



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

JUL 13 2010

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Change 08-7 to the Navy Marine Corps Acquisition Regulation Supplement
(NMCARS)

The attached document identifies changes incorporated in the April 2008 edition of NMCARS which are effective immediately. The online version of NMCARS will reflect these changes shortly.

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SUBJECT: Change 08-7 to the Navy Marine Corps Acquisition Regulation Supplement
(NMCARS)

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Incorporate the following changes into the April 2008 NMCARS (Change 08-7):

1. Under PART 5201 FEDERAL ACQUISITION REGULATIONS SYSTEM, the following revisions are made to each SUBPART identified below:

a. **SUBPART 5201.1—PURPOSE, AUTHORITY, ISSUANCE:** New section **5201.170 (DFARS 201.170) Peer Reviews** and subsection **5201.170-4 (PGI 201.170-4) Administration of Peer Reviews** are added to reflect DFARS Change Notice 20090729 and DON policy on peer reviews, as follows:

SUBPART 5201.1—PURPOSE, AUTHORITY, ISSUANCE

5201.170 (DFARS 201.170) Peer Reviews.

(90) *DON Peer Review Procedures.* The DON procedures for peer reviews are described in Annex 8, DON Peer Review Program. Peer reviews shall be performed on solicitations and contracts with estimated values at \$50,000,000 or more (including options).

(91) *Peer Review Rolling Forecast Report.* By the 25th day of each month, HCAs shall submit a rolling forecast of acquisitions valued at \$250,000,000 or more requiring peer reviews by ASN(RD&A) or DPAP in the format prescribed by Annex 8, Peer Review Program. Submit the required information to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil. Identify in the subject line "Peer Review Rolling Forecast."

5201.170-4(PGI 201.170-4) Administration of Peer Reviews.

(f) Contracting Officers shall submit copies of required memoranda documenting the disposition of peer review results and recommendations to DASN(A&LM)/PA&BT via electronic mail address RDAJ&As@navy.mil. Properly identify in the subject line "DISPOSITION OF PEER REVIEW RECOMMENDATIONS" followed by the applicable solicitation/contract number and peer review date.

b. **SUBPART 5201.3—AGENCY ACQUISITION REGULATIONS:** Section **5201.304 (DFARS 201.304) Agency control and compliance procedures** is revised in its entirety to align with the approved DON Control Plan for Component Clauses and to effect necessary editorial revisions, as follows:

SUBPART 5201.3—AGENCY ACQUISITION REGULATIONS

5201.304 (DFARS 201.304) Agency control and compliance procedures.

(4) DON Procedures for Control of Component Clause Use. Navy/Marine Corps contracting activities shall follow the approved DON Control Plan for Component Clauses available at <https://acquisition.navy.mil/rda/content/view/full/7071>. This Plan sets forth specific requirements that must be met before use of Component clauses in DON solicitations and contracts. All Component clauses used in DON solicitations and contracts shall be properly approved before use.

(i) Definitions.

(A) "*Component*" means an organizational entity exercising contracting authority within DON.

(B) "*Navy Clause Baseline*" means all properly approved DON component clauses.

(ii) Requirements.

(A) *Publication in the Federal Register*. Component clauses or changes to existing component clauses that meet the conditions of DFARS 201.304(1)(i) (*i.e.* have a significant effect beyond the internal operating procedures of the agency, or a significant cost or administrative impact on offerors/contractors) shall be published for public comment in the Federal Register.

(B) *Approvals*. The required approval authorities for use of Component clauses are established in Paragraph 4 of the DON Control Plan for Component Clauses and DFARS 201.304(1)(i). Component clauses which do not meet the conditions for USD(AT&L)/DPAP approval require HCA approval, which is delegable only as set forth in the Plan. However, ASN(RD&A)/DASN(A&LM) approval is required for any Component clause which results in a FAR/DFARS/NMCARS deviation. Approvals of deviations are set forth in paragraph 5 of the Plan. Copies of all approved Component clauses shall be submitted to DASN(A&LM) via electronic mail address at RDAPolicy@navy.mil for inclusion in the Navy clause baseline within 30 days of approval.

(C) *Documentation*. All Component clauses must be properly supported in writing and reviewed by Counsel before approval. The clause approval documents shall be in the format and include the content similar to that prescribed for proposed revisions of FAR or DFARS at DFARS 201.201-1(d) and when applicable, DFARS 201.301(b).

(D) *Clause numbering*. All component clauses shall be numbered in accordance with 5252.101.

(E) *Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items*.

(a) The following approvals are required for use of agency or component-unique provisions or clauses in solicitations and contracts for commercial items that will supplement FAR Part 12 and DFARS Part 212 provisions or clauses:

* * * * *

c. **SUBPART 5201.4—DEVIATIONS FROM THE FAR: Section 5201.403 (DFARS 201.403) Individual deviations** is revised to align with the approved DON Control Plan for Component Clauses, as follows:

SUBPART 5201.4—DEVIATIONS FROM THE FAR

* * * * *

5201.403 (DFARS 201.403) Individual deviations.

- (1) DASN(A&LM) is the approval authority for:
 - (i) individual deviations from the FAR or DFARS other than those specified in 5201.403(2), DFARS 201.402(1) and DFARS 201.403(2).
 - (ii) individual or class deviations from NMCARS.
 - (iii) deviations from certain component clauses (see 5201.304(4)).
- (2) In the case of a purchase or contract by an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, deviations from contract clauses may be granted by the HCA provided that no change in intent, principle, or substance is made. The HCA may delegate this authority no lower than one level above the contracting officer.

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d. **SUBPART 5201.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES: Paragraph (a) of section 5201.690 Requirements to be met before entering into contracts** is revised to effect a minor editorial revision and to require the use of the Business Clearance Format in Annex 2 when documenting pre-award and award decisions, as follows:

SUBPART 5201.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

5201.690 Requirements to be met before entering into contracts.

* * * * *

- (a) Contracting actions should be subject to some form of review prior to award. The formal review process is conducted and documented through the use of the business clearance. The purpose of the business clearance is to demonstrate that the proposed decision on a contract action conforms to law, regulation, good business practices and DOD/DON acquisition policy. The format at Annex 2, Business Clearance Memorandum, shall be used to document business decisions on contract actions.

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2. Under PART 5202 DEFINITIONS OF WORDS AND TERMS, **SUBPART 5202.1—DEFINITIONS**, section **5202.101(DFARS 202.101) Definitions**, the term “DASN(A&LM)” is revised to reflect the current organizational structure of position titles, as follows:

SUBPART 5202.1—DEFINITIONS

5202.101 (DFARS 202.101) Definitions.

* * * * *

“DASN(A&LM)” means the Deputy Assistant Secretary of the Navy for Acquisition and Logistics Management, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition). It also includes the Executive Director, DASN(A&LM), and the Director, Program Analysis and Business Transformation (PA&BT), DASN(A&LM).

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3. Under PART 5204 ADMINISTRATIVE MATTERS, effect changes to each SUBPART identified below to reflect DFARS Change Notices 20090904 and 20090729, as stated below:

a. **SUBPART 5204.2—CONTRACT DISTRIBUTION:** Section **5204.201 (PGI 204.201) Procedures** is revised to align with the detailed contract distribution procedures established in PGI 204.201 by DCN 20090904, as follows:

SUBPART 5204.2—CONTRACT DISTRIBUTION

5204.201 (PGI 204.201) Procedures.

(3)(i) DON Activities shall post an electronic copy of each newly executed procurement instrument (contracts, purchase orders, delivery orders, modifications, etc.) within two working days of execution, to the DoD Electronic Document Access (EDA) website at (<http://eda.ogden.disa.mil>), regardless of dollar value or method of payment. All parts of an instrument that would have been provided to a recipient in paper should be made available electronically.

b. **SUBPART 5204.6—CONTRACT REPORTING:** New section **5204.604 (DFARS 204.604) Responsibilities** is added and section **5204.670 (PGI 204.670) Contract action reporting requirements** is deleted to align with the current DoD procedures for the reporting of contract actions in FPDS-NG established by DFARS Change Notice 20090729, as follows:

SUBPART 5204.6—CONTRACT REPORTING

5204.604 (DFARS 204.604) Responsibilities.

(3)(i) HCAs shall complete quarterly data verification and validation (V&V) in accordance with the data V&V process described in section 4.0 available at [http://www.acq.osd.mil/dpap/pdi/eb/docs/OSD Data Improvement Plan v1-3.pdf](http://www.acq.osd.mil/dpap/pdi/eb/docs/OSD_Data_Improvement_Plan_v1-3.pdf) and submit the quarterly results and certifications to DASN (A&LM) eBusiness Policy and Oversight Division no later than 30 days from the end of the quarter.

(ii) By December 1st of each year, HCAs shall submit the required annual certification and data validation results for the preceding fiscal year reported data on contract actions to DASN(A&LM) E-business Policy and Oversight Division following the instructions and format available at [http://www.acq.osd.mil/dpap/pdi/eb/docs/OSD Improvement Plan v1-3 Exhibit E.doc](http://www.acq.osd.mil/dpap/pdi/eb/docs/OSD_Improvement_Plan_v1-3_Exhibit_E.doc).

5204.670 [REMOVED]

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4. UNDER PART 5207 ACQUISITION PLANNING, **SUBPART 5207.1—ACQUISITION PLANS**, section **5201.103(DFARS 207.103) Agency-head responsibilities** is revised to reflect new DON approval requirements for acquisition plans, as follows:

SUBPART 5207.1—ACQUISITION PLANS

5207.103 (DFARS 207.103) Agency-head responsibilities.

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(h) DASN(A&LM) is the approval authority for acquisition plans (APs) that include individual contract actions with an estimated value of \$100,000,000 or more (including options), except if the contract action is included in a current acquisition strategy for an ACAT program for which ASN(RD&A) or USD(AT&L) is the milestone decision authority. Submit APs to DASN(A&LM) for review and approval via electronic mail address RDAJ&As@navy.mil. HCAs are responsible for prescribing procedures for the review and approval of APs, including revisions to those plans, for contracts valued less than \$100,000,000 (including options). Cognizant PEOs, DRPMs or HCAs, and their designees are authorized to approve these APs. All APs should be signed by the approving official, the program manager, the CCO, and the contracting officer.

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5. Under PART 5209 CONTRACTOR QUALIFICATIONS, **SUBPART 5209.4—DEBARMENT, SUSPENSION, AND INELIGIBILITY**, section **5209.402 (FAR 9.402) Policy** is revised to effect an editorial revision by deleting the FAR 9.402 reference in the title of this section and inserting the corresponding DFARS 209.402 citation, as follows:

**SUBPART 5209.4—DEBARMENT, SUSPENSION, AND INELIGIBILITY
5209.402 (DFARS 209.402) Policy.**

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

6. Under PART 5216 TYPES OF CONTRACTS, new **SUBPART 5216.4—INCENTIVE CONTRACTS** and section **5216.401 General** are added to reflect current FAR, DOD and DON policy and procedures governing the use of award and incentive fee type contracts, as follows:

**SUBPART 5216.4 INCENTIVE CONTRACTS
5216.401 General.**

(d) HCAs may delegate signature authority for approval of required determinations and findings (D&Fs), subject to the limitations established below.

(1) Award-fee contract types. D&F signature authority is delegable no lower than one level below the HCA.

(2) Other Incentive contracts. D&F signature authority is delegable no lower than one level above the Contracting Officer.

(3) D&F submittal requirements for cost-plus-award-fee (CPAF) contracts. HCAs shall submit copies of approved D&Fs to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil, as follows:

(i) All D&Fs for ACAT I Programs: Within 15 days after approval.

(ii) D&Fs for contracts of non-ACAT I programs valued \$50,000,000 or more (options included): Within 30 days after approval.

(iii) Properly identify in the email subject line "CPAF D&F, ACAT Program Designation Number/Description, and Activity Name."

(f) Incentive- and Award-Fee Data Collection and Analysis. HCAs shall collect, evaluate and report on award and incentive fees earned on contracts with an estimated value greater than \$50,000,000 (including options) following the DON Process for Collecting, Evaluating, and Reporting Award and Incentive Fees Earned, available in Annex 9, AWARD FEE AND INCENTIVE FEE CONTRACT REPORTING, of this supplement. Submit a semiannual report on award and incentive fees earned to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil in the format

prescribed under Annex 9. Properly identify in the subject line and the report "AWARD AND INCENTIVE FEES EARNED REPORT" followed by the applicable month/reporting period (e.g. September 1, 2010/1 January – 30 June). The reporting schedule is as follows:

<u>Fees earned during reporting period:</u>	<u>Report due by:</u>
1 January – 30 June	1 September
1 July – 31 December	1 March

7. Under PART 5217 SPECIAL CONTRACTING METHODS, the following revisions are made to **SUBPART 5217.1—MULTI-YEAR CONTRACTING** to reflect DFARS Change Notice 20090301 and to effect minor editorial revisions, as stated below:

a. New section **5217.108 Congressional notification** is added to align with the FAR 17.108(b) notification requirement, as follows:

SUBPART 5217.1—MULTI-YEAR CONTRACTING

* * * * *

5217.108 Congressional notification.

(b) HCAs shall submit a copy of the required written Congressional notification of a proposed multi-year contract that includes a cancellation ceiling in excess of \$114.5 million to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil. Contracting officers shall verify that the required Congressional notification has been made and the time limit for award has been satisfied before executing contract award.

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b. An editorial change is made to the paragraph citation in section **5217.170 (DFARS 217.170) General** and the last sentence is deleted, as follows:

5217.170 (DFARS 217.170) General.

(e)(4) HCAs shall submit copies of Congressional notifications for multi-year contracting to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil.

c. New subparagraphs (4) and (5) are added to paragraph (a) of section **5217.171 Multiyear contracts for services** and new sections **5217.172 Multiyear contracts for supplies** and **5217.174 Multiyear contracts that employ economic order quantity procurement** are also added to appropriately reflect submittal requirements for DFARS congressional notifications, as follows:

5217.171 (DFARS 217.171) Multiyear contracts for services.

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(4) and (5) HCAs shall submit a copy of the required congressional notification to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil.

5217.172 Multiyear contracts for supplies.

(e) and (f) HCAs shall submit copies of the required congressional notifications to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil.

5217.174 Multiyear contracts that employ economic order quantity procurement.

(a) HCAs shall submit a copy of the required congressional notification to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil.

8. Under PART 5225 FOREIGN ACQUISITION, revisions are made to the following sections and subsections in **SUBPART 5225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION**, to reflect DFARS Change Notice 20090729, as stated below:

a. Section **5225.7002 Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools** is revised to remove the words “specialty metals” from its title; subsection **5225.7002-2 (DFARS 225.7002-2) Exceptions** is revised to appropriately reflect the subparagraph citation; section **5225.7003 (DFARS PGI 225.7003) Restrictions on acquisition of specialty metals**, subsection **5225-7003-3 Exceptions**, and subsection **5225-7003-4 One-time waiver**, are added as follows:

SUBPART 5225.70—AUTHORIZATION ACTS, APPROPRIATION ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

5225.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.

5225.7002-2 (DFARS 225.7002-2) Exceptions.

(b)(1)(iii) Submit domestic non-availability determinations for approval by the Secretary of the Navy through DASN(A&LM) using the format in Annex 3 via electronic mail address RDAJ&As@navy.mil. Include in subject line “DNAD pursuant to DFARS 225.7002-2.”

5225.7003 (DFARS 225.7003), Restrictions on acquisitions of specialty metals.

5225.7003-3 (DFARS 225-7003-3) Exceptions.

(b)(2)(ii) Submit the required annual report on exceptions used in the previous fiscal year for the acquisition of COTS end items valued at \$5M or more per item via DASN(A&LM) electronic mail address RDAJ&As@navy.mil not later than October 15. See PGI 225.7003-3.

(b)(5) Submit required domestic non-availability determinations (DNADs) for approval by the Under Secretary of Defense (Acquisition, Technology and Logistics) or the Secretary of the Navy (SECNAV) through DASN(A&LM) using the format at Annex 3, DOMESTIC NON-AVAILABILITY DETERMINATION, via electronic mail address RDAJ&As@navy.mil. Include in subject line: "DNAD pursuant to DFARS 225.7003-3 for approval by (*i.e.* USD(AT&L) or SECNAV)."

(c)(2) and (d) Submit required determinations for approval by the Under Secretary of Defense (Acquisition, Technology and Logistics) or SECNAV through DASN(A&LM) using the format in Annex 3, DOMESTIC NON-AVAILABILITY DETERMINATION, via electronic mail address RDAJ&As@navy.mil. Include in subject line: "Determination Pursuant to DFARS 225.7003-3 for approval by (*i.e.* USD(AT&L) or SECNAV)."

5225.7003-4 (DFARS 225-7003-4) One-time waiver.

(d) Submit the required determinations for approval by the Under Secretary of Defense (Acquisition, Technology and Logistics) or ASN(RD&A) through DASN(A&LM) via electronic mail address RDAJ&As@navy.mil. Include in subject line: "One-time waiver determination pursuant to DFARS 225.7003-4 for approval by (*i.e.* USD(AT&L) or ASN(RD&A))."

b. Section **5225.7090 Restriction on certain components for naval vessels** is revised to effect an editorial change reflecting the correct DON section numbering scheme for supplemental guidance and to correct DFARS citations in paragraph (d), Waiver, as follows:

* * * * *

5225.9000 Restriction on certain components for naval vessels.

* * * * *

(d) Waiver. In accordance with the provisions of DFARS 225.7008(b), the Under Secretary of Defense (Acquisition, Technology, and Logistics) has executed an annual waiver of the restrictions of 10 U.S.C. 2534 for certain items manufactured in the United Kingdom, including the items listed in paragraph (a) above. This waiver applies to –

- (1) Procurements under solicitations issued on or after August 4, 1998; and
- (2) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in DFARS 225.7008(a)(1)(iv).

9. **PART 5245 GOVERNMENT PROPERTY** is substantially revised to reflect DFARS Change Notice 20090729, which updated and reorganized SUBPARTS 245.1, 245.3, 245.4, and 245.5 for consistency with FAR changes on the management of Government property in possession of contractors. As a result, the following revisions are effected:

a. New **SUBPART 5245.1—GENERAL** and sections **5245.102-90 Policy** and **5245.106 Transferring Accountability** are added to align DON guidance with corresponding FAR sections, as follows:

SUBPART 5245.1—GENERAL

5245.102-90 Policy.

Decisions to provide Government property shall be fully documented in the contract file. Any decision to provide readily available commercial items as Government property requires a detailed analysis and written justification supporting the decision and approval by the commander of the requiring activity, or a designated representative as being in the best interest of the Government.

5245.106 Transferring Accountability.

(90) Government property shall not be transferred between contracts unless approval for retention is obtained from the authorized representative of the requiring activity, adequate consideration is received and proper identification is maintained. Contracts may not authorize the transfer of property from one contract to another without specific identification of the type, quantity and acquisition cost of the property that is authorized for transfer to the gaining contract.

b. Revise **SUBPART 5245.3—AUTHORIZING THE USE AND RENTAL OF GOVERNMENT PROPERTY** in its entirety, as stated below:

(1) Section **5245.302, Providing facilities** is renamed “**Contracts with foreign governments or internal organizations.**” Paragraph (a)(4)(A)(S-90) of subsection **5245.302-1(DFARS 245.302-1) Policy**, is deleted in its entirety. New paragraph (3)(ii) is added under subsection **5245.302**. These changes are reflected as follows:

SUBPART 5245.3—AUTHORIZING THE USE AND RENTAL OF GOVERNMENT PROPERTY

5245.302 (DFARS 245.302) Contracts with foreign governments or international organizations.

(3)(ii) Submit requests for waivers or reduction of charges for the use of Government property on work for foreign governments or international organizations to the Director, Defense Security Cooperation Agency (DSCA) through DASN(A&LM) via electronic mail address RDAJ&As@navy.mil.

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(2) Sections **5245.303 Providing material**; **5245.306 Providing special tooling**; and **5245.311 Providing Government property by transfer** are deleted. This text no longer exists in DFARS SUBPART 245.3.

c. **SUBPARTS 5245.4—PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS** and **5245.5—MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF CONTRACTORS**, including corresponding sections and subsections, are deleted. This text no longer exists in DFARS SUBPARTS 245.4 and 245.5.

d. Under **SUBPART 5245.6—REPORTING, REDISTRIBUTION, AND DISPOSAL OF CONTRACTOR INVENTORY**, subsection **5245.608-1 (DFARS 245.608-1) General**, is restructured to appropriately reflect the numbering convention for DON guidance, as follows:

SUBPART 5245.6—REPORTING, REDISTRIBUTION, AND DISPOSAL OF CONTRACTOR INVENTORY

5245.608 Screening of contractor inventory.

5245.608-1 (DFARS 245.608-1) General.

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

(1) Upon receipt of inventory schedules in acceptable form, the plant clearance office should provide an original to the requiring activity and copies to DON inventory managers, the contracting activity, and Naval activities other than inventory managers who have potential requirements for the property.

(2) Provide retention and redistribution requirements of the owning Commands, Offices and Bureaus (requiring activities), inventory managers, contracting activities and other Naval activities directly to the reporting office during this period.

10. Under **SUBPART 5252.2—TEXT OF PROVISIONS AND CLAUSES**, clause **5252.201-9000 CIVIL WORKS—DELEGATION TO NAVAL FACILITIES ENGINEERING COMMAND**, an editorial revision is made in the prescription for clause use, as follows:

SUBPART 5252.2—TEXT OF PROVISIONS AND CLAUSES
5252.201-9000 CIVIL WORKS—DELEGATION TO NAVAL FACILITIES
ENGINEERING COMMAND

As prescribed in 5201.601(90)(a)(2), insert the following clause:

* * * * *

11. **Annex 3 - DETERMINATION OF DOMESTIC NON-AVAILABILITY**, which provides templates for required DNADs, is revised to accurately reflect statutory citations throughout the templates as a result of DFARS Change Notice 2009729 and to distinctly identify DNAD templates for 10 U.S.C. 2533a (“Berry Amendment”) and 10 U.S.C. 2533b (“Specialty Metals”) actions.

12. New **Annex 8** titled “**DEPARTMENT OF THE NAVY PEER REVIEW PROGRAM**” is added to reflect the peer review procedures applicable to Navy/Marine Corps contracting activities and to standardize reporting requirements, as follows:

ANNEX 8 - DEPARTMENT OF THE NAVY PEER REVIEW PROGRAM

- A. Policy. In accordance with NMCARS 5201.170 (DFARS 201.170) Peer Reviews, and Deputy Assistant Secretary of the Navy, Acquisition and Logistics Management (DASN(A&LM)) memorandum of March 26, 2009, DON peer reviews shall be performed on solicitations and contracts with estimated acquisition values of \$50,000,000 or more (inclusive of options).
- B. Process. Enclosure (1) of DASN(A&LM) memorandum dated March 26, 2009 describes the DON peer review process which applies to all Navy/Marine Corps Contracting Activities.
- C. Reporting requirements. In accordance with NMCARS 5201.170, Peer Reviews, DON contracting activities shall submit by the 25th day of every month, a rolling forecast of acquisitions valued \$250,000,000 or more (options inclusive) requiring peer reviews and which provides the following information:
- Command/Buying Activity (include Location)
 - Peer Review Authority (DPAP, A&LM)
 - Program or contract action (Description)
 - Estimated value (Inclusive of options)
 - Competitive (Yes or No)
 - Anticipated Milestones (Dates) for the following:
 - Pre-Solicitation Review
 - Pre-BCM/PNM or Pre-BAFO Review
 - Post-BCM/PNM or Pre-Award Review
 - Post-Award Review (Services)
 - Required Award Date or Option Exercise Date
 - Buying Activity POC (Name/telephone number/electronic mail address)
 - Comments (e.g. Identify ACAT or MAIS level, if applicable)

To standardize report submission, use the DON Peer Review Projections spreadsheet format available at the following DON website:

https://acquisition.navy.mil/rda/home/policy_and_guidance/nmcars.

D. Resources. The following reference documents or resource tools support these procedures:

- NMCARS Subparts 5201.170, Peer Reviews.
- DASN(A&LM) memorandum Department of the Navy Peer Review Program dated March 26, 2009. <https://acquisition.navy.mil/rda/content/view/full/6526>
- Defense Federal Acquisition Regulation Supplement (DFARS) 201.170, Peer Reviews.
http://www.acq.osd.mil/dpap/dars/dfars/html/current/201_1.htm#201.170
- DFARS PGI 201.170 Peer Reviews.
http://www.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno=201_1&pgino=PGI201_1&dfarsanchor=201.170&pgianchor=201.170
- Department of Defense (DoD) Instruction 5000.02 Operation of the Defense Acquisition System dated December 8, 2008.
<http://www.dtic.mil/whs/directives/corres/pdf/500002p.pdf>
- Director, DPAP memorandum Review Criteria for the Acquisition of Services dated February 18, 2009.
<http://www.acq.osd.mil/dpap/policy/policyvault/USA002735-08-DPAP.pdf>
- Director, DPAP memorandum Peer Reviews of Contracts for Supplies and Services dated September 29, 2008.
<http://www.acq.osd.mil/dpap/policy/policyvault/USA000820-08-DPAP.pdf>
- DPAP Peer Review Resources Webpage, available at
http://www.acq.osd.mil/dpap/cpic/cp/peer_reviews.html

13. New **Annex 9** titled “**AWARD FEE AND INCENTIVE FEE CONTRACT REPORTING**” is added to incorporate the DON process for the collection, evaluation, and reporting of award and incentive fees earned, as defined in ASN(RD&A) memorandum of March 1, 2010, as follows:

ANNEX 9 -AWARD FEE AND INCENTIVE FEE CONTRACT REPORTING

- A. Policy: In accordance with NMCARS 5216.401(f), Incentive Fee and Award Fee Data Collection and Analysis, each contracting activity shall follow the process described in ASN(RD&A) policy memorandum of March 1, 2010 and submit a report on award and incentive fees earned on contracts with an estimated value greater than \$50,000,000. At a minimum, the report shall provide the following information:

Contracting Agency Name

Contract Number

Delivery/Task Order Number

Is this contract for services, supplies, or a mix of the two?

Program Name

Contracting Office Name

Base and all Options Value

Solicitation Date

If solicitation date is prior to 1 August 2007, has award fee criteria been reviewed for opportunities to bring it into compliance with current policy?

Date of Award

Contractor

Potential Award or Incentive Fee for Life of Contract

Award or Incentive Fee Available in Current Period

Actual Award or Incentive Fee Earned During Reporting Period

Percentage (%) Award or Incentive Fee Earned

Date Fee Determined

Does Earned Value Management Apply to this Contract?

CPI

SPI

Fee Type

Have provisional award fee payments ever been made on the contract?

Date of last provisional award fee payment.

Is a cost overrun projected on this contract?

Is a schedule slip projected on this contact?

Is a Nunn-McCurdy breach projected?

Was there any CPARS ratings during the reporting period that were inconsistent with the fee earned?

Has roll-over ever been approved on this contract?

Total Fee Rolled Over

Date most recent roll-over approved.

Has program been identified by OMB, DoDIG, or other entity as experiencing a cost, schedule, performance or other management issue (List report number in Notes column).

Point of contact
-POC Phone Number
POC electronic mail
Notes

B. Report Format: Use the electronic spreadsheet template available at <https://acquisition.navy.mil/rda/content/view/full/6992> for the semi-annual report. Follow the instructions set forth in the reporting template.

C. Resources: The following resource documents support this requirement:

- ASN RD&A memorandum of March 1, 2010, Subj: Department of the Navy (DON) Process for Collecting, Evaluating, and Reporting Award and Incentive Fees Earned, available at <https://acquisition.navy.mil/rda/content/view/full/6992>.
- DASN(A&LM) memorandum of January 22, 2008, Subj: Proper use of Award Fee Contracts and Award Fee Provisions, available at <https://acquisition.navy.mil/rda/content/view/full/5618>.
- DASN(A&LM) memorandum of May 8, 2007, Subj Award and Incentive Fees—Data Collection, available at <https://acquisition.navy.mil/rda/content/view/full/5061>.
- DPAP memorandum of April 24, 2007, Subj: Proper Use of Award-Fee Contracts and Award-Fee Provisions, available at <http://www.acq.osd.mil/dpap/policy/policyvault/2007-0197-DPAP.pdf>.
- DPAP memorandum of April 24, 2007, Subj: Award and Incentive Fees – Data Collection, available at <http://www.acq.osd.mil/dpap/policy/policyvault/2007-0712-DPAP.pdf>.
- DPAP memorandum of September 22, 2009, Subj: Award and Incentive Fees—New GAO Report and Evaluation of Data, available at <http://www.acq.osd.mil/dpap/policy/policyvault/USA002083-09-DPAP.pdf>.
- DFARS PGI 216.405-2 Cost-plus-award-fee contracts, available at http://www.acq.osd.mil/dpap/dars/pgi/pgi_hm/PGI216_4.htm
- FAR SUBPART 16.4—Incentive Contracts available at https://www.acquisition.gov/far/current/html/Subpart%2016_4.html#wp1078212

ANNEX 3 - DOMESTIC NON-AVAILABILITY DETERMINATION

Note: This annex contains templates for required documentation on Domestic Non-availability Determinations (DNADs) executed pursuant to the following statutes:

10 U.S.C. 2533a (“Berry Amendment”); and

10 U.S.C. 2533b (“Specialty Metals”).

**DEPARTMENT OF THE NAVY**OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

DETERMINATION OF DOMESTIC NON-AVAILABILITY

In accordance with 10 U.S.C. 2533a [Berry Amendment] and Defense Federal Acquisition Regulation (DFARS) 225.7002-2(b), I hereby make the following determination concerning acquisition of the _____ [identify the end item or program affected] _____.

FINDINGS

1. Title 10 U.S.C. 2533a requires that, unless meeting an exception in the law, the Department of Defense is prohibited from acquiring ___ [Identify applicable class of end item, component thereof. Classes of end items are: food; clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof (clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, hand wear, belts, badges, and insignia (See PGI 225.7002-1 for additional guidance and examples); tents, tarpaulins, or covers; cotton and other natural fiber products; woven silk or woven silk blends; spun silk yarn for cartridge cloth; synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics; canvas products; wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); any item of individual equipment (Federal Supply Class 8465) manufactured from or containing any of the fibers, yarns, fabrics, or materials listed herein; hand or measuring tools] unless produced in the United States.

2. The ___ [insert name of contracting activity] ___ has an acquisition for ___ [identify specific item at prime contract level] ___ under Solicitation/Contract _____ [insert number] _____. It was determined that this acquisition is subject to the 10 U.S.C. 2533a requirement to buy certain articles from United States sources and did not fall under any of the statutory exceptions. Therefore, the implementing clause at [Delete one] 252.225-7012, Preference for Certain Domestic Commodities / 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools, was included in the solicitation. ___ [Identify prime contractor] ___ has asserted that ___ [identify non-compliant end item, component, part, or material] ___ cannot be obtained containing items grown, reprocessed, reused, or produced in the U.S. and has requested approval of a determination that this ___ [specify item/material] ___ is not available from domestic sources.

3. ___ [Provide detail to explain what portion of the specific item being procured at the prime contract level is compliant and what is not compliant. Specify whether the DNAD is for an entire contract or certain deliveries.] ___.
4. ___ [Summarize the Contractor's market research and the Government's analysis supporting the assertion of non-availability. Such research and analysis should address the aspects of satisfactory quality, sufficient quantity, required form, and time requirements including dates needed for incorporation into the prime contract level end items. The market research and Government analysis must accompany the request for a DNAD.]
5. ___ [Summarize the analysis of alternatives that would not require a domestic nonavailability determination. The requiring activity's complete analysis must accompany the request for a DNAD. If the acquisition was competitive, address whether any other responding contractor(s) asserted compliant items would be delivered and, if so, explain why the contract will be awarded to a contractor proposing a non-compliant item.] ___.
6. ___ [Address and summarize the requiring activity's written certification with specificity stating why such alternatives are unacceptable. The certification must accompany the request for a DNAD and may be in the form of a PM/PEO signature on the analysis of alternatives approving the conclusion or may be included as part of a cover memo forwarding the request for a DNAD provided that it includes wording to the effect that no alternatives are acceptable.] ___.

DETERMINATION

Based on the findings above, I have determined that items grown, reprocessed, reused, or produced in the United States of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed for the ___ [specify end item/component] ___ in accordance with 10 U.S.C. 2533a(b) as implemented by DFARS 225.7002-2(b).

[Name]
Secretary of the Navy

Date

MEMORANDUM FOR THE SECRETARY OF THE NAVY

Subject: Analysis of Market Research and Analysis of Alternatives for _____

1. Purpose

The purpose of this analysis is to evaluate whether _____ of satisfactory quality and sufficient quantity, and in the required form, can be procured as and when needed for Contract _____ in support of the _____ program or if any other alternatives are acceptable. [If the Government performed the market research itself, only the analysis of alternatives is necessary for this memo. Additionally, the information contained herein may be contained in separate memos, if desired.]

2. Methodology Used in Market Research

[Explain how the restricted items to be acquired or any item of individual equipment containing the restricted item(s) were identified and what the individual equipment items are. Specify the restricted items involved to the degree possible.

If this request covers a group of equipment items and a representative sample was selected, explain the total number of items involved and the procedures for selecting the sample. An example would be that a list of all equipment was assembled and a random number generator was used to select a specific percentage of the items. Note whether the items were identified by the contractor or the Government.

Identify whether information about the restricted items/material was provided by a prime contractor or subcontractor for the end item or component involved.]

3. Issues

[Summarize issues investigated relative to contractor's assertion of non-availability. Examples are: predominant industry location, status of industry in qualifying countries, alternative materials/parts, US Government market share, cost of changes, Original Equipment Manufacturer, Qualified Parts List, or any other qualification required.]

4. Findings of Market Research

a. Materials/Suppliers – [Discuss manufacturers contacted, location of manufacturer and sources of supply, whether the manufacturer can track the material or items to source, degree of compliance/non-compliance asserted, willingness to analyze items for compliance if not already known, any conclusions as to veracity of compliance statements. If the manufacturer states its parts are compliant but the sources of supply (vendors) contradict or undermine this statement, this should be noted. If a manufacturer or supplier's interpretation of the material or item requirements is incorrect, this should be noted.

Examples of this would be an assumption that reprocessing or dyeing of fibers, yarns, fabrics, or materials qualified or that the small purchase exception is applicable at lower tiers of subcontracting. If more than one type of restricted material or item is involved in the DNAD, each should be treated in a separate section.]

b. State of Industry – [Discuss research done on the industry overall. This would include studies done by other organizations, annual industry sales and the US Government market share, information obtained from sources such as the Defense Logistics Agency, Department of Commerce or National Association of Manufacturers, internet surveys conducted, information obtained from other DNADs, commercial aspects of the industry. Discuss what portion of manufacturers and/or suppliers are represented in this document and efforts to identify additional sources through means such as notices in the Commerce Business Daily or Urgent Data Requests through the Government Industry Data Exchange Program.]

c. Other Issues – [Discuss any other issues relevant to this DNAD such as logistics considerations or whether an item is a critical capability for DoD].

5. Alternatives Considered and Effects of Compliance

a. Material/part alternatives considered and effects of compliance – [Explain the economic and schedule consequences if compliance were mandated for the specific material/part. This would include costs and time to build facilities, costs of insuring compliant materials were segregated in the supply system, redesign costs, or costs of any other alternatives considered.]

b. Alternative Acquisition Strategies Considered – [Explain any alternatives considered to buying the noncompliant material/part. These alternatives may include considering different end items to fulfill the requirement or using a different component/part in the end item. Effects of alternatives in terms of reengineering, delayed deliveries, mission impacts, etcetera, should be explained. Address the price reasonableness of buying compliant alternatives; can the price of the alternative be determined to be fair and reasonable?].

6. Recommendation/Signatures

[Briefly, summarize conclusions and give a recommendation. If analysis was performed by a support contractor or an organization other than the requiring activity, signatures should be identified to that organization/contractor and certification of why alternatives are not acceptable should be provided as an additional section or separate document].

[If this analysis was performed by the requiring activity, the certification as to why alternatives are not acceptable should be included in this section along with the requiring activity signatures.]



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

DETERMINATION OF DOMESTIC NON-AVAILABILITY

In accordance with 10 U.S.C. 2533b and Defense Federal Acquisition Regulation (DFARS) 225.7003-3(b)(5), I hereby make the following determination concerning acquisition of the _____ [identify the end item or program affected] _____.

FINDINGS

1. Title 10 U.S.C. 2533b requires that, unless meeting an exception in the law, the Department of Defense is prohibited from acquiring ___ [Identify applicable end item, component thereof, unless any specialty metals contained in the items or components are melted or produced in the United States. Restricted end items are: aircraft; missile or space systems; ships; tank or automotive items; weapon systems; ammunition; directly purchased specialty metal (e.g., raw stock, including bar, billet, slab, wire, plate, and sheet; castings; and forgings) as an end item; commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems; COTS fasteners, unless the fasteners are incorporated into COTS end items, subsystems, or assemblies, or the fasteners qualify for the commercial item exception.] This requirement does not apply to the extent that the Secretary of the Navy determines that end items containing compliant specialty metal of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed.

2. The ___ [name of contracting activity] ___ has an acquisition for ___ [identify specific item at prime contract level] ___ under Solicitation/Contract ___ [insert number] ___. It was determined that this acquisition is subject to the 10 U.S.C. 2533b requirements to buy strategic materials critical to national security from U.S. sources and did not fall under any of the statutory exceptions. Therefore, the implementing clause DFARS 252.225-7008, Restriction on Acquisition of Specialty Metals /252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, [Delete one] was included in the solicitation. ___ [Identify prime contractor] ___ has asserted that ___ [identify non-compliant end item, component, part, or material] ___ cannot be obtained containing specialty metals melted or produced in the U.S. and has requested approval of a determination that this ___ [item/material] ___ is not available from domestic sources.

3. ___ [Provide detail to explain what portion of the specific item being procured at the prime contract level is compliant and what is not compliant. Specify whether the DNAD is for an entire contract or certain deliveries.] ___.

4. ___ [Summarize the Contractor's market research and the Government's analysis supporting the assertion of non-availability. Such research and analysis should address the aspects of satisfactory quality, sufficient quantity, required form, and time requirements including dates needed for incorporation into the prime contract level end items. (This summary should also address the determination that the price of the item to be acquired is fair and reasonable. If the contracting officer determines that the price would not be fair and reasonable, the Secretary of the military department concerned may use that information in determining whether the unreasonable price causes the compliant metal to be effectively "nonavailable." See DFARS PGI 225.7003-3 (b)(5)(A)) The market research and Government analysis must accompany the request for a DNAD.]

5. ___ [Summarize the analysis of alternatives to a DNAD. The complete analysis should accompany the request for a DNAD. If the acquisition was competitive, address whether any other responding contractor(s) asserted compliant items would be delivered and, if so, explain why the contract will be awarded to a contractor proposing a non-compliant item.]

6. ___ [Address and summarize the requiring activity's written certification that such alternatives are unacceptable. The certification must accompany the request for a DNAD and may be in the form of a PM/PEO signature on the analysis of alternatives approving the conclusion or may be included as part of a cover memo forwarding the request for a DNAD provided that it includes wording to the effect that no alternatives are acceptable.] ___.

DETERMINATION

Based on the findings above, I have determined that specialty metal melted or produced in the United States of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed for the ___ [specify end item/component] ___ in accordance with 10 U.S.C. 2533b(b) as implemented by DFARS 225.7003-3(b).

[Name]
Secretary of the Navy

Date

MÉMORANDUM FOR THE SECRETARY OF THE NAVY

Subject: Analysis of Market Research and Analysis of Alternatives for _____

1. Purpose

The purpose of this analysis is to evaluate whether _____ of satisfactory quality and sufficient quantity, and in the required form, can be procured as and when needed for Contract _____ in support of the _____ program or if any other alternatives are acceptable. [If the Government performed the market research itself, only the analysis of alternatives is necessary for this memo. Additionally, the information contained herein may be contained in separate memos, if desired.]

2. Methodology Used in Market Research

[Explain how directly purchased specialty metal or end items or components/parts thereof, containing the specialty metal were identified and what the parts are. Specify the specialty metals involved to the degree possible.]

[If this request covers a group of parts and a representative sample was selected, explain the total number of parts involved and the procedures for selecting the sample. An example would be that a list of all parts was assembled and a random number generator was used to select a specific percentage of the items. Note whether such selection was made by the contractor or the Government.]

[Identify whether information about the parts/material was provided by a prime contractor or subcontractor for the end item or component involved.]

3. Issues

[Summarize issues investigated relative to contractor's assertion of non-availability. Examples are: predominant industry location, status of industry in qualifying countries, alternative materials/parts, US Government market share, cost of changes, Original Equipment Manufacturer, Qualified Parts List, or any other qualification (such as FAA approval) required.]

4. Findings of Market Research

a. Materials/Suppliers – [Discuss manufacturers contacted, location of manufacturer and sources of supply, whether the manufacturer can track specialty metals to source, degree of compliance/non-compliance asserted, willingness to analyze parts for compliance

if not already known, any conclusions as to veracity of compliance statements. If the manufacturer states its parts are compliant but the sources of supply (vendors) contradict or undermine this statement, this should be noted. If a manufacturer or supplier's interpretation of the specialty metal requirements is incorrect, this should be noted. Examples of this would be an assumption that remelting of a specialty metal qualified or that the small purchase exception is applicable at lower tiers of subcontracting. If more than one part or type of specialty metal is involved in the DNAD, each should be treated in a separate section.]

b. State of Industry – [Discuss research done on the industry overall. This would include studies done by other organizations, annual industry sales and the US Government market share, information obtained from sources such as the Department of Commerce or National Association of Manufacturers, internet surveys conducted, information obtained from other DNADs, commercial aspects of the industry. Discuss what portion of manufacturers and/or suppliers are represented in this document and efforts to identify additional sources through means such as notices in the Commerce Business Daily or Urgent Data Requests through the Government Industry Data Exchange Program.]

c. Other Issues – [Discuss any other issues relevant to this DNAD such as logistics considerations or whether an item is a critical capability for DoD.]

5. Alternatives Considered and Effects of Compliance

a. Material/part alternatives considered and effects of compliance - [Explain the economic and schedule consequences if compliance were mandated for the specific material/part. This would include costs and time to build facilities, costs of insuring compliant metals were segregated in the supply system, redesign costs, or costs of any other alternative considered.]

b. Alternative acquisition Strategies considered –[Explain any alternatives considered to buying the noncompliant material/part. These alternatives may include considering different end items to fulfill the requirement or using a different component/part in the end item. Effects of alternatives in terms of reengineering, delayed deliveries, mission impacts, etcetera, should be explained. Address the price reasonableness of buying compliant alternatives; can the price of the alternative be determined to be fair and reasonable?]

6. Recommendation/Signatures

[Briefly, summarize conclusions and give a recommendation. If analysis was performed by a support contractor or an organization other than the requiring activity, signatures should be identified to that organization/contractor and certification of why alternatives are not acceptable should be provided as an additional section or separate document.]

[If this analysis was performed by the requiring activity, the certification as to why alternatives are not acceptable should be included in this section along with the requiring activity signatures.]

DoN Peer Review Projections

COMMAND _____
 COMMAND P _____

COMMAND	Peer Review Authority	Program or contract action	Estimated Value \$M	Comp (Y/N)	Anticipated Milestones (dates completed)				Location of the Buying Activity	Comments
	DPAP, A&LM, HCA	(Account for all actions)			Pre solicitation Review	Pre-PNM or Pre BAFO Review	Post-PNM or Pre-Award Review	Required Contract Award Date		Identify ACAT or MAIS level if applicable
I	II	III	IV	V	VI	VII	VIII	IX	X	XI