

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 202, 204, 206, 207, 209, 212, 214, 215, 219, 223, 225, 227, 228, 231, 232, 235, 239, 242, 244, 249, 250, 252, 253, and Appendices B, C, G, and I

[Defense Acquisition Circular (DAC) 91-11]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 91-11 amends the Defense Federal Acquisition Regulation Supplement (DFARS) to revise, finalize, or add language on competition requirements, acquisition planning, contractor qualifications, contracting by negotiation, ozone-depleting substances, drug-free work force, foreign acquisition, bonds and insurance, contract cost principles and procedures, contract financing, research and development contracting, acquisition of information resources, contract administration, and subcontracting policies and procedures.

DATES: Effective date: September 26, 1996.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

A. Background

This Defense Acquisition Circular (DAC) 91-11 includes 30 rules and miscellaneous editorial amendments. Ten of the rules (Items, III, VI, VII, VIII, XI, XII, XX, XXII, XXIII, and XXVI) were published previously in the Federal Register and thus are not included as part of this notice of amendments to the Code of Federal Regulations. These ten rules are being published in the DAC incorporate the previously published amendments into the loose-leaf edition of the DFARS.

B. Regulatory Flexibility Act

DAC 91-11, Items I, II, X, XIV, XVIII, XIX, XXIV, XXV, and XXVII

These final rules do not constitute significant revisions within the meaning of Federal Acquisition Regulation 1.501 and Public Law 98-577, and publication of public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Regulatory Flexibility

Act (5 U.S.C. 610). Please cite the applicable DFARS case number in correspondence.

DAC 91-11, Items V, XV, XVII, XXI, XXVIII, XXIX, and XXX

DoD certifies that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because:

Item V, Leasing of Commercial Vehicles and Equipment—Leasing of commercial vehicles and equipment is already permitted by the Federal Acquisition Regulation (FAR). This rule merely amends the Defense FAR Supplement (DFARS) to reflect DoD statutory authority and internal Government considerations pertaining to such leasing.

Item XV, Naval Vessel Components—The foreign source restrictions contained in this rule do not differ significantly from existing foreign source restrictions.

Item XVII, Pricing for Sales of Defense Articles—The DFARS already requires pricing of foreign military sales contracts using the same general principles that are used in pricing other defense contracts. The only significant change in this rule relates to the allowability of independent research and development and bid and proposal costs in accordance with the cost principle at FAR 31.205-18, under contracts for foreign military sales wholly paid for from nonrepayable funds. Most contracts awarded to small entities are awarded using simplified acquisition procedures, or on a competitive fixed-price basis, and do not require application of the FAR or DFARS cost principles.

Item XXI, Allowability of Costs—The cost principle in this rule applies only to costs for bonuses or other payments in excess of the normal salary paid by a contractor to an employee, when such payments are part of restructuring costs associated with a business combination. Most contracts awarded to small entities are awarded using simplified acquisition procedures, or on a competitive fixed-price basis, and do not require application of the FAR or DFARS cost principles.

Item XXVIII, Material Management and Accounting System Changes—Material management and accounting system (MMAS) requirements only apply to contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and are not awarded under the set-aside or Section 8(a) procedures of FAR Part 19. Additionally, MMAS

disclosure, demonstration, and maintenance requirements only apply to large business concerns.

Item XXIX, Contractor Purchasing System Reviews—Contractor purchasing system reviews generally are conducted only for contractors that are expected to have annual sales to the Government exceeding \$25 million.

Item XXX, Ground and Flight Risk—The amendments in this rule only apply to contracts for aircraft development, production, modification, maintenance, repair, or overhaul, or otherwise involving the furnishing of aircraft to the contractor by the Government. Historically, most contractors engaged in this type of contract have been large business concerns.

DAC 91-11, Items IV, IX, XIII, and XVI

A final regulatory flexibility analysis has been performed for each of these rules. A copy of the analysis is available by writing the Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301-3062. Please cite the applicable DFARS case number in correspondence. The analyses are summarized as follows:

Item IV, Precontractual Contract Administration (DFARS Case 95-D015)—This final rule amends the DFARS to provide the contract administration component access to acquisition planning information, set forth the fact that costs or savings related to contract administration may be considered when evaluating an offeror's past performance, and establish as a contract administration function the providing of support to program offices and buying activities in precontractual efforts leading to a solicitation or award. No public comments were received in response to the initial regulatory flexibility analysis prepared for the proposed rule published in the Federal Register at 60 FR 53573 on October 16, 1995. The rule applies to all entities, large and small, that compete for DoD contracts awarded using past performance as an evaluation factor. The rule imposes no new reporting, recordkeeping, or other compliance requirements. The alternative of not making the revisions to DFARS Parts 207 and 242 was considered, since the Federal Acquisition Regulation (FAR) already permits involvement of contract administration components in precontractual efforts. However, it was determined that these revisions are needed to ensure that the contract administration component has access to early acquisition planning information and is involved in precontractual planning in order to allow for efficient

and effective contract administration support throughout the acquisition. The alternative of not making the revisions to DFARS Parts 209 and 215 was also considered, since the FAR already permits the use of contract and audit data in evaluating performance risk or past performance. It was determined that specifically citing costs and savings related to contract administration and audit as a factor in evaluating performance risk or past performance will encourage use of this factor and will be beneficial in refining the process for determining the best value to the Government.

Item IX, Drug Free Work Force (DFARS Case 88-083)—This rule is necessary to implement DoD policy to ensure that its contractors maintain programs for achieving a drug-free work force. No public comments were received in response to the initial regulatory flexibility analysis prepared for the interim rule published in the Federal Register at 57 FR32736 on July 23, 1992. The rule applies to large and small entities with DoD contracts that involve access to classified information, or that include the prescribed clause for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract. The rule requires that certain DoD contractors maintain a drug-free work force program, including recordkeeping necessary to ensure that any instances of illegal drug use be dealt with in accordance with the contractor's program. The recordkeeping required by DFARS clause 252.223-7004 has been approved by the Office of Management and Budget under OMB Control Number 0704-0336. Consideration was given to elimination of the rule in light of Federal Acquisition Regulation (FAR) Subpart 23.5, which implements the Drug-Free Work Force Act of 1988. However, the FAR addresses illegal drugs only in the workplace. The DoD policy is that any drug use by a contractor employee working in a sensitive position under a DoD contract may adversely affect national security, health, or safety of those using or affected by the product of, or performance of, the contract.

Item XIII, Ball and Roller Bearings (DFARS Case 95-D308)—This final rule implements Section 8099 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104-61) and 10 U.S.C. 2534 as amended by Sections 806(b) and (d) of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104-106), which extend the statutory restriction on the acquisition of nondomestic ball and roller bearings through the year

2000, but reduce the exceptions to the restriction and limit waiver authority when Fiscal Year 1996 funds are used. There were no issues raised by public comments in response to the initial regulatory flexibility analysis prepared for the interim rule published in the Federal Register at 61 FR 10899 on March 18, 1996. The final rule incorporates the restriction on miniature and instrument ball bearings that is presently included in DFARS Subpart 225.71, and specifically identifies the commercial item exception to the requirements of Section 8099 of the Fiscal Year 1996 Defense Appropriations Act. The rule applies to all small and large entities that are interested in furnishing to the Government ball or roller bearings or items incorporating ball or roller bearings. The rule lessens foreign competition for domestic sources, particularly in acquisitions that do not exceed the simplified acquisition threshold, and is expected to have a positive impact on both small and large entities. The rule imposes no new recordkeeping or reporting requirements. The existing recordkeeping and reporting required by DFARS clause 252.225-7025 has been approved by the Office of Management and Budget under OMB Control Number 0704-0229.

Item XVI, Foreign Product Restrictions (DFARS Case 95-D033)—This final rule eliminates all foreign product restrictions in DFARS Subpart 225.71, with the exception of ship propulsion shafts (excluding service and landing craft shafts), periscope tubes, and ring forgings for bull gears (greater than 120 inches in diameter). The restriction on miniature and instrument ball bearings is being incorporated in DFARS 225.7019 with the other statutory restrictions on ball and roller bearings, because 10 U.S.C. 2534(a)(5) provides for restrictions on ball and roller bearings in accordance with DFARS Subpart 225.71, as in effect on October 23, 1992. The elimination of the other restrictions in DFARS Subpart 225.71 is based on an assessment by DoD that these restrictions are no longer needed. The objective of this rule is to maximize full and open competition to the extent consistent with maintenance of a viable domestic industrial base. No comments were received in response to the initial regulatory flexibility analysis prepared for the proposed rule published in the Federal Register at 60 FR 67115 on December 28, 1995. However, a number of respondents expressed concern that the rule's elimination of foreign product

restrictions would weaken the domestic forging industry and the national security. Therefore, retention of the foreign product restrictions on forgings was considered, but rejected for the following reasons: The restrictions were originally imposed to preserve a domestic mobilization base for specific classes of items, including various ferrous forgings, needed to meet Cold War era operational scenarios. DoD no longer has such a requirement for the classes of forgings under consideration. Therefore, the mobilization base for these forgings is no longer required. Additionally, both productivity and exports have increased for the domestic forging industry.

The rule will affect the preference for domestic manufacturers of the items no longer restricted. It is estimated that approximately 90 contractors, some of which are small businesses, supply such items to DoD either as prime contractors or subcontractors under defense contracts. The information collection required by DFARS clause 252.225-7025 has been approved by the Office of Management and Budget under OMB Control Number 0704-0229. The rule will reduce this information collection requirement, as recordkeeping and reporting will no longer be required for those items which are no longer restricted to domestic sources. There are no practical alternatives which would affect the impact on small entities and still accomplish the objectives of the rule.

C. Paperwork Reduction Act

DAC 91-11, Items I, II, IV, V, X, XIV, XV, XVII, XVIII, XIX, XXI, XXIV, XXV, XXVII, XXIX, and XXX

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

DAC 91-11, Items IX, XIII, XVI, and XXVIII

The Paperwork Reduction Act applies. OMB has approved the information collection requirements as follows:

Item	OMB control number
IX	0704-0336
XIII	0704-0229
XVI	0704-0229
XXVIII	0704-0250

Michele P. Peterson,
Executive Editor, Defense Acquisition
Regulations Council.

Defense Acquisition Circular (DAC) 91-11 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1991 edition. The amendments are summarized as follows:

Item I—Revisions to FAR/DFARS (DFARS Case 96-D009)

This final rule amends DFARS 201.201-1 to specify that requests for changes to the FAR or DFARS must identify any potential impact of the change on automated systems (e.g., automated financial and procurement systems).

Item II—Overseas Contracts With NATO/Allied Governments or the United Nations (DFARS Case 96-D004)

This final rule amends DFARS 201.402 and adds a new section at 225.970 to authorize contracting officers outside the United States to deviate from prescribed non-statutory FAR and DFARS clauses when contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations. This authority may be exercised only if such governments or organizations will not agree to the standard FAR/DFARS clauses.

Item III—Justification and Approval Thresholds (DFARS Case 96-D307)

This final rule was issued by Departmental Letter 96-003, effective April 12, 1996 (61 FR 10285, March 13, 1996). The rule amends DFARS 206.304 to implement Section 4102 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104-106). Section 4102 amends 10 U.S.C. 2304(f)(1)(B) and 41 U.S.C. 253(F)(1)(B) to increase the dollar thresholds at which approval for use of other than full and open competition must be obtained from the competition advocate, the head of the procuring activity, or the senior procurement executive.

Item IV—Precontractual Contract Administration (DFARS Case 95-D015)

This final rule amends DFARS Subparts 207.1, 209.1, 215.6, and 242.3 to (1) provide for involvement of the contract administration office early in the acquisition process, and (2) specify that costs or savings related to contract administration and audit may be considered in proposal evaluation when an offeror's past performance or

performance risk is likely to result in significant costs or savings.

Item V—Leasing of Commercial Vehicles and Equipment (DFARS Case 96-D302)

The interim rule issued by Departmental Letter 96-007, on April 18, 1996, is revised and finalized. The rule amends DFARS 207.470 to implement Section 807 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104-106). Section 807 amends 10 U.S.C. 2401a to permit the use of leasing in the acquisition of commercial vehicles and equipment. The final rule differs from the interim rule in that it clarifies that the requirements of 207.470(b) apply to the leasing of commercial vehicles and the equipment that is associated with those vehicles.

Item VI—Institutions of Higher Education (DFARS Case 96-D305)

This interim rule was issued by Departmental Letter 96-012, effective May 21, 1996 (61 FR 25408, May 21, 1996). The rule amends DFARS 209.470 and 243.105 to implement Section 541 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104-106). Section 541 provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has an anti-ROTC policy.

Item VII—Small Disadvantaged Business Concerns (DFARS Case 95-D039)

This final rule was issued by Departmental Letter 96-009, effective April 29, 1996 (61 FR 18686, April 29, 1996). The rule amends DFARS Parts 215, 219, 236, 242, 252, and 253 to (1) expand use of the evaluation preference for small disadvantaged businesses (SDBs) to include competitive awards based on other than price or price-related factors; (2) consider small, small disadvantaged, and women-owned small business subcontracting as a factor in the evaluation of past performance; (3) clarify that the contracting officer will weigh enforceable commitments to use small businesses, SDBs, women-owned small businesses, historically black colleges and universities, and minority institutions more heavily than non-enforceable ones, if the commitment to use such firms is included in the solicitation as a source selection criterion; (4) require prime contractors to notify the contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan; and (5) establish a test program of an

SDB evaluation preference that would remove the bond cost differentials between SDBs and other businesses as a factor in most source selections for construction acquisitions.

Item VII—Test Program for Negotiation of Comprehensive Subcontracting Plans (DFARS Case 96-D304)

This interim rule was issued by Departmental Letter 96-016, effective July 31, 1996 (61 FR 39900, July 31, 1996). The rule amends DFARS Subpart 219.7 and the clause at 252.219-7004 to reflect changes to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, as required by Section 811 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104-106). The rule also makes editorial changes to DFARS Part 219 to reflect revisions to FAR Part 19 published in Federal Acquisition Circular 90-32.

Item IX—DRUG-Free Work Force (DFARS Case 88-083)

The interim rule published as Item VII of DAC 91-3, and amended by Item XXXV of DAC 91-9, is converted to a final rule without change. The rule implements DoD policy regarding contractor maintenance of a drug-free work force. The applicable DFARS guidance is at Subpart 223.5 and 252.223-7004.

Item X—Ozone-Depleting Substances (DFARS Case 95-D037)

This final rule adds DFARS Section 223.803 to provide a cross-reference to the restrictions in DFARS 211.271 regarding award or modification of contracts requiring the use of class I ozone-depleting substances.

Item XI—Petroleum Products from Caribbean Basin Countries (DFARS Case 96-D312)

This interim rule was issued by Departmental Letter 96-015, effective July 22, 1996 (61 FR 37841, July 22, 1996). The rule amends DFARS 225.403 to fully implement Section 8094 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139). Section 8094 requires DoD to consider all qualified bids from eligible countries under the Caribbean Basin Economic Recovery Act as if they were offers from designated countries under the Trade Agreements Act. The rule also amends DFARS 225.403-70 and 252.225-7007 to clarify that the definition of Caribbean Basin country end products includes petroleum and any end product derived from petroleum.

Item XII—Designation of Singapore (DFARS Case 96-D308)

This final rule was issued by Departmental Letter 96-008, effective April 18, 1996 (61 FR 16880, April 18, 1996). The rule amends DFARS 225.408 and 252.225-7007 to add Singapore as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative on March 19, 1996.

Item XIII—Ball and Roller Bearings (DFARS Case 95-D308)

The interim rule issued by Departmental Letter 96-004 on March 18, 1996, is revised and finalized. The rule implements Section 8099 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104-61) and Sections 806(b) and (d) of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104-106), which extend the statutory restrictions on the acquisition of nondomestic ball and roller bearings through the year 2000, but reduce the exceptions to the restrictions and limit waiver authority when fiscal year 1996 funds are used to acquire other than commercial items. The final rule differs from the interim rule in that it amends DFARS 225.7001, 225.7019, and 252.225-7016 to include restrictions pertaining to the acquisition of miniature and instrument ball bearings which previously were included in Subpart 225.71 and 252.225-7025.

Item XIV—Domestic Wool Preference (DFARS Case 96-D311)

This final rule amends DFARS 225.7002 and deletes the provision at 252.225-7013 to eliminate special procedures for evaluation of offers for wool. In December 1995, the U.S. Department of Agriculture discontinued the practice of establishing incentive prices for domestic wool, which was the practice upon which the special evaluation procedures were based. Corresponding amendments are made at 212.301.

Item XV—Naval Vessel Components (DFARS Case 96-D300)

The interim rule issued by Departmental Letter 96-005, on March 26, 1996, is converted to a final rule without change. The rule amends DFARS 225.7012 and 225.7022 to implement Section 806(a) of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104-106). Section 806(a) imposes additional statutory restrictions on the acquisition of anchor and mooring chain and totally enclosed lifeboats, when used as components of naval vessels. The rule further amends 225.7012, and deletes the clauses at

252.225-7020 and 252.225-7021, to remove obsolete language pertaining to fiscal year 1988-90 restrictions on the acquisition of anchor and mooring chain.

Item XVI—Foreign Product Restrictions (DFARS Case 95-D033)

This final rule amends DFARS Subpart 225.71 and the clause at 252.225-7025 to eliminate non-statutory foreign product restrictions except those for certain forging items (ship propulsion shafts, periscope tubes, and ring forgings for bull gears). Restrictions pertaining to miniature and instrument ball bearings have been moved to Subpart 225.70 and 252.225-7016.

Item XVII—Pricing for Sales of Defense Articles (DFARS Case 96-D309)

The interim rule issued by Departmental Letter 96-010, on April 30, 1996, is converted to a final rule without change. The rule amends DFARS 225.7303 to implement Section 531A of the Fiscal Year 1996 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104-107). Section 531A provides that foreign military sales of defense articles and services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis as is applicable to like items purchased by DoD for its own use.

Item XVIII—Alternatives to Miller Act Bonds (DFARS Case 95-D305)

This final rule removes DFARS 228.171 and 252.228-7007. These sections were published as Item XXIII of DAC 91-9, and amended by Item X of DAC 91-10, to provide alternative payment protections for construction contracts between \$25,000 and \$100,000, pending implementation of Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) in the FAR. The implementing FAR guidance was published as Item XVII of FAC 90-39; therefore, the DFARS guidance is removed.

Item XIX—Insurance—Liability to Third Parties (DFARS Case 92-D015)

This final rule amends DFARS 228.311 to remove guidance pertaining to use of the clause at FAR 52.228-6, Insurance—Immunity from Tort Liability, as this clause was removed from the FAR by item XII of FAC 90-37.

Item XX—Individual Compensation (DFARS Case 96-D314)

This interim rule was issued by Departmental Letter 96-014, effective July 10, 1996 (61 FR 36305, July 10, 1996). The rule amends DFARS Part 231 to implement Section 8086 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104-61). Section 8086 limits allowable costs for individual compensation to \$200,000 per year. This limitation applies to payments using funds appropriated in fiscal year 1996 under contracts awarded after July 1, 1996.

Item XXI—Allowability of Costs (DFARS Case 95-D309)

The interim rule published as Item XVII of DAC 91-10 is converted to a final rule with minor clarifying revisions at DFARS 231.205-6. The rule implements Section 8122 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104-61). Section 8122 prohibits DoD from using fiscal year 1996 funds to reimburse a contractor for costs paid to an employee for a bonus or other payment in excess of the normal salary paid to the employee, when such payment is part of restructuring costs associated with a business combination.

Item XXII—Restructuring Costs Under Defense Contracts (DFARS Case 94-D316)

This final rule was issued by Departmental Letter 96-006, effective April 18, 1996 (61 FR 16881, April 18, 1996). The rule amends DFARS 231.205-70 and 242.1204 to finalize the interim rule which was published as Item XXIII of DAC 91-7 and which implements Section 818 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 818 restricts DoD from reimbursing external restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met.

Item XXIII—Cost Reimbursement Rules for Indirect Costs (DFARS Case 96-D303)

This interim rule was issued by Departmental Letter 96-011, effective May 13, 1996 (61 FR 21973, May 13, 1996). The rule adds a new section at DFARS 231.205-71 to implement Section 808 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104-106). Section 808 permits DoD to enter into a defense capability preservation agreement with a defense contractor where it would facilitate the achievement of the policy objectives relating to defense reinvestment, diversification, and conversion set forth

in 10 U.S.C. 2501(b), Such an agreement would permit the contractor to claim certain indirect costs, attributable to its private sector work, on its defense contracts.

Item XXIV—Determination of Need (DFARS Case 96–D012)

This final rule revises DFARS 232.803(d) to reflect (1) the amendments made to FAR Subpart 32.8 in Item III of FAC 90–38; and (2) the May 10, 1996, determination by the Director of Defense Procurement that a need exists for DoD to agree not to reduce or set off any money due or to become due under a contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract.

Item XXV—Manufacturing Technology Program (DFARS Case 96–D313)

This final rule amends DFARS 235.006 to implement a portion of Section 276 of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106). Section 276 changes the name of the Manufacturing Science and Technology Program to the “Manufacturing Technology Program,” and permits contracts under the program to be on other than a cost-sharing basis if the contract is for a program to be carried out by an institution of higher education.

Item XXVI—Direct Submission of Vouchers to Disbursing Office (DFARS Case 96–D007)

This final rule was issued by Departmental Letter 96–013, effective May 21, 1996 (61 FR 25409, May 21, 1996). The rule amends DFARS 242.803 to permit contract auditors to authorize direct submission of interim vouchers for provisional payment to the disbursing office, for contractors with approved billing systems.

Item XXVII—Requirements for Cost/Schedule Status Report (DFARS Case 95–D042)

This final rule amends DFARS Subpart 242.11 to update references and guidance pertaining to contractor reporting requirements. DoDI 7000.10, Contract Cost Performance, Funds Status and Cost/Schedule Status Reports, has been canceled and replaced by DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, dated March 15, 1996.

Item XXVIII—Material Management and Accounting System Changes (DFARS Case 95–D029)

This final rule amends DFARS Subpart 242.72 and 252.242–7004 to (1) increase the dollar thresholds at which large business contractors are subject to material management and accounting system (MMAS) disclosure, demonstration, and maintenance requirements; (2) clarify the circumstances under which MMAS disclosure and demonstration are required; and (3) clarify requirements for contractor use of a “loan/pay-back” technique for accomplishing material transactions.

Item XXIX—Contractor Purchasing System Reviews (DFARS Case 95–D026)

This final rule removes the procedures for contractor purchasing system reviews at DFARS 244.303 and Appendix C, to provide agencies maximum flexibility in conducting such reviews.

Item XXX—Ground and Flight Risk (DFARS Case 95–D028)

This final rule amends DFARS 252.228–7001 and 252.228–7002 to (1) specify that the Government’s assumption of risk of aircraft does not extend to damage, loss, or destruction sustained during flight, if the flight crew members have not been approved by an authorized Government flight representative; (2) increase, from \$1,000 to \$25,000, the contractor’s liability for aircraft loss or damage not sustained during flight; and (3) clarify language pertaining to aircraft which is damaged, lost, or destroyed prior to delivery and acceptance by the Government.

Editorial Revisions

(1) DFARS 201.201–1(d)(i) is amended to update the DAR Council datafax number.

(2) DFARS 202.101 is amended under the heading “Army” to revise the name “Strategic Defense Command” to read “Space and Strategic Defense Command.”

(3) DFARS 202.101 is amended under the heading “Navy” to revise the title “Deputy, Acquisition Policy, Integrity and Accountability” to read “Deputy, Acquisition and Business Management.”

(4) DFARS is amended to reflect the change in name of the “Advanced Research Projects Agency” to the “Defense Advanced Research Projects Agency” and the change in name of the “Defense Nuclear Agency” to the “Defense Special Weapons Agency.”

(5) DFARS 207.105 is amended to update references and to conform to the current numbering of FAR 7.105.

(6) DFARS 215.605 is amended to conform to the current numbering of FAR 15.605.

(7) DFARS 227.7009–1 is amended to update FAR references.

(8) DFARS 231.205–71 is amended to remove the title “Assistant Secretary of Defense for Economic Security” and insert in its place the title “Deputy Under Secretary of Defense for Industrial Affairs and Installations.”

(9) DFARS 239.7501–2 is amended to update statutory references.

(10) DFARS 253.204–70(c)(4)(ix)(B)(9) is amended to revise the FAR reference.

(11) DFARS Part 253 is amended to update DD Forms 882 and 2139. (This amendment is being made only in the loose-leaf edition of the DFARS.)

(12) DFARS Appendix G is amended to update activity names and addresses.

(13) DFARS Appendix I is amended in I–102(a) and (b) and I–103(a) by revising the date “September 30, 1995” to read “September 30, 1996.”

Interim Rules Adopted as Final Without Change

PARTS 223 AND 252—[AMENDED]

The interim rule that was published at 57 FR 32736 on July 23, 1992, and amended at 60 FR 61597 on November 30, 1995, is adopted as final without change.

PART 225—[AMENDED]

The interim rule that was published at 61 FR 18987 on April 30, 1996, is adopted as final without change.

PARTS 225 AND 252—[AMENDED]

The interim rule that was published at 61 FR 13106 on March 26, 1996, is adopted as final without change.

Interim Rules Adopted as Final With Changes

PART 207—[AMENDED]

The interim rule that was published at 61 FR 16879 on April 18, 1996, is adopted as final with an amendment at section 207.470.

PARTS 225 AND 252—[AMENDED]

The interim rule that was published at 61 FR 10899 on March 18, 1996, is adopted as final with revisions at sections 225.7001, 225.7019–2, 225.7019–3, and 252.225–7016.

PART 231—[AMENDED]

The interim rule that was published at 61 FR 7077 on February 26, 1996, is

adopted as final with amendments at section 231.205–6.

List of Subjects in 48 CFR Parts 201, 202, 204, 206, 207, 209, 212, 214, 215, 219, 223, 225, 227, 228, 231, 232, 235, 239, 242, 244, 249, 250, 252, 253

Government procurement.

Amendments to 48 CFR Chapter 2 (Defense Federal Acquisition Regulation Supplement)

48 CFR Chapter 2 (the Defense Federal Acquisition Regulation Supplement) is amended as set forth below.

1. The authority citation for 48 CFR Parts 201, 202, 204, 206, 207, 209, 212, 214, 215, 219, 223, 225, 227, 228, 231, 232, 235, 239, 242, 244, 249, 250, 252, 253, and Appendices B, C, B, and I to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.201–1 is amended by revising the introductory text of paragraph (d)(i), and paragraph (d)(i)(III) to read as follows:

201.201–1 The two councils.

* * * * *

(d)(i) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council, OUSD(A&T), 3062 Defense Pentagon, Washington, DC 20301–3062; datafax (703) 602–0350:

* * * * *

III. Discussion: Include a complete, convincing explanation of why the change is necessary and how the recommended revision will solve the problem. Address advantages and disadvantages of the proposed revision, as well as any cost or administrative impact on Government activities and contractors. Identify any potential impact of the change on automated systems, e.g., automated financial and procurement systems. Provide any other background information that would be helpful in explaining the issue.

* * * * *

3. Section 201.402 is amended by revising paragraph (2) to read as follows:

201.402 Policy.

* * * * *

(2) Individual deviations.

(i) Except as provided in paragraph (2)(ii) of this section, individual deviations, other than those in paragraph (1)(i) of this section, must be approved in accordance with the

department/agency plan prescribed by 201.304(4).

(ii) Contracting officers outside the United States are authorized to deviate from prescribed non-statutory FAR and DFARS clauses when contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations. This authority shall be exercised only if such governments or organizations will not agree to the standard clauses.

* * * * *

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

4. Section 202.101 is amended by revising under the heading “ARMY” the phrase “Strategic Defense Command” to read “Space and Strategic Defense Command”; by revising under the heading “NAVY” the phrase “Deputy, Acquisition Policy, Integrity and Accountability,” to read “Deputy, Acquisition and Business Management,”; by revising the heading “ADVANCED RESEARCH PROJECTS AGENCY” to read “DEFENSE ADVANCED RESEARCH PROJECTS AGENCY”; by revising the heading “DEFENSE NUCLEAR AGENCY” to read “DEFENSE SPECIAL WEAPONS AGENCY”; by revising under the newly revised heading “DEFENSE SPECIAL WEAPONS AGENCY” the phrase “Headquarters, Defense Nuclear Agency” to read “Headquarters, Defense Special Weapons Agency”; and by revising in the definition of *Departments and agencies* the phrases “Advanced Research Projects Agency” and “Defense Nuclear Agency” to read “Defense Advanced Research Projects Agency” and “Defense Special Weapons Agency”, respectively.

PART 204—ADMINISTRATIVE MATTERS

204.7003 [Amended]

5. Section 204.7003 is amended in paragraph (a)(1)(i)(F) by revising the phrase “Defense Nuclear Agency—DNA” to read “Defense Special Weapons Agency—DSWA”.

PART 206—COMPETITION REQUIREMENTS

6. Section 206.304 is amended by revising paragraph (a)(4)(B)(2) to read as follows:

206.304 Approval of the justification.

(a)(4) * * *

(B) * * *

(2) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

PART 207—ACQUISITION PLANNING

207.103 [Amended]

7. Section 207.103 is amended in paragraph (h)(i)(B) by revising the phrase “to the extent prescribed DoDD 5000.1” to read “to the extent prescribed by DoDD 5000.1”.

8. Section 207.104 is added to read as follows:

207.104 General procedures.

(b) The planner should forward the requirements information to the contract administration organization when assistance in identification of potential sources of supply is necessary, when an existing contract is being modified or resolicited, or when contract administration resource requirements will be affected.

9. Section 207.105 is amended by revising the introductory text; in paragraph (a)(8) by removing the reference “DoDI 5000.2, Defense Acquisition Management Policies and Procedures” and inserting in its place “DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs”; by redesignating paragraphs (b) (12), (15), and (17) as paragraphs (b) (13), (16), and (18), respectively; in newly designated paragraph (b)(13)(iv) by removing the reference “DoDI 5000.2, Defense Acquisition Management Policies and Procedures” and inserting in its place “DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs”; in newly designated paragraph (b)(16) by revising the title to read “*Environmental and energy conservation objectives.*”; in newly designated paragraph (b)(18)(A)(i)(ii) by removing the reference “(b)(17)(A)(i)(i)” and inserting “(b)(18)(A)(i)(i)” in its place; and by adding paragraph (b)(18)(D). The revised and added text reads as follows:

207.105 Contents of written acquisition plans.

For acquisitions covered by 207.103(c)(i) (A) and (B), correlate the plan to the DoD Future Years Defense Program, applicable budget submissions, and the decision coordinating paper/program

memorandum, as appropriate. It is incumbent upon the planner to coordinate the plan with all those who have a responsibility for the development, management, or administration of the acquisition. The acquisition plan should be provided to the contract administration organization to facilitate resource allocation and planning for the evaluation, identification, and management of contractor performance risk.

* * * * *

(b) * * *

(18) * * *

(D) *Contract administration.* Discuss the level of Government administration anticipated or currently performed and any change proposed by the contract administration office.

10. Section 207.470 is amended by revising paragraph (b) to read as follows:

207.470 Statutory requirements.

* * * * *

(b) *Leasing of commercial vehicles and associated equipment.* Except as provided in paragraph (a) of this section, the contracting officer may use leasing in the acquisition of commercial vehicles and associated equipment whenever the contracting officer determines that leasing of such vehicles is practicable and efficient (10 U.S.C. 2401a).

PART 209—CONTRACTOR QUALIFICATIONS

11. Section 209.103 is amended by adding paragraph (c) to read as follows:

209.103 Policy.

* * * * *

(c) The additional cost of contract administration and audit due to a contractor's performance risk may be considered in evaluating the contractor's price.

209.103-70 [Amended]

11a. Section 209.103-70 is amended by removing the phrase "in FAR part 13".

209.403 [Amended]

12. Section 209.403 is amended in paragraph (1) by revising the phrase "Advanced Research Projects Agency—The Director" to read "Defense Advanced Research Projects Agency—The Director"; and by revising the phrase "Defense Nuclear Agency—The Director" to read "Defense Special Weapons Agency—The Director".

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

13. Section 212.301 amended by removing paragraph (f)(i) and redesignating paragraphs (f)(ii) through (f)(iv) as paragraphs (f)(i) through (f)(iii), respectively. Newly designated paragraph (f)(ii) is amended in the first sentence by removing the phrase "in FAR part 13".

PART 214—SEALED BIDDING

214.406-3 [Amended]

14. Section 214.406-3 is amended in paragraph (e)(i) by revising the phrase "Advanced Research Projects Agency:" to read "Defense Advanced Research Projects Agency:"; and by revising the abbreviation "ARPA" to read "DARPA"; and in paragraph (e)(vi) by revising the phrase "Defense Nuclear Agency:" to read "Defense Special Weapons Agency:" and by revising the abbreviation "DNA" to read "DSWA".

PART 215—CONTRACTING BY NEGOTIATION

15. Section 215.605 is amended by revising paragraph (b) to read as follows:

215.605 Evaluation factors and subfactors.

(b)(2)(A) In acquisitions which require use of the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the extent of participation of small and small disadvantaged business in performance of the contract shall be addressed in source selection.

(1) For acquisitions other than those based only on cost or price competition, the contracting officer shall evaluate the extent to which offerors identify and commit to small business and to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(2) Criteria for evaluation may include—

(i) The extent which such firms are specifically identified in proposals;

(ii) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(iii) The complexity and variety of the work small firms are to perform;

(iv) The realism of the proposal;

(v) When not otherwise required by 215.608(a)(2), past performance of the offerors in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small, Small

Disadvantaged and Women-Owned Small Business Concerns, and 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

(vi) The extent of participation of such firms in terms of the value of the total acquisition.

(3) Proposals addressing the extent of small and small disadvantaged business performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and should be structured to allow for consideration of offers from small businesses.

(4) When an evaluation includes the criterion in paragraph (b)(2)(A)(2)(i) of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(g).

(B) The costs or savings related to contract administration and audit may be considered when the offeror's past performance or performance risk is likely to result in significant costs or savings.

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

16. Subpart 219.7 is amended by revising the title to read as follows:

Subpart 219.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

17. Section 219.7201 is amended by revising the second sentence to read as follows:

219.7201 Administration of the test program.

* * * The focal point for the test program is the Director, Small and Disadvantaged Business Utilization (SADBU), Office of the Deputy Under Secretary of Defense (International and Commercial Programs). * * *

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

18. Subpart 223.8 is added to read as follows:

Subpart 223.8—Ozone-Depleting Substances

223.803 Policy.

Section 211.271, Elimination of use of class I ozone-depleting substances,

places restrictions on award or modification of DoD contracts requiring the use of class I ozone-depleting substances. These restrictions are in addition to any imposed by the Clean Air Act and apply after June 1, 1993, to all DoD contracts, regardless of place of performance.

PART 225—FOREIGN ACQUISITION

225.403 [Amended]

19. Section 225.403 is amended in paragraph (d)(1)(B) (3) by inserting the work "Subpart" immediately before the reference "225.71".

20. Subpart 225.9 is added to read as follows:

Subpart 225.9—Additional Foreign Acquisition Clauses

225.970 Clause deviations in overseas contracts.

See 201.402(2) for approval authority for clause deviations in overseas contracts with governments of North Atlantic Treaty Organization (NATO) countries or other allies or with United Nations or NATO organizations.

21. Section 225.7001 is amended by revising paragraph (a) to read as follows:

225.7001 Definitions.

* * * * *

(a) *Bearing components and miniature and instrument ball bearings* are defined in the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings.

* * * * *

22. Section 225.7002–2 is amended by revising paragraphs (e) and (f) to read as follows:

225.7002–2 Exceptions.

* * * * *

(e) Acquisitions using simplified acquisition procedures.

(f) Acquisitions of end items incidentally incorporating cotton or wool, for which the estimated value of the cotton or wool is not more than 10 percent of the total price of the end item; provided the estimated value of the cotton or wool does not exceed the simplified acquisition threshold.

* * * * *

23. Section 225.7002–3 is revised to read as follows:

225.7002–3 Contract clauses.

Unless an exception is known to apply—

(a) Use the clause at 252.225–7012, Preference for Certain Domestic Commodities, in all solicitations and contracts which meet or exceed the simplified acquisition threshold.

(b) Use the clause at 252.225–7014, Preference for Domestic Specialty Metals, in all solicitations and contracts over the simplified acquisition threshold that require delivery of an article containing specialty metals. Use the clause with its Alternate I in all solicitations and contracts over the simplified acquisition threshold requiring delivery, for one of the following major programs, of an article containing specialty metals—

- (1) Aircraft;
- (2) Missile and space systems;
- (3) Ships;
- (4) Tank-automotive;
- (5) Weapons; or
- (6) Ammunition.

(c) Use the clause at 252.225–7015, Preference for Domestic Hand or Measuring Tools, in all solicitations and contracts over the simplified acquisition threshold calling for delivery of hand or measuring tools.

225.7002–4 [Removed]

24. Section 225.7002–4 is removed.

225.7011–4 [Amended]

25. Section 225.7011–4 is amended in the introductory text of paragraph (b) by removing the phrase "The Pentagon" and inserting in its place the phrase "7100 Defense Pentagon"

225.7012–3 [Amended]

26. Section 225.7012–3 is amended by revising the section title to read "Contract clause." and by redesignating paragraphs (1) and (2) as paragraphs (a) and (b), respectively.

27. Section 225.7019–2 is revised to read as follows:

225.7019–2 Exceptions.

(a) The restriction in 225.7019–1(a) does not apply to—

- (1) Acquisitions using simplified acquisition procedures, unless ball or roller bearings or bearing components are the end items being purchased;
- (2) Purchases of commercial items incorporating ball or roller bearings;
- (3) Miniature and instrument ball bearings when necessary to meet urgent military requirements;
- (4) Items acquired overseas for use overseas; or
- (5) Ball and roller bearings or bearing components or items containing bearings for use in a cooperative or co-production project under an international agreement. This exception does not apply to miniature and instrument ball bearings.

(b) The restriction in 225.7019–1(b) does not apply to contracts for acquisition of commercial items or subcontracts for acquisition of

commercial items or subcontracts for acquisition of commercial items or commercial components (see 212.503(a)(xi) and 212.504(a)(xxxvi)).

28. Section 225.7019–3 is amended by revising the introductory text of paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

225.7019–3 Waiver.

(a) * * *

(2) For multiyear contracts or contracts exceeding 12 months, except those for miniature and instrument ball bearings, only if—

* * * * *

(3) For miniature and instrument ball bearings, only if the contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

* * * * *

29. Sections 225.7102, 225.7103, and 225.7104 are revised to read as follows:

225.7102 Policy.

DoD requirements for the following forging items, whether as end items or components, shall be acquired from domestic sources (as described in the clause at 252.225–7025) to the maximum extent practicable—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

225.7103 Exceptions.

The policy in 225.7102 does not apply to acquisitions—

- (a) Using simplified acquisition procedures, unless the restricted item is the end item being purchased;
- (b) Overseas for overseas use; or
- (c) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity). The restriction to domestic sources does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.

225.7104 Waiver.

Upon request from a prime contractor, the contracting officer may waive the requirement for domestic manufacture of the items covered by the policy in 225.7102.

225.7303 [Amended]

30. Section 225.7303 is amended in the title by removing the abbreviation

“(FMS)” in the first sentence by revising the phrase “foreign military sale” to read “FMS”; and in the second sentence by revising the phrase “a foreign military sale” to read “an FMS”.

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.7004 [Amended]

31. Section 227.7004 is amended in paragraph (c)(6) by revising the phrase “Defense Nuclear Agency” to read “Defense Special Weapons Agency”.

227.7009–1 [Amended]

32. Section 227.7009–1 is amended by removing paragraph (a); by redesignating paragraphs (b) through (f) as paragraphs (a) through (e), respectively; and in newly designated paragraph (d) by revising the reference “FAR 33.014” to read “FAR subpart 33.2”.

PART 228—BONDS AND INSURANCE

228.171, 228.171–1, 228.171–2, and 228.171–3 [Removed]

33. Sections 228.171, 228.171–1, 228.171–2, and 228.171–3 are removed.

228.311–1 [Removed]

34. Section 228.311–1 is removed.

228.311–2 [Redesignated]

35. Section 228.311–2 is redesignated as 228.311–1.

36. Section 228.370 is amended by revising the title to read as follows:

228.370 Additional clauses.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

37. Section 231.205–6 is amended in paragraph (a)(2) by revising the parenthetical phrase to read “(Section 8117 of Pub. L. 103–335)” and in paragraph (f)(1) by revising the first sentence to read as follows:

231.205–6 Compensation for personal services.

* * * * *

(f)(1) Costs for bonuses or other payments in excess of the normal salary paid by the contractor to an employee, that are part of restructuring costs associated with a business combination, are unallowable under DoD contracts funded by fiscal year 1996 appropriations (Section 8122 of Pub. L. 104–61). * * *

231.205–70 [Amended]

38. Section 231.205–70 is amended in paragraph (d)(2) by removing the phrase “paragraph (c)(1)(iv) of this subsection” and inserting “231.205–70(c)(1)(iv)” in its place.

231.205–71 [Amended]

39. Section 231.205–71 is amended in paragraph (b) by removing the phrase “Assistant Secretary of Defense for Economic Security” and inserting in its place the phrase “Deputy Under Secretary of Defense for Industrial Affairs and Installations”.

PART 232—CONTRACT FINANCING

40. Section 232.803 is amended by revising paragraph (d) to read as follows:

232.803 Policies.

* * * * *

(d) Pursuant to Section 3737(e) of the Revised Statutes (41 U.S.C. 15), and in accordance with Presidential delegation dated October 3, 1995, Secretary of Defense delegation dated February 5, 1996, and Under Secretary of Defense for Acquisition and Technology delegation dated February 23, 1996, the Director of Defense Procurement determined on May 10, 1996, that a need exists for DoD to agree not to reduce or set off any money due or to become due under the contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract. This determination was published in the Federal Register on June 11, 1996, as required by law. Nevertheless, if departments/agencies decide it is in the Government's interests, or if the contracting officer makes a determination in accordance with FAR 32.803(d) concerning a significantly indebted offeror, they may exclude the no-setoff commitment.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

41. Section 235.006 is amended by revising paragraphs (a) and (b)(iv) to read as follows:

235.006 Contracting methods and contract type.

(a) All contracts under the Manufacturing Technology Program (see DoDI 4200.15, Manufacturing Technology Program) shall be awarded using competitive procedures (10 U.S.C. 2525).

(b) * * *

(iv) A cost-sharing arrangement (see FAR 16.303) must be used for contracts awarded in support of the Manufacturing Technology Program, unless an alternative is approved by the Secretary of Defense (10 U.S.C. 2525). Approval by the Secretary of Defense to use other than a cost-sharing arrangement for the Manufacturing Technology Program must be based on

a determination that the contract is for a program that—

(A) Is not likely to have any immediate and direct commercial application;

(B) Is of sufficiently high risk to discourage cost sharing by non-Federal Government sources; or

(C) Will be carried out by an institution of higher education.

235.7002 [Amended]

42. Section 235.7002 is amended in paragraph (a)(4) by revising the phrase “Defense Nuclear Agency” to read “Defense Special Weapons Agency”.

235.7003 [Amended]

43. Section 235.7003 is amended in paragraph (b)(4)(ii) by revising the phrase “Defense Nuclear Agency:” to read “Defense Special Weapons Agency:”; and by revising the phrase “Acquisition Management Office” to read “Acquisition Management Directorate”.

PART 239—ACQUISITION OF INFORMATION RESOURCES

44. Section 239.7501–2 is revised to read as follows:

239.7501–2 Restriction.

Section 8028 of the FY 1992 Defense Appropriations Act (Pub. L. 102–172) and similar sections of the FY 1993, FY 1994, and FY 1995 Defense appropriations acts prohibit use of DoD appropriations for acquisition of major automated information systems, unless the systems have successfully completed oversight reviews required by DoD regulations.

PART 242—CONTRACT ADMINISTRATION

45. Section 242.302 is amended in paragraph (a)(19) by revising the reference “252.225–7008” to read “252.225–7009” and by adding paragraph (a)(67) to read as follows:

242.302 Contract administration functions.

(a) * * *

(67) Also support program offices and buying activities in precontractual efforts leading to a solicitation or award.

* * * * *

242.803 [Amended]

46. Section 242.803 is amended at the end of paragraph (b)(i)(C) by changing the period to a semicolon.

47. Section 242.1106 is amended by revising paragraph (a)(i) to read as follows:

242.1106 Reporting requirements.

(a) * * *

(i) DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs; and

* * * * *

48. Section 242.1107-70 is revised to read as follows:

242.1107-70 Additional clauses.

When cost/schedule status reporting (C/SSR) is required on acquisitions for other than major systems (i.e., the Contract Data Requirements List includes DI-MGMT-81467), use in solicitations and resulting contracts the clause at 252.242-7005, Cost/Schedule Status Report.

49. Section 242.7202 is amended by revising paragraph (d) to read as follows:

242.7202 Policy.

* * * * *

(d) Conforms to the standards at 252.242-7004(f) when the contractor has cost-reimbursement or fixed-price contracts exceeding the simplified acquisition threshold, with progress or other contract financing provisions, except when all of the contracts and subcontracts are awarded under the set-aside or Section 8(a) procedures of FAR part 19.

50. Section 242.7203 is revised to read as follows:

242.7203 MMAS disclosure, demonstration, and maintenance requirements.

(a) A large business contractor is subject to MMAS disclosure, demonstration, and maintenance if in its preceding fiscal year the contractor received DoD prime contracts or subcontracts (including modifications) totaling—

(1) \$70 million or more; or

(2) \$30 million or more (but less than \$70 million), and the contracting officer determines it to be in the best interests of the Government (e.g., contractor disclosure, demonstration, or other activities indicate significant MMAS problems exist).

(b) After the administrative contracting officer determines the contractor's MMAS is adequate (see 242.7204(b)), written disclosure will not be required for the next MMAS review unless the contractor's policies, procedures, or practices have changed in the interim period(s). Similarly, once the contractor demonstrates that its MMAS contains no significant deficiencies, demonstration requirements for subsequent reviews may be satisfied if internal audits are reasonably current and contain

sufficient transaction tests to demonstrate MMAS compliance with each standard.

242.7204 [Amended]

51. Section 242.7204 is amended in paragraph (a)(1) by revising the reference "242.7203" to read "242.7203(a)"; and in paragraph (a)(2) by revising the reference "242.7203(b)" to read "242.7203(a)(2)".

242.7206 [Amended]

52. Section 242.7206 is amended in the introductory text by removing the phrase "in FAR part 13".

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

244.303 [Removed]

53. Section 244.303 is removed.

244.304 [Amended]

54. Section 244.304 is amended in the introductory text of paragraph (b) by removing the abbreviation "PSA" and inserting in its place the phrase "purchasing system analyst (PSA)".

PART 249—TERMINATION OF CONTRACTS

249.7001 [Amended]

55. Section 249.7001 is amended in paragraph (b)(4) by revising the phrase "Advanced Research Projects Agency—CMO" to read "Defense Advanced Research Projects Agency—CMO"; and in paragraph (b)(9) by revising the phrase "Defense Nuclear Agency—Chief, Office of Procurement, OATR" to read "Defense Special Weapons Agency—Acquisition Management Directorate (AM)".

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

250.303 [Amended]

56. Section 250.303 is amended in paragraph (5) by revising the phrase "Advanced Research Projects Agency—" to read "Defense Advanced Research Projects Agency—"; and in paragraph (10) by revising the phrase "Defense Nuclear Agency—" to read "Defense Special Weapons Agency—", by revising the abbreviation "DNA" to read "DSWA", and by revising the abbreviation "OAPR" to read "AM".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7000 [Amended]

57. Section 252.212-7000 is amended in the introductory text by revising the reference "212.301(f)(iii)" to read "212.301(f)(ii)".

252.212-7001 [Amended]

58. Section 252.212-7001 is amended in the introductory text by revising the reference "212.301(f)(iv)" to read "212.301(f)(iii)".

252.225-7012 [Amended]

59. Section 252.225-7012 is amended in the introductory text by revising the reference "225.7002-4(a)" to read "225.7002-3(a)".

252.225-7013 [Removed and Reserved]

60. Section 252.225-7013 is removed and reserved.

252.225-7014 [Amended]

61. Section 252.225-7014 is amended in the introductory text by revising the reference "225.7002-4(c)" to read "225.7002-3(b)"; and in the introductory text of ALTERNATE I by revising the reference "225.7002-4(c)" to read "225.7002-3(b)".

252.225-7015 [Amended]

62. Section 252.225-7015 is amended in the introductory text by revising the reference "225.7002-4(d)" to read "225.7002-3(c)".

63. Section 252.225-7016 is revised to read as follows:

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7019-4, use the following clause:

Restriction on Acquisition of Ball and Roller Bearings (Sep 1996)

(a) *Definitions.*

As used in this clause—

(1) "Bearing components" means the bearing element, retainer, inner race, or outer race.

(2) "Miniature and instrument ball bearings" means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, regardless of material, tolerance, performance, or quality characteristics.

(b) The Contractor agrees that all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States or Canada.

(c) The restriction in paragraph (b) of this clause does not apply to the extent that the end items or components containing ball or roller bearings are commercial items. The commercial item exception does not include items designed or developed under a Government contract or contracts where the end item is bearings and bearing components.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the

Contractor in accordance with subsection 225.7019-3 of the Defense Federal Acquisition Regulation Supplement. If the restriction is waived for miniature and instrument ball bearings, the Contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(e) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Office.

(f) The Contractor agrees to insert this clause, including this paragraph (f), in every subcontract and purchase order issued in performance of this contract, unless items acquired are—

- (1) Commercial items other than ball or roller bearings; or
- (2) Items that do not contain ball or roller bearings.

(End of clause)

64. Section 252.225-7025 is revised to read as follows:

252.225-7025 Foreign Source Restrictions.

As prescribed in 225.7105, use the following clause:

Foreign Source Restrictions (Sep 1996)

(a) *Definitions.*

As used in this clause—

(1) *Domestic manufacture* means manufactured in the United States or Canada if the Canadian firm—

(i) Normally produces similar items or is currently producing the item in support of DoD contracts (as prime or subcontractor); and

(ii) 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.

(2) *Forging items* means—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

(b) The Contractor agrees that end items and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with section 225.7104 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Officer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in subcontracts and purchase orders issued in performance of this contract, when products purchased contain restricted forging items.

(End of clause)

65. Section 252.228-7001 is amended by revising the clause date to read "(SEP 1996)"; by revising paragraph (d)(2); in paragraph (e) by removing "\$1,000" both places it appears and inserting "\$25,000" in its places; in the introductory text of paragraph (h) by removing the phrase "In the event the" and inserting in its place the phrase "In the event of"; and by revising paragraph (i)(1), the introductory text of paragraph (i)(2), and paragraph (k). The revised text reads as follows:

252.228-7001 Ground and flight risk.

* * * * *

(d) * * *

(2) Is sustained during flight if the flight crew members have not been approved in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled "Contractor's Flight and Ground Operations" (Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1C, and Defense Logistics Agency Manual 8210.1);

* * * * *

(i) * * *

(1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(2) Terminate this contract with respect to the aircraft, in which event the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

* * * * *

(k) The Contractor agrees to be bound by the operating procedures contained in the combined regulation entitled "Contractor's Flight and Ground Operations" in effect on the date of contract award.

(End of clause)

66. Section 252.228-7002 is amended by revising the clause date to read "(SEP 1996)"; and by revising section title, the introductory text of paragraph (c), and paragraph (e) to read as follows:

252.228-7002 Aircraft flight risk.

* * * * *

(c) Unless the flight crew members previously have been approved in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled "Contractor's Flight and Ground Operations" (Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1C, and Defense Logistics Agency Manual 8210.1), the Contractor shall not be—

* * * * *

(e) The Contractor agrees to be bound by the operating procedures contained in the combined regulation entitled "Contractor's

Flight and Ground Operations" in effect on the date of contract award.

(End of clause)

252.228-7006 and 252.228-7007 [Removed]

67. Sections 252.228-7006 and 252.228-7007 are removed.

68. Section 252.242-7004 is amended by revising the clause date to read "(SEP 1996)"; by adding paragraph (a)(3); and by revising paragraphs (c)(2)(i), (c)(2)(ii), (f)(7)(i), and (f)(7)(ii), and paragraph (f)(7)(iii) introductory text to read as follows:

252.242-7004 Material management and accounting system.

* * * * *

(a) * * *

(3) "Contractor" means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

* * * * *

(c) * * *

(2) * * *

(i) \$70 million or more; or

(ii) \$30 million or more (but less than \$70 million), and is notified in writing by the Contracting Officer that paragraphs (d) and (e) apply.

(f) * * *

(7) * * *

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411-50(b). Consistency shall be maintained across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The "loan/pay-back technique" means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the Administrative Contracting Officer. When the technique is used, the Contractor shall have controls to ensure—

* * * * *

PART 253—FORMS

253.204-70 [Amended]

69. Section 253.204-70 is amended in paragraph (c)(4)(ix)(B)(9) by revising the reference "FAR 6.302-3(a)(2)(i)" to read "FAR 6.302-3(a)(2)".

Appendix B to Chapter 2—[Amended]

70. Appendix B to Chapter 2 is amended in Part 5 by revising in the title the phrase "DEFENSE NUCLEAR

AGENCY" to read "DEFENSE SPECIAL WEAPONS AGENCY"; and by revising the abbreviation "DNA" to read "DSWA" both places it appears.

Appendix C to Chapter 2—[Removed and Reserved]

71. Appendix C to Chapter 2 is removed and reserved.

Appendix G to Chapter 2—[Amended]

72. Appendix G to Chapter 2 is amended in Part 1, Section G-101, paragraph (c), by removing the address "***Defense Nuclear Agency, Chief, Contract Division, Defense Nuclear Agency, Washington, DC 20305-1000" and inserting in its place the address "***Defense Special Weapons Agency, Director, Acquisition Management Directorate, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310-3398".

73. Appendix G to Chapter 2 is amended in Part 2 by revising entry DASG60-CB to read as follows:

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

* * * * *

DASG60-CB

USA Space and Strategic Defense Command, Deputy Commander, ATTN: CSSD-CM, P.O. Box 1500, Huntsville, AL 35807-3801

* * * * *

74. Appendix G to Chapter 2 is amended in Part 3 by removing entry N66032-LK and the address that follows; by revising the entries for activity address numbers N00022, N31149, N52855, N61463, N62472, N66022, N66972, N67596, and N68409; and by adding entries for activity address numbers N00038, N0610A, N39088, N43636, N48984, N53863, N55105, N55271, N57092, N66101, N68317, N68326, N68389, N68482, N68573, and N68939. The revised and added text reads as follows:

PART 3—NAVY ACTIVITY ADDRESS NUMBERS

* * * * *

N00022—ML*, MQ*, NV*, MLZ
Chief of Naval Personnel,
Washington, DC 20370-2000

* * * * *

N00038 (MAJ00011)—LB-5

U.S. Commander-in-Chief, Pacific, HQ
Support Division, Box 64017, Code
J145, Camp H.N. Smith, HI 96861-
4017

* * * * *

N0610A (MAJ00062)—L98

Commanding Officer, Naval Diving
and Salvage Training Center, 350
South Crag Road, Panama City, FL

32407-7016

* * * * *

N31149 (MAJ00024)—EHA-B

Naval Sea Logistics Center
Detachment, Philadelphia Naval
Base, Philadelphia, PA 19112-5061

* * * * *

N39088 (MAJ00022)—NVF

Navy Recruiting Orientation Unit, 206
South Avenue, Suite C, Pensacola,
FL 32508-5102

* * * * *

N43646 (MAJ00023)—4JB

Defense Printing Service, Detachment
Branch Office, 5403 Southside
Drive, Louisville, KY 40214

* * * * *

N48984 (MAJ00023)—L5E

Defense Printing Service, Detachment
Office, 901 South Drive, Scott Air
Force Base, IL 62225-5106

* * * * *

N52855—LZ

Special Boat Unit 11, FPO AP 96601-
4517

* * * * *

N53863 (MAJ00060)—LHH

Commander, Surface Warfare
Development Group, 2200
Amphibious Drive, Norfolk, VA
23521-2850

* * * * *

N55105 (MAJ00060)—NMC

Amphibious Construction Battalion
Two, 1815 Seabee Drive, Norfolk,
VA 23701

* * * * *

N55271 (MAJ00070)—LP8

Commander, Combat Logistics Group
One (N716), Building 221-2W,
NSC, Oakland, CA 94625-5309

* * * * *

N57092 (MAJ00070)—V5U

Naval Inshore Undersea Warfare
Group One, Building 184, Box
357140NOLF, Imperial Beach, CA
92135-7140

* * * * *

N61463 (MAJ00060)—LHB-D, LH2-4

Supply Officer, COMNAVBASE
Supply, 1530 Gilbert Street, Suite 8,
Norfolk, VA 23511-2793

* * * * *

N62472—JP

Naval Facilities Engineering
Command, Northern Division, 10
Industrial Highway, Mail Stop #82k
Lester, PA 19113

* * * * *

N66022 (MAJ00018)—MDW

Naval Dental Center, San Diego, CA
92136-5147

* * * * *

N66101 (MAJ00018)—J5B-D

U.S. Naval Hospital ROTA, PSC 819,
Box 18, FPO AE 09645-2500

* * * * *

N66972 (MAJ00022)—MQ2

Commanding Officer, Navy Recruiting
District, 8525 N.W. 53rd Terrace,
Suite 201, Miami, FL 33166

N67596 (MAJ00022)—NVD

Commanding Officer, Navy Recruiting
District, 10500 N. U.S. Highway
281, Suite 108, San Antonio, TX
78216-3630

* * * * *

N68317 (MAJ00062)—R03

Naval Administrative Unit, 1
Amsterdam Road, Scotia NY
12302-9460

* * * * *

N68326 (MAJ00018)—MDA

Naval Dental Center, 2707 Sheridan
Road, Bldg 73, Great Lakes, IL
60088-5258

* * * * *

N68389 (MAJ00011)—LB4

Commander, Joint Intelligence Center,
Pacific/DSL, P.O. Box 500, Bldg
352, Makalapa Drive, Pearl Harbor,
HI 96860-7450

* * * * *

N68409 (MAJ00018)—QAU

Naval Dental Center, San Francisco,
CA 94130-5030

* * * * *

N68482 (MAJ00022)

Department of the Navy, BUPERS Det
DAPMAL, Bldg 11, Naval Training
Center, 32110 Perry Road, Suite
110, San Diego, CA 92133-1521

* * * * *

N68573 (MAJ00023)—4JM

Navy Exchange Service Center,
NAVABASE, Norfolk, Bldg CD-1,
9222 Hampton Blvd, Norfolk, VA
23511-6390

* * * * *

N68939 (MAJ00012)—V8R

Naval Information Systems
Management Center, Washington
Navy Yard, Bldg 176-4,
Washington, DC 20374-5070

* * * * *

75. Appendix G to Chapter 2 is amended by revising Part 9 to read as follows:

PART 9—DEFENSE SPECIAL WEAPONS AGENCY ACTIVITY ADDRESS NUMBERS

DSWA01—8Z

Defense Special Weapons Agency,
Headquarters, ATTN: Acquisition
Management Directorate (AM), 6801
Telegraph Road, Alexandria, VA
22310-3398 (ZD30)

DSWA02—0N

Defense Special Weapons Agency,
Field Command, ATTN:
Acquisition Management Office
(FCA), 1680 Texas Street, S.E.,
Kirtland AFB, NM 87115-5669

(ZD31)

76. Appendix G to Chapter 2 is amended in Part 10 by revising under entry "MDA972—WS" the abbreviation "ARPA" to "DARPA".

Appendix I to Chapter 2 [Amended]

77. Appendix I to Chapter 2 is amended in section I-102, paragraphs (a) and (b), and in section I-103, paragraph (a), by revising the date "September 30, 1995" to read "September 30, 1996".

[FR Doc. 96-24064 Filed 9-25-96; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 960129018-6018-01; I.D. 091996B]

Fisheries of the Exclusive Economic Zone off Alaska; Northern Rockfish in the Western Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of northern rockfish in that area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), October 1, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the annual TAC for northern rockfish in the Western Regulatory Area of the GOA was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 640 metric tons (mt). The directed fishery for northern rockfish in the Western

Regulatory Area of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (61 FR 37226, July 17, 1996). NMFS has determined that, as of September 7, 1996, 527 mt remain in the directed fishing allowance.

The Administrator, Alaska Region, NMFS, has determined that the 1996 directed fishing allowance of northern rockfish in the Western Regulatory Area of the GOA has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

All other closures remain in full force and effect.

Classification

This action is taken under § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 20, 1996.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

[FR Doc. 96-24670 Filed 9-25-96; 8:45 am]

BILLING CODE 3510-22-F