatment on a reciprocal basis to offers of service to be performed or supplies to be produced, in the other country:

A. Offers will be evaluated without applying price differentials resulting from buy national laws and regulations.

B. To the extent permitted by law and regulation, these offers will be evaluated without consideration of the cost of custom duties and provisions will be made for duty-free entry certificates and related documentation.

c. Full consideration will be given to qualified industrial and/or governmental sources of the other country for items or services consistent with the policies and criteria of the cognizant purchasing agencies. It being understood that such offers will be required to satisfy requirements of the purchasing organization for performance, quality, delivery, and costs.

d. The other requirements of each Government's laws and regulations relating to purchases of property and services (including the requirements for obtaining competition for such purchases) shall be applicable.

5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate implementation of this agreement and achievement of improved defense cooperation. Each Government will also be responsible for calling to the attention of the relevant industries within its country the basic understanding of this memorandum of understanding, together with an appropriate implementing guidance.

6. Technical data, including TDPS, furnished to the other Government or to persons in the other country for the purpose of offering or bidding on, or performing a defense contract for either Government, shall not be used for any other purpose without the prior agreement of the originating Government as well as the prior agreement of those owning or controlling proprietary rights in such technical information. Each Government, will ensure that full protection will be given to its officers, agents, and contractors to such proprietary, or to any privileged protected, or classified data and information they contain. Each Government will also undertake its best efforts to ensure compliance with the foregoing provisions on the part of other persons in its country. In no event shall such technical information or

TDPS derived therefrom be transfered to any third country or any other third party transferree without the prior written consent of the originating Government.

7. The transfer to third countries or to anyone not an officer, agent or employee of recipient Government of material or technical data and of articles or services directly derived therefrom generated from the mutual cooperative programs under this MOU requires case-by-case advance agreement of the originating Government, obtained through normal channels.

8. Both Governments will undertake their best efforts to assist in negotiating, licensing, royalties, and technical data exchanges with their respective industries. When the projects.* Both Governments will give timely consideration to the necessary export licenses required for the submission of bids of proposals or otherwise required for the performance of such projects.

9. Duly authorized United States Government Representatives (either employees of the Government of the United Stated or contractor personnel) shall have access to inspect the production, testing, or evaluation of any items manufactured from the U.S. techncial data furnished pursuant to this memorandum of understanding. In cases where production, testing, or evaluation of such items is performed in a sensitive location, access to such items will be given after receipt of prior notice sufficient to permit the Government of Egypt to make security arrangements to protect other facilities or equipment in the vicinity.

10. The Government of Egypt agrees to furnish at no cost to the Government of the United States detailed technical data and information on inventions, improvements, and modifications directly derived from the use of technical data acquired by the Government of Egypt pursuant to this MOU notwithstanding paragraph 7. The Government of the United States shall have the right to use such data on a royalty-free basis for the use by the Armed Forces of the United States, the military assistance program (Grant Aid) of the United States Government or for foreign military sales.

11. This memorandum of understanding shall be effective for a period of three years unless otherwise agreed. Either party may terminate this memorandum of understanding by giving notice to the other party of its intention to terminate. In such case, the memorandum of understanding shall terminate one year after such notice has been given but without prejudice to obligations and liabilities which have then accrued pursuant to the terms hereunder, in particular those under paragraphs 3, 6, and 7 of this MOU.

12. Promptly after entry into effect of this MOU, the committee established pursuant to article 11 of the MOU will commence the review of the candidate projects and will submit recommendations to the Governments concerning the projects to be undertaken. Projects as to which the requisite agreements have been made between the Governments will be listed in annex A.

13. The activities of the United States Government in furtherance of this MOU shall be undertaken in accordance with, and subject to, applicable United States laws and regulations, in particular the Arms Export Control Act and regulations issued pursuant thereto. Foreign military sales cases under this MOU shall be executed in accordance with the U.S. Arms Export Control Act and governed by the terms and conditions of the DD Form 1513, letter of offer and acceptance.

Article II—Implementing Procedures

A joint U.S. Egypt Committee shall be established to periodially review the progress of implementation of this MOU. The Departments of State and Defense will be responsible in the U.S. Government for implementation of this MOU. The Egyptian Ministry of Defense will be the responsible counterpart authority for the Government of Egypt. Other duties to be assigned the joint committee and the frequency of their meetings shall be further defined and annexed to this MOU.

Article III—Security

1. To the extent that any items, plans, specifications, or information furnished in connection with the specific implementation of this MOU are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government through the period during which the classifying Government may maintain such classifications.

2. Classified military information and material shall be transferred only on a Government-to-Government basis and only to persons who have appropriate security clearance for access to it.

3. Each Government will permit security experts of the other Government to make periodic visits to its territory, when it is mutually convenient, to discuss with its security authorities its procedures and facilities for the protection of classified military information furnished to it by the other Government. Each Government will assist such experts in determining whether such information provided to it by the other Government is being adequately protected.

4. The recipient Government will investigate all cases in which it is known or there are grounds for suspecting that classified military information from the originating country has been lost or disclosed to unauthorized persons. The responsible Government agency of the originating country will, without delay, be fully advised of such occurrences and of the final findings and corrective actions taken to preclude recurrences.

5. This MOU shall enter into force and effect after exchange of notifications among the Governments that each has complied with the requirements of its national laws and practices that are prerequisites to entry into force of this agreement.

General Kamal Hassan Ali,

For the Government of Egypt.

Doctor William J. Perry,

For the Government of the United States of America.

21 October 1985

Amendment—Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of U.S. Designed Defense Equipment

The Government of the United States of America and the Government of Egypt hereby agree to renew subject Memorandum of Understanding, dated 21 October 1979, for an additional three years, thereby extending the effective period of the Memorandum of Understanding until 21 October 1988, unless otherwise agreed.

This Amendment shall be affixed to, and become a part of, the original Memorandum of Understanding dated 21 October 1979.

———— ————,

For the Government of Egypt.

———— ————,

For the Government of the United States of America.

Annex I to the Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of U.S. Designated Defense Equipment, Dated 21 October 1979

Terms of Reference

1. The members of the Egypt/U.S. Committee for Mutual Cooperation (hereafter to be called "the Committee") will serve under the direct responsibility of the authorities listed in Article II, of the MOU, respectively, responsible for the implementation of the MOU.

2. In particular, the Committee will be responsible for monitoring implementation of the MOU governing the mutual cooperation in Defense Production Assistance, research and development, production, acquisition and logistic support of conventional defense equipment which is related to the Defense Production Assistance Program. To this end the Committee members will meet as required, but not less than semi-annually, to review progress in implementing the MOU. In this review:

2.1 The Committee will discuss Defense Production Assistance, research, development, production, acquisition, and logistic support needs of each country and the likely areas of cooperation, including joint activities in those fields relating to the Defense Production Assistance Program.

2.2 The Committee will exchange information as to the way the stipulations of the MOU have been carried out and, if need be, prepare proposals for amendments of the MOU and/or its annexes.

2.3 The Committee will consider any other matters relevant to the MOU

* The text of the agreement as negotiated by the Governments includes the following language after "projects": "... carried out under this MOU require such efforts." The foregoing language was omitted thru inadvertence from the text of the agreement as actually signed.

2.4 After each meeting the Committee will advise the authorities listed in Article II as appropriate.

2.5 The Committee will alternately meet in the United States and in Egypt. The country in which a particular meeting will take place will provide the chairman and the secretariat for that meeting.

———— ————,

For the Government of Egypt.

———— ————,

For the Government of the United States.

April 11, 1980.

Scientist and Engineer Exchange Agreement Between Egypt and the United States

Introduction

1.1 The Government of Egypt and the Government of the United States, agree to provide on-site working assignments to selected scientists and engineers from the other country in defense organizations, industries and universities associated with defense contracts covering technical areas of interest related to Army, Navy and Air Force conventional weapons systems and equipment. This agreement is intended to further implement the Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of US. Designed Defense Equipment, dated 21 October 1979.

Selection of Candidates

2.1 Participation in the Egypt and US scientist and engineer exchange program is restricted to military officers and civilian employees of the Egyptian Ministry of Defense (MOD) and the US Department of Defense (DOD) (including wholly owned government industries or facilities).

2.2 The placement of each candidate nominated under this program is conditional upon the ability of the activity involved to provide working assignments for a mutually agreed period.

2.3 Candidates should hold at least baccalaureate degrees and have at least four years practical experience in the discipline to which they are to be exposed.

2.4 To assist in the evaluation of candidates, the MOD and the DOD will forward background resumes and assignment objectives to each other at least six months prior to the desired date of assignment. Final selection of candidates will be by mutual agreement between the MOD and the DOD.

2.5 Selected candidates from the MOD must be proficient in English and have a working knowledge of US technical terms. Candidates from the DOD may be required to be proficient in Egyptian and have a working knowledge of Egyptian technical terms (as may be necessary on a case by case basis).

Costs

3.1 Costs incurred on account of participation of a country in assigning scientists and engineers under this program will be borne by the country of which that scientist or engineer is a national ("country of Origin").

3.2 Incurred costs to be borne by the country of origin will include, but not be limited to salary, per diem costs, housing allowances, differential relocation pay, family allowances, cost of movement of dependents and household effects, cost of shipment of remains and funeral expense in event of death, travel to and from the host country, travel in connection with assigned duties within the host country, and hospitalization, medical, dental and any other associated personnel costs occasioned by assignment of its nationals under this program.

3.3 The country of origin will make arrangements to defray costs of this program directly to its personnel rather than by reimbursement to the host country.

3.4 Incurred costs, to be borne by the country of origin, will not include costs of host country personnel or charges for the use of host country owned facilities, tooling, plant or laboratory equipment.

Security

4.1 During the selection process, each country will inform the other of the level of security clearance required to permit candidates access to selected work areas. Access will be limited to classifications based on the participants need-to-know to accomplish the work assignment. Security clearance will be authorized for the work program identified for participation. Additional or modified work assignments will require separate disclosure authorization.

4.2 Each country will cause to be filed, through its Embassy in the host country, appropriate security assurances for each selected candidate.

4.3 Any violation of security procedures by a participant during his assignment will be reported to the country of origin for appropriate action.

4.4 All classified items, plans, specifications, or other information available to personnel participating in this program will be considered as classified information furnished to or by the country of origin, and will be subject to all provisions and safeguards provided for under arrangements in force between the United States and Egypt.

4.5 The country of origin will insure, by appropriate means (e.g., indoctrination on applicable security laws and statutes, retention agreement equal to three times the length of the assignment, etc.), the protection of proprietary, classified, and other information disclosed under this program, after termination of a participant's assignment.

4.6 The data and information to be exchanged under this program as well as access to facilities, equipment and sites shall not extend to those disclosing "RESTRICTED DATA" or "FORMERLY RESTRICTED DATA" as those terms are used in the United States Atomic Energy Act of 1954 as amended.

4.7 Technical data (classified or unclassified, in written or other documentary form) received by a participant shall not be transmitted by the participant unless prior review and approval have been obtained by the appropriate host country disclosure authority.

Technical and Administrative Matters

5.1 The host country will provide, at no cost to the country of origin, such technical and administrative support as is deemed necessary for the efficient performance of a participant's assigned task.

5.2 Participants assigned under this program will be subject to the same restrictions, conditions, and privileges as local personnel of comparable rank in the area of assignment, unless modified by the local director or commander or equivalent of the facility to which assigned.

5.3 Participants and their authorized dependents shall be briefed regarding their specific entitlements, privileges, and obligations prior to or immediately following their arrival in the host country.

5.4 As a general rule, except for religious holidays, participants will observe holidays of the host organization rather than their own national holidays. Exceptions to this rule may be made by the local director, commander or equivalent of the installation to which personnel are assigned.

5.5 All participants will work under the guidance and control of a host supervisor who will, upon completion of a participant's tour of duty, submit an evaluation report to the participant's country of origin.

5.6 Supervisors will insure daily observation of participant's performance in order to provide a basis for counseling and reporting.

5.7 Supervisors may submit interim reports to appropriate recipients as deemed useful.

Inventions and Technical Information

6.1 The respective rights of the exchange scientist or engineer and the two governments, to use inventions made and technical information developed by an exchange scientist or engineer while working in a host organization under this program shall be governed by the laws and regulations of the respective government of origin.

6.2 To the extent that the right, title and interest to an invention is assigned to the government of origin under the provision established in paragraph 6.1, the government or origin agrees to grant:

a. To the host government for its own governmental purposes a worldwide, irrevocable, non-exclusive, royalty-free license for such inventions made (conceived or first actually reduced to practice under this program); and

b. To a non-government host facility a non-exclusive, royalty-free license to make, use and sell each such invention within the host country, coupled with the right to use and sell throughout the world any product manufactured pursuant to such license, if the invention is made while the participating scientist or engineer is engaged in work at such non-government owned facility.

6.3 As a condition for participating in this program, the government of origin shall obtain from each exchange scientist or engineer selected, a written agreement to grant:

a. To the government of origin and the host government, for their respective

governmental purposes, worldwide, irrevocable, non-exclusive, royalty-free licenses in inventions made and technical information developed by the individual during the period of and as a result of his participation in the program; and

b. To a non-government host facility a non-exclusive, royalty-free license to use technical information developed by the individual, and to make, use and sell within the host country each invention made by the individual coupled with the right to use and sell throughout the world any product manufactured pursuant to such license, if the technical information is developed or the invention is made while the participating scientist or engineer is engaged in work at such non-government owned facility.

6.4 In order to permit the host government to adequately protect its interest in inventions referred to in paragraph 6.2 within its territory, the host government as a licensee may file and prosecute patent applications within its territory for such inventions.

6.5 To the extent it can do so without incurring liability to a third party, each government agrees to grant to the other government for its governmental purposes a worldwide, irrevocable, non-exclusive, royalty-free license in technical information:

a. Furnished to or by the host government through an exchange scientis. or engineer; and

b. Relevant to technical information developed by an exchange scientist or engineer working in a host organization under this program.

6.6 Any additional compensation or award under an incentive award program or similar program due to the participating scientist or engineer for the work performed under this program shall be the responsibility of the government of origin.

Duration and Termination

7.1 This program will cover a period coincident with the Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of US Designed Defense Equipment, dated October 21, 1979, unless sooner terminated by agreement between the parties.

7.2 In the event of termination or expiration, the commitments regarding security, the protection of technical and other information against unauthorized use, disclosure, or transfer, and industrial property rights that accrued prior to termination will continue without the limit of time.

General Kamal Hassan Ali,

For the Government of Egypt.

11 April 1980.

Dr. William J. Perry,

For the Government of the United States of America.

11 April 1980.

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