

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 202, 204, 209, 212, 214, 215, 216, 217, 219, 223, 225, 226, 227, 229, 231, 232, 233, 234, 235, 236, 237, 239, 241, 242, 243, 250, 252, 253, and Appendices G and I to Chapter 2

[Defense Acquisition Circular 91-13]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Interim and final rules.

SUMMARY: Defense Acquisition Circular 91-13 amends the Defense Federal Acquisition Regulation Supplement (DFARS) to revise, finalize, or add language on the Defense Acquisition Regulations System, acquisition of commercial items, multiyear contracting, interagency acquisitions under the Economy Act, small business programs, the environment, foreign acquisition, utilization of Indian organizations, foreign patent interchange agreements, taxes, contract cost principles and procedures, contract financing, disputes and appeals, major system acquisition, research and development contracting, construction and architect-engineer contracts, service contracting, acquisition of information technology, acquisition of utility services, contract administration, extraordinary contractual actions, and contract reporting.

DATES: Effective date: March 9, 1998.

Comment date: Comments on the interim rule (Item XXIII: Sections 236.102, 236.274, 236.570, 252.236-7010, and 252.236-7012) should be submitted in writing to the address shown below on or before May 8, 1998 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments on the interim rule (Item XXII) to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite DFARS Case 97-D307 in all correspondence related to this rule. E-mail comments should cite DFARS Case 97-D307 in the subject line.

FOR FURTHER INFORMATION CONTACT: Item XXIII—Ms. Amy Williams, (703) 602-0131.

All other items—Ms. Susan Buckmaster, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

Defense Acquisition Circular (DAC 91-13) includes 31 rules and miscellaneous editorial amendments. Eight of the rules (Items II, III, IV, V, XIII, XVI, XVII, and XXIX) 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 eight rules are included in the DAC to incorporate the previously published amendments into the loose-leaf edition of the DFARS.

B. Determination to Issue an Interim Rule

DAC 91-13, Item XXIII

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This rule amends the DFARS to implement Section 112 of the Military Construction Appropriations Act for Fiscal Year 1998 (Public Law 105-45). Section 112 provides that no military construction appropriations may be used to award, to a foreign contractor, any contract estimated to exceed \$1,000,000 for military construction in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf; except for contract awards for which the lowest responsive and responsible bid of a United States firm exceeds the lowest responsive and responsible bid of a foreign firm by greater than 20 percent; and except for contract awards for military construction on Kwajalein Atoll for which the lowest responsive and responsible bid is submitted by a Marshallese firm. Section 112 was effective upon enactment on September 30, 1997. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

DAC 91-13, Items I, VII, VIII, IX, XII, XV, XXI, XXII, XXV, XXVI, 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 for 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 91-13, Items VI, XI, XIV, XVIII, XX, XXIV, and XXXI

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 VI, Multiyear Contracting and Other Miscellaneous Provisions—The rule primarily reorganizes and clarifies existing DFARS guidance pertaining to multiyear contracting, updates internal Government operating procedures for processing Economy Act orders, and makes minor amendments to reflect existing statutory and regulatory requirements.

Item XI, Duty-Free Entry—The rule does not constitute a change in policy but is a clarification of implementing procedures pertaining to duty-free entry of supplies and the North American Free Trade Agreement.

Item XIV, Contingent Fees—Foreign Military Sales—Most firms that pay or receive contingent fees on foreign military sales are not small business concerns.

Item XVIII, Cost Reimbursement Rules for Indirect Costs—Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the FAR or DFARS cost principles.

Item XX, Earned Value Management Systems—The rule only applies to contractors for certain major defense programs, and eliminates the requirement that such contractors use a unique management control system for DoD contracts.

Item XXIV, Architect-Engineer Selection Process—The rule streamlines, but does not significantly alter, the process for selection of firms for architect-engineer contracts.

Item XXXI, Reporting of Contract Performance Outside the United States—Most contractors that submit reports of contract performance outside the United States are not small business concerns.

DAC 91-13, Item XXIII

This interim rule is not expected to 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 the DFARS changes contained in this rule apply only to contracts for military construction on Kwajalein Atoll that are estimated to exceed \$1,000,000; DoD awards approximately two such

contracts annually. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97-D307 in correspondence.

DAC 91-13, Items X, XIX, XXVIII, and XXX

A final regulatory flexibility analysis has been performed for each of these rules. A copy of the analyses may be obtained from the address specified herein. Please cite the applicable DFARS case number in correspondence. The analyses are summarized as follows:

Item X, Buy American Act Exception for Information Technology Products (DFARS Case 97-D022)

This final rule implements the determination by the Under Secretary of Defense (Acquisition and Technology) (USD(A&T)) that it is not in the public interest to apply the restrictions of the Buy American Act to U.S. made information technology products, in acquisitions subject to the Trade Agreements Act. The legal basis for the rule is 41 U.S.C. 10a, which provides an exception to the requirements of the Buy American Act if the head of the agency determines that application of the restrictions is not in the public interest. The objective of the rule is to reduce burdensome recordkeeping and tracking requirements imposed on U.S. manufacturers of information technology products and to remove the competitive disadvantage imposed on some U.S. manufacturers of information technology products, when competing with foreign offerors of eligible information technology products against an offeror of an information technology product that qualifies as a domestic product under the Buy American Act. In acquisitions subject to the Trade Agreements Act, the rule provides that offers of U.S. made information technology products in Federal Supply Group 70 or 74 will be evaluated without regard to whether the product qualifies as a domestic product. The different rules of origin under the Buy American Act and the Trade Agreements Act result in disproportionately burdensome recordkeeping requirements on firms offering information technology products, because eligible offers under the Trade Agreements Act are exempt from the Buy American Act, but offers

of U.S. made products are not exempt. This rule will relieve U.S. manufacturers of information technology products from the burden of researching and documenting the origin of components for information technology products, because the Buy American Act component test no longer applies. The rule will also simplify the evaluation of offers because, for acquisitions subject to the determination, there is only one class of U.S. made products, and no preference for domestic products. There were no public comments in response to the initial regulatory flexibility analysis prepared for the proposed rule published in the **Federal Register** at 62 FR 47407 on September 9, 1997. The rule will apply to all offerors/contractors offering information technology products in Federal Supply Group 70 or 74 to DoD, in acquisitions valued at \$190,000 or more. Based on DD Form 350 data from the Washington Headquarters Services, in fiscal year 1996, DoD awarded 735 contracts meeting these criteria to 612 contractors, of which 214 were small businesses. The final rule does not impose any new reporting or recordkeeping requirements. The rule will result in a reduction of paperwork burden on offerors. There are no significant alternatives to the rule that would accomplish the stated objectives yet reduce any negative impact on small entities. This rule is expected to have a generally positive impact on small entities, because USD(A&T) has determined that removal of the competitive disadvantage for some U.S. made information technology end products, and the removal of burdensome requirements on U.S. manufacturers to separately track domestic and foreign components, outweighs the possible increase in use of foreign components.

Item XIX, Finance (DFARS Case 95-D710)

This final rule supplements the FAR rules published as Item VII of Federal Acquisition Circular 90-32 on September 18, 1995 (60 FR 48272), and Items I and IV of Federal Acquisition Circular 90-33 on September 26, 1995 (60 FR 49707 and 60 FR 49728). These DFARS revisions include the addition of 232.2, Commercial Item Purchase Financing, and 232.10, Performance-Based Payments; the deletion of 232.173, Reduction or Suspension of Contract Payments Upon Finding of Fraud, and 232.970, Payment of Subcontractors, since equivalent coverage is now provided in the FAR; and a number of editorial changes to

reflect revisions made in the FAR. One of the issues raised by several respondents relates to the prompt payment periods specified in the rule: 30 days for commercial advance payments, and 14 days for commercial interim and performance-based payments. The respondents advocate the 7 days now allowed for progress payments. The DoD Contract Finance Committee made an assessment that no changes should be made to the prompt payment times in the DFARS rule. The payment period (14 days) for performance-based payments reflects the likely additional time required for verification of the contractor's claimed performance and analysis of what often will be a relatively extensive compilation of performance events. Thus, more time is allowed than for cost-based progress payments (7 days). The commercial advance payments period reflects the anticipated timing of most such requests. These requests for payment are expected to occur at the beginning of the contract, possibly being keyed to the actual contract signing date. Thus, a 30-day period has been allowed to enable the payment office to receive the contract, enter it into the payment office computer system, and process the contractor's request for payment. The commercial interim payment normally is expected to be submitted during the life of the contract, and after the payment office is prepared to process payment of such requests. A 14-day payment period has been adopted as a payment time reasonably capable of accommodating the wide diversity anticipated for commercial payment terms. The prompt payment periods established in the DFARS are shorter than the equivalent standard prompt payment periods (30 days) in FAR 32.906, and, thus, are more beneficial for small entities than the existing FAR policy. A second issue raised by several respondents concerns the provisions relating to the list of financial and other information that the Government must obtain to determine the financial responsibility of contractors. One respondent indicated its "concern with the substantial burdens that will be placed on the contracting officer and offeror." The requirement, stated in section 232.072 of the rule, was transferred verbatim from DFARS 232.172. This DFARS rule makes no policy change, only an editorial change to move the DFARS language to correspond to certain changes made to the FAR. In addition, the contracting officer is only required to obtain information sufficient to make a determination of the contractor's

financial responsibility. The changes made to the DFARS by this rule will apply to large and small entities whose DoD contracts include performance-based or commercial (advance or interim) type of financing. For the 11 months of available fiscal year 1997 DD Form 350 data (October 1996 through August 1997), less than 0.5 percent of small business contracts (98 out of a total of 40,102) used commercial or performance-based financing. Accordingly, the final rule does not impact a significant number of small entities. The rule imposes no reporting, recordkeeping, or other compliance requirements. Various alternatives involving shorter prompt payment periods were considered, but, as previously explained, were rejected since their implementation would be exceptionally costly and burdensome on payment offices.

Item XXVIII, Certification of Requests for Equitable Adjustment (DFARS Case 97-D302)

This rule finalizes, with changes, the interim rule published in the **Federal Register** on July 11, 1997 (62 FR 37146). The interim rule amended the DFARS to implement 10 U.S.C. 2410(a), which requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. There were no comments in response to the initial regulatory flexibility analysis prepared for the interim rule. The primary impact of the rule relates to requests in the range of \$100,000 to \$500,000, because requests in excess of \$500,000 generally require submission of cost or pricing data and certification thereof. Many of the firms requesting equitable adjustment in amounts of \$100,000 to \$500,000 are construction contractors. It is estimated that the rule will affect approximately 330 small entities annually. Accounting skills will be necessary to provide the cost data to support the certification. The rule minimizes the economic impact on small entities, because the certification requirements of the rule apply only to requests exceeding the simplified acquisition threshold, and because the certification is limited to only that which is specifically required by 10 U.S.C. 2410(a). There is no other known alternative that would be consistent with the stated objective yet further reduce the burden on small entities.

Item XXX, Specialty Metals—Agreements With Qualifying Countries (DFARS Case 97-D007)

This final rule amends the clause at DFARS 252.225-7014 to make the exception in the clause consistent with the Berry Amendment (10 U.S.C. 2241 Note) and with the existing DFARS text at 225.7001-2(i). The objective of the rule is to clearly and accurately implement the Berry Amendment, which provides an exception to domestic source restrictions for the procurement of specialty metals, where such procurement is necessary in furtherance of agreements with foreign governments in which both governments agree to remove barriers to purchase of supplies produced in the other country. There were no public comments in response to the initial regulatory flexibility analysis or the proposed rule published in the **Federal Register** at 62 FR 23741 on May 1, 1997. The clause at DFARS 252.225-7014, Preference for Domestic Specialty Metals, is prescribed for use in all solicitations and contracts exceeding the simplified acquisition threshold that require delivery of an article containing specialty metals. The clause is prescribed for use with its Alternate I if the article containing specialty metals is for one of certain major programs. The basic clause only restricts the direct acquisition of specialty metals by the prime contractor, whereas Alternate I flows down the restriction to subcontractors at any tier. The rule does not affect the already unrestricted sources of specialty metals when acquiring qualifying country end products or when acquiring components including specialty metals for use in an end product for other than a major program. The rule does loosen the restriction on domestic specialty metals for prime contractors providing domestic or nonqualifying country end products, permitting them to incorporate specialty metals melted in a qualifying country (for both major and nonmajor programs); or qualifying country components containing specialty metals of unrestricted source for use in end products for major programs. Because the components subject to increased foreign competition are at a subcontract level, it is not possible to more specifically identify the items or whether they are produced by small business concerns. The rule imposes no new reporting, recordkeeping, or compliance requirements on offerors or contractors. One alternative considered was to require that the specialty metals incorporated in articles manufactured in

a qualifying country also be melted in a qualifying country. This approach could slightly reduce the extent of foreign competition facing domestic entities. However, this approach appeared to go beyond the requirements of the statute being implemented.

D. Paperwork Reduction Act

DAC 91-13, Items I, VI, VII, VIII, IX, XII, XIV, XV, XVIII, XIX, XX, XXI, XXII, XXIV, XXV, XXVI, XXVII, and XXX

The Paperwork Reduction Act does not apply, because these rules contain no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

DAC 91-13, Items X, XI, XXIII, XXVIII, and XXXI

The Paperwork Reduction Act applies. The Office of Management and Budget (OMB) has approved the information collection requirements as follows:

| Item | OMB Control No. |
|--------------|----------------------|
| X | 0704-0187; 0704-0259 |
| XI | 0704-0229 |
| XXIII | 0704-0255 |
| XXVIII | 0704-0397 |
| XXXI | 0704-0229 |

E. Summary of Amendments

Defense Acquisition Circular (DAC) 91-13 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1991 edition. The amendments are summarized as follows:

Item I—Approval of Nonstatutory Certification Requirements (DFARS Case 97-D301)

This final rule adds a new section at DFARS 201.107 and amends 201.304 to implement Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), as amended by Section 4301 of the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 29 provides that a requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless the certification requirement is specifically imposed by statute or approved in writing by the head of the executive agency.

Item II—Contract Action Reporting (DFARS Case 97-D013)

This final rule was issued by Departmental Letter 97-016, effective October 1, 1997 (62 FR 44221, August 20, 1997). The rule amends DFARS 204.670-2, 253.204-70 and 253.204-71 to revise DD Form 350 and DD Form

1057 contract action reporting requirements for compliance with the Clinger-Cohen Act of 1996 (Public Law 104-106) and to enhance data collection procedures.

Item III—Data Universal Numbering System (DUNS) Number (DFARS Case 97-D019)

This final rule was issued by Departmental Letter 97-020, effective October 1, 1997 (62 FR 48181, September 15, 1997). The rule amends DFARS 204.72 and 253.204-70 to replace guidance on use of DUNS numbers with references to the FAR guidance on that subject, and to remove guidance on locally developed coding systems that are no longer used.

Item IV—Single Process Initiative (DFARS Case 97-D014)

This interim rule was issued by Departmental Letter 97-017, effective August 20, 1997 (62 FR 44223, August 20, 1997). The rule adds guidance at DFARS 211.273 and 242.302(a) (S-70), and a contract clause at 252.211-7005, to implement the policy set forth in OUSD(A&T) memorandum dated April 30, 1997, as it relates to the Single Process Initiative (SPI) and new contracts. The rule encourages offerors to propose the use of nongovernment specifications and industrywide practices that meet the intent of military or Federal specifications and standards, and establishes that, in procurements of previously developed items, SPI processes shall be considered valid replacements for military or Federal specifications or standards, absent a specific determination to the contrary.

Item V—Truth in Negotiations and Related Changes (DFARS Case 95-D708)

This final rule was issued by Departmental Letter 97-015, effective July 29, 1997 (62 FR 40471, July 29, 1997). The rule amends DFARS parts 204, 215, 216, 232, 239, and 252 to update requirements pertaining to the submission of cost or pricing data. The rule also removes requirements pertaining to work measurement systems, as Section 2201(b) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) repealed 10 U.S.C. 2406, which was the primary statute governing work measurement systems.

Item VI—Multiyear Contracting and Other Miscellaneous Provisions (DFARS Case 95-D703)

This final rule removes obsolete language at DFARS 216.301-3; revises subpart 217.1 to reorganize and clarify guidance on multiyear contracting;

revises Subpart 217.5 to update guidance on processing interagency orders under the Economy Act; adds guidance at 233.204-70 and 250.102-70 pertaining to statutory limitations on Congressionally directed payment of a claim or request for equitable adjustment or relief; and amends subpart 237.2 to reflect the current numbering of FAR subpart 37.2.

Item VII—Qualified Nonprofit Agencies for the Blind or Severely Disabled (DFARS Case 97-D310)

This final rule amends DFARS 219.703 to implement Section 835 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85). Section 835 amends 10 U.S.C. 2410d to extend, through September 30, 1999, the authority for contractors to claim credit toward their small business subcontracting goals for subcontracts awarded to qualified nonprofit agencies for the blind or severely disabled.

Item VIII—Pilot Mentor-Protégé Program (DFARS Case 97-D322)

This final rule amends DFARS 219.7104 and Appendix I to implement Section 821 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85). Section 821 extends to September 30, 1999, the date by which an interested company must apply for participation as a mentor firm under the DoD Pilot Mentor-Protégé Program; and extends to September 30, 2000, the date by which a mentor firm must incur costs in order to be eligible for reimbursement under the Program.

Item IX—Recovered Material Certification (DFARS Case 97-D031)

This final rule amends DFARS 223.404 to reflect the FAR revisions that were published as Item V of Federal Acquisition Circular 97-01. The FAR revisions eliminated the requirement for agencies other than the Environmental Protection Agency (EPA) to specify minimum recovered material content standards for designated items, and eliminated the requirement for contractors to provide annual certifications under the clause at FAR 52.223-9, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items.

Item X—Buy American Act Exception for Information Technology Products (DFARS Case 97-D022)

This final rule adds a new provision at DFARS 252.225-7020, Trade Agreements Certificate, and a new clause at 252.225-7021, Trade Agreements, and makes other amendments in parts 212, 225, and 252

to implement the determination made by the Under Secretary of Defense (Acquisition and Technology), on May 16, 1997, that it is not in the public interest to apply the restrictions of the Buy American Act to U.S. made information technology products, in acquisitions subject to the Trade Agreements Act.

Item XI—Duty-Free Entry (DFARS Case 96-D020)

This final rule amends DFARS Parts 225, 242, and 252 to clarify guidance regarding duty-free entry of supplies and implementation of the North American Free Trade Agreement.

Item XII—Trade Agreements Threshold (DFARS Case 97-D040)

This final rule amends DFARS 225.408(a) to increase, from \$50,000 to \$53,150, the threshold for use of the clause at 252.225-7036, North American Free Trade Agreement Implementation Act. The increase is based on the cumulative rate for the Producer Price Index for Finished Goods, as reported by the U.S. Bureau of Labor Statistics, and as notified to the NAFTA parties by the U.S. Department of State.

Item XIII—Application of Berry Amendment (DFARS Case 96-D333)

This final rule was issued by Departmental Letter 97-018, effective September 8, 1997 (62 FR 47153, September 8, 1997). The rule revises and finalizes the interim rule published as Item XXII of DAC 91-12, which implemented Section 8109 of the National Defense Appropriations Act for Fiscal Year 1997 (Public Law 104-208). Section 8109 provides that, in applying the domestic source restrictions of the Berry Amendment, the term "synthetic fabric and coated synthetic fabric" shall be deemed to include all textile fibers and yarns that are for use in such fabrics; and that the domestic source restrictions of the Berry Amendment shall apply to contracts and subcontracts for the procurement of commercial items. The final rule differs from the interim rule in that it amends DFARS 225.7002 and 252.225-7012 to expand the list of products that are exempt from the Berry Amendment restrictions on synthetic fabrics.

Item XIV—Contingent Fees—Foreign Military Sales (DFARS Case 96-D021)

The interim rule published as Item XXVII of DAC 91-12 is revised and finalized. The rule amends DFARS guidance pertaining to contingent fees for foreign military sales. The final rule differs from the interim rule in that it revises DFARS 225.7303-4 and

252.225–7027 to permit payment of contingent fees exceeding \$50,000 under foreign military sales contracts if the foreign customer agrees to such fees in writing before contract award.

Item XV—Subcontracting Plans—Indian Incentives (DFARS Case 97–D309)

This final rule amends DFARS Subpart 226.1 to implement Section 8024 of the National Defense Appropriations Act for Fiscal Year 1998 (Public Law 105–56). Section 8024 provides that incentive payments under the Indian Incentive Program shall be available only to contractors that have submitted subcontracting plans pursuant to 15 U.S.C. 637, including comprehensive subcontracting plans submitted in accordance with the DoD test program.

Item XVI—Cost Principles (DFARS Case 95–D714)

This final rule was issued by Departmental Letter 97–019, effective September 8, 1997 (62 FR 47154, September 8, 1997). The rule amends DFARS Part 231 to implement Section 7202 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355). Section 7202 prohibits the expenditure of funds to assist any DoD contractor in preparing any material, report, list, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.

Item XVII—Allowability of Costs for Restructuring Bonuses (DFARS Case 97–D312)

This interim rule was issued by Departmental Letter 97–021, effective November 26, 1997 (62 FR 63035, November 26, 1997). The rule amends DFARS 231.205–6 to implement Section 8083 of the National Defense Appropriations Act for Fiscal Year 1998 (Public Law 105–56). Section 8083 prohibits the use of fiscal year 1998 funds to reimburse a contractor for costs paid by the contractor to an employee for a bonus or other payment in excess of the normal salary paid by the contractor to the employee, when such payment is part of restructuring costs associated with a business combination.

Item XVIII—Cost Reimbursement Rules for Indirect Costs (DFARS Case 96–D303)

This final rule removes the cost principle at DFARS 231.205–71 pertaining to defense capability preservation agreements. Section 1027

of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) repealed the statute upon which this cost principle was based (Section 808 of Public Law 104–106).

Item XIX—Finance (DFARS Case 95–D710)

This final rule amends DFARS Part 232 to conform to the FAR revisions published as Item VII of FAC 90–32 and Items I and IV of FAC 90–33, which implemented provisions of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355). The rule adds a new subpart 232.2, Commercial Item Purchase Financing, and a new subpart 232.10, Performance-Based Payments; removes 232.173, Reduction or Suspension of Contract Payments Upon Finding of Fraud, and 232.970, Payment of Subcontractors, as equivalent guidance is now provided in FAR Part 32; and moves guidance pertaining to responsibility of contractors from 232.172 to 232.072, with no change in policy.

Item XX—Earned Value Management Systems (DFARS Case 96–D024)

The interim rule published in Item XXXIII of DAC 91–12 is revised and finalized. The rule amends DFARS Parts 234, 242, and 252 to recognize industry-standard guidelines for earned value management systems as an alternative to DoD-unique cost/schedule control systems under DoD contracts. The final rule differs from the interim rule in that it makes minor clarifying amendments at 234.005–70, 242.1107–70, and 252.234–7000; amends 252.234–7001 to clarify the timing of the initial application of the earned value management system and the integrated baseline reviews; and amends 252.242–7005 for consistency with the industry standard, Guidelines for Earned Value Management Systems.

Item XXI—Research and Development Definitions (DFARS Case 97–D021)

This final rule revises DFARS 235.001 to update the definitions pertaining to research and development, for consistency with the terms defined in DoD 7000.14–R, Financial Management Regulation.

Item XXII—Report of 10-Year Term Contracts (DFARS Case 97–D303)

This final rule removes DFARS 235.002, which required departments and agencies to notify Congress of any research and development contract with a period of performance exceeding 10 years. Section 1062(c) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106)

repealed the statute upon which this requirement was based (10 U.S.C. 2352).

Item XXIII—Construction in Foreign Countries (DFARS Case 97–D307)

This interim rule amends DFARS Part 236 and adds a new provision at 252.236–7012 to implement Section 112 of the Military Construction Appropriations Act for Fiscal Year 1998 (Public Law 105–45). Section 112 provides that no military construction appropriations may be used to award, to a foreign contractor, any contract estimated to exceed \$1,000,000 for military construction in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, except for: (1) Contract awards for which the lowest responsive and responsible bid of a United States firm exceeds the lowest responsive and responsible bid of a foreign firm by more than 20 percent, and (2) contract awards for military construction on Kwajalein Atoll for which the lowest responsive and responsible bid is submitted by a Marshallese firm.

Item XXIV—Architect-Engineer Selection Process (DFARS Case 97–D015)

This final rule revises DFARS 236.602 to streamline the process for selection of firms for architect-engineer contracts. The rule eliminates requirements for formal constitution and minimum size of preselection boards; eliminates special approval requirements for selection of firms for contracts exceeding \$500,000; and changes the criteria for inclusion of firms on a preselection list from “the maximum practicable number of qualified firms” to “the qualified firms that have a reasonable chance of being considered as most highly qualified by the selection board.”

Item XXV—Overseas Architect-Engineer Services (DFARS Case 97–D034)

This final rule amends DFARS 236.609–70 to clarify the prescription for use of the provision at 252.236–7011, Overseas Architect-Engineer Services—Restriction to United States Firms. The provision is used in solicitations for architect-engineer contracts that are funded with military construction appropriations; estimated to exceed \$500,000; and to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

Item XXVI—Uncompensated Overtime (DFARS Case 97-D037)

This final rule removes DFARS 237.102, 237.170, and 252.237-7019. This guidance has been superseded by the guidance on performance-based contracting and uncompensated overtime at FAR 37.102, 37.115, and 52.237-10. A related editorial change is made at DFARS 215.608(a)(1).

Item XXVII—Telecommunications Services (DFARS Case 97-D305)

This final rule revises the guidance on multiyear contracting for telecommunications resources at DFARS 239.7405 to reflect the elimination of the Federal Information Resources Management Regulations (FIRMR), and revisions made to the Federal Property Management Regulations (FPMR), as a result of the Information Technology Management Reform Act of 1996 (Public Law 104-106).

Item XXVIII—Certification of Requests for Equitable Adjustment (DFARS Case 97-D302)

The interim rule issued by Departmental Letter 97-014 on July 11, 1997, is revised and finalized. The rule implements 10 U.S.C. 2410(a), as amended by Section 2301 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355). 10 U.S.C. 2410(a) requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The final rule differs from the interim rule in that it amends DFARS 243.204-70 to clarify that the certification required by 10 U.S.C. 2410(a) is different from the certification of a claim under the Contract Disputes Act; and amends 252.243-7002 to clarify requirements for contractor disclosure of facts to support a certification of a request for equitable adjustment.

Item XXIX—Designation of Hong Kong (DFARS Case 97-D023)

This final rule was issued by Departmental Letter 97-013, effective July 11, 1997 (62 FR 37147, July 11, 1997). The rule amends DFARS 252.225-7007 to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the U.S. Trade Representative.

Item XXX—Specialty Metals—Agreements with Qualifying Countries (DFARS Case 97-D007)

This final rule amends the clause at DFARS 252.225-7014, Preference for

Domestic Specialty Metals, to specify that the requirements of the clause do not apply to specialty metals melted, or incorporated in articles manufactured, in a qualifying country listed in DFARS 225.872-1.

Item XXXI—Reporting of Contract Performance Outside the United States (DFARS Case 97-D029)

This final rule amends the clause at DFARS 252.225-7026, Reporting of Contract Performance Outside the United States, to increase the reporting threshold from \$25,000 to the simplified acquisition threshold, under contracts exceeding \$500,000. The rule also increases the threshold for incorporation of the clause in first-tier subcontracts from \$100,000 to \$500,000.

Editorial Revisions

(1) DFARS 201.201-1 is amended to reflect the issuance of DoDI 5000.63, Defense Acquisition Regulations (DAR) System.

(2) DFARS 202.101 is amended to update the list of Army contracting activities and to show the correct title "Under Secretary of Defense (Acquisition & Technology)" in the definition of "Head of the agency."

(3) DFARS 204.7003(a)(1)(i) is amended to change the designation of the last paragraph from "(L)" to "(M)" (*this revision is made only in the loose-leaf edition of the DFARS*).

(4) DFARS 209.403 is amended to reflect the change in name of the "Defense Mapping Agency" to the "National Imagery and Mapping Agency."

(5) DFARS 214.202-5 is amended to show the correct number of the clause "Brand Name or Equal."

(6) DFARS Subparts 216.4 and 216.5 are amended to conform to the current numbering of the corresponding FAR subparts.

(7) DFARS 227.676 and 229.101 are amended to update the telephone and telefax numbers of the United States European Command.

(8) DFARS Part 241 is amended to conform to the current numbering of FAR Part 41 and to update other FAR references. Corresponding amendments are made at DFARS 252.241-7000 and 252.241-7001.

(9) DFARS 252.212-7001 is amended to remove references to DFARS 252.242-7002 and 252.249-7001, which were deleted in DAC 91-12.

(10) DFARS 252.229-7004 is amended to correct a typographical error in the clause title.

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

Note: This DAC incorporates, into the loose-leaf edition of the DFARS, revisions previously issued by Departmental Letters 97-13 through 97-21. DFARS revisions contained in Departmental Letter 97-12 and departmental letters issued after 97-21 will be covered in a future DAC.

List of Subjects in 48 CFR Parts 201, 202, 204, 209, 212, 214, 215, 216, 217, 219, 223, 225, 226, 227, 229, 231, 232, 233, 234, 235, 236, 237, 239, 241, 242, 243, 250, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rules Adopted as Final With Changes**PARTS 225 AND 252—[AMENDED]**

The interim rule that was published at 62 FR 30831 on June 5, 1997, is adopted as final with amendments at sections 225.7303-4 and 252.225-7027, as set forth below (see amendatory instructions 40 and 86).

PARTS 234, 242, AND 252—[AMENDED]

The interim rule that was published at 62 FR 9990 on March 5, 1997, is adopted as final with amendments at sections 234.005-70, 242.1107-70, 252.234-7000, 252.234-7001, and 252.242-7005, as set forth below (see amendatory instructions 53, 72, 90, 91, and 97).

PARTS 235, 243, AND 252—[AMENDED]

The interim rule that was published at 62 FR 37146 on July 11, 1997, is adopted as final with amendments at sections 243.204-70 and 252.243-7002, as set forth below (see amendatory instructions 73 and 98).

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

48 CFR Chapter 2 (the Defense Federal Acquisition Regulation Supplement) is amended as follows:

1. The authority citation for 48 CFR parts 201, 202, 204, 209, 212, 214, 215, 216, 217, 219, 223, 225, 226, 227, 229, 231, 232, 233, 234, 235, 236, 237, 239, 241, 242, 243, 250, 252, 253, and Appendices G 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 201.107 is added to read as follows:

201.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), a new requirement for a certification by a contractor or offeror may not be included in the DFARS unless—

(1) The certification requirement is specifically imposed by statute; or

(2) Written justification for such certification is provided to the Secretary of Defense by the Under Secretary of Defense (Acquisition and Technology), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

3. Section 201.201-1 is amended by revising paragraphs (c) and (d)(i)I. to read as follows:

201.201-1 The two councils.

(c) The composition and operation of the DAR Council is prescribed in DoDI 5000.63, Defense Acquisition Regulations (DAR) System.

(d)(i) * * *

I. PROBLEM: Succinctly state the problem created by current FAR and/or DFARS coverage and describe the factual and/or legal reasons necessitating the change to the regulation.

* * * * *

4. Section 201.304 is amended by revising the introductory text and paragraphs (1), (2), (3), and (5) to read as follows:

201.304 Agency control and compliance procedures.

Departments and agencies and their component organizations may issue acquisition regulations as necessary to implement or supplement the FAR or DFARS.

(1)(i) Approval of the Under Secretary of Defense (Acquisition and Technology) (USD(A&T)) is required before including in a department/agency or component supplement, or any other contracting regulation document such as a policy letter or clause book, any policy, procedure, clause, or form that—

(A) Has a significant effect beyond the internal operating procedures of the agency; or

(B) Has a significant cost or administrative impact on contractors or offerors.

(ii) Except as provided in paragraph (2) of this section, the USD(A&T) has delegated authority to the Director of Defense Procurement (USD(A&T)DP) to approve or disapprove the policies,

procedures, clauses, and forms subject to paragraph (1)(i) of this section.

(2) In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), a new requirement for a certification by a contractor or offeror may not be included in a department/agency or component procurement regulation unless—

(i) The certification requirement is specifically imposed by statute; or

(ii) Written justification for such certification is provided to the Secretary of Defense by USD(A&T), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

(3) Approval of USD(A&T)DP is required for any class deviation (as defined in FAR Subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulation document such as a policy letter or clause book.

* * * * *

(5) Departments and agencies shall submit request for the Secretary of Defense, USD(A&T), and USD(A&T)DP approvals required by this section through the Director of the DAR Council.

* * * * *

PART 202—DEFINITIONS OF WORDS AND TERMS

5. Section 202.101 is amended in the definition of “Contracting activity” by revising the text under the heading “ARMY”; and in the second sentence of the definition of “Head of the agency” by adding, in the parenthetical, after the word “Acquisition”, the phrase “& Technology”. The revised text reads as follows:

202.101 Definitions.

* * * * *

ARMY

Contract Support Agency
Office of the Deputy Chief of Staff for
Research, Development and Acquisition,
Headquarters, U.S. Army Materiel
Command

Aviation and Missile Command
Industrial Operations Command
Communications-Electronics Command
Troop Support Agency
Tank-Automotive and Armaments Command
Training and Doctrine Command
Forces Command
Health Services Command
Military District of Washington
U.S. Army, Europe
National Guard Bureau
Corps of Engineers
Information Systems Command
Medical Research and Development
Command

U.S. Army, Pacific
Military Traffic Management Command
Space and Strategic Defense Command
Eighth U.S. Army
Intelligence and Security Command
U.S. Army, South
Defense Supply Service-Washington
Directorate of Information Systems for
Command, Control, Communications and
Computers, Office of the Secretary of the
Army
U.S. Army Special Operations Command
* * * * *

PART 204—ADMINISTRATIVE MATTERS

204.805 [Amended]

6. Section 204.805 is amended in the first sentence of paragraph (5), in the parenthetical, by removing “15.804-2” and inserting in its place “15.403-4”.

PART 209—CONTRACTOR QUALIFICATIONS

209.403 [Amended]

7. Section 209.403 is amended in the definition of “Debarring official”, in paragraph (1), by removing the entry “Defense Mapping Agency—The General Counsel” and inserting in its place the entry “National Imagery and Mapping Agency—The General Counsel”.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

8. Section 212.301 is amended by redesigning paragraph (f)(i)(C) as paragraph (f)(i)(D) and by adding a new paragraph (f)(i)(C) to read as follows:

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

(f)(i) * * *

(C) 252.225-7020, Trade Agreements Certificate.

* * * * *

PART 214—SEALED BIDDING

214.205-5 [Amended]

9. Section 214.202-5 is amended in paragraph (d) by revising the reference “252.210-7000” to read “252.211-7003”.

PART 215—CONTRACTING BY NEGOTIATION

215.608 [Amended]

10. Section 215.608 is amended in the first sentence of paragraph (a)(1), in the parenthetical, by removing the reference “237.170” and inserting in its place the reference “FAR 37.115”.

215.805-5 [Amended]

11. Section 215.805-5 is amended in paragraphs (a)(1)(A)(1) and (a)(1)(A)(2)

by removing the reference "15.804-2(a)(1)" and inserting in its place the reference "15.403-4(a)(1)".

PART 216—TYPES OF CONTRACTS

216.203-4 [Amended]

12. Section 216.203-4 is amended in paragraph (d)(xvi) by removing the reference "15.804-1" and inserting in its place the reference "15.403-1".

216.301 and 216.301-3 [Removed]

13. Sections 216.301 and 216.301-3 are removed.

216.403-70 [Removed]

14. Section 216.403-70 is removed.

15. Section 216.404 is revised to read as follows:

216.404 Fixed-price contracts with award fees.

Award-fee provisions may be used in fixed-price contracts as provided in 216.470

216.404-1 [Redesignated]

16. Section 216.404-1 is redesignated as section 216.405-1.

216.404-2 [Redesignated]

17. Section 216.404-2 is redesignated as section 216.405-2.

18. Section 216.405 is added to read as follows:

216.405 Cost-reimbursement incentive contracts.

216.501 [Amended]

19. Section 216.501 is amended in the introductory text of paragraph (a)(i) and in the first sentence of paragraph (a)(ii) by revising "indefinite delivery" to read "indefinite-delivery".

20. Sections 216.505 and 216.506 are revised to read as follows:

216.505 Ordering.

Orders placed under indefinite-delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

216.506 Solicitation provisions and contract clauses.

(d) If the contract is for the preparation of personal property for shipment or storage (see 247.271-4), substitute paragraph (f) at 252.247-7015, Requirements, for paragraph (f) of the clause at FAR 52.216-21, Requirements.

PART 217—SPECIAL CONTRACTING METHODS

21. Subpart 217.1 is revised to read as follows:

Subpart 217.1—Multiyear Contracting

Sec.

217.103 Definitions.

217.170 All multiyear contracts.

217.171 Multiyear contracts for services.

217.172 Multiyear contracts for supplies.

217.173 Multiyear contracts for weapon systems.

217.174 Multiyear contracts that employ economic order quantity procurement.

Subpart 217.1—Multiyear Contracting

217.103 Definitions.

Advance procurement, as used in this subpart, means an exception to the full funding policy that allows acquisition of long lead time items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, components, and effort that must be funded in advance to maintain a planned production schedule.

217.170 All multiyear contracts.

(a) Before a multiyear contract is awarded, the cost of that contract shall be compared against the cost of an annual procurement approach, using a present value analysis. The multiyear contract shall not be awarded unless the analysis shows that it results in the lowest cost (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(b) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 10 days before termination of any multiyear contract (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(c) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 2306b(j)).

(d) Every multiyear contract must comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant comptroller.

217.171 Multiyear contracts for services.

(a) 10 U.S.C. 2306(g). (1) DoD may enter into multiyear acquisitions for the following services (and items of supply relating to such services), even though funds are limited by statute to obligation

only during the fiscal year for which they were appropriated:

(i) Operation, maintenance, and support of facilities and installations.

(ii) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(iii) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training).

(iv) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(2) This authority may be used as long as the contract does not extend beyond 5 years.

(b) 10 U.S.C. 2829. (1) The head of the agency may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year from annual appropriations for that year.

(2) This authority may be used as long as the contract does not extend beyond 4 years.

(c) Award of a multiyear contract for services requires a written determination by the head of the agency (10 U.S.C. 2306(g)(1)) that—

(1) There will be a continuing need for the services and incidental supplies;

(2) Furnishing the services and incidental supplies will require—

(i) A substantial initial investment in plant or equipment; or

(ii) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations (e.g., economic lot purchases and more efficient production rates).

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.173.

(b) A multiyear contract for supplies may be used if, in addition to the conditions listed in FAR 17.105-1(b), the use of such a contract will promote the national security of the United States.

(c) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before the contracting officer awards a multiyear contract

including an unfunded contingent liability in excess of \$20 million (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(d) Agencies shall establish reporting procedures to meet the requirements of paragraph (c) of this section. Submit copies of the notifications to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)DP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

217.173 Multiyear contracts for weapon systems.

(a) As authorized by 10 U.S.C. 2306b(a) and subject to the conditions in paragraph (b) of this section, the head of the agency may enter into a multiyear contract for—

(1) A weapon system and associated items, services, and logistics support for a weapon system; and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see 217.174 regarding economic order quantity procurement).

(b) The following conditions must be satisfied before a multiyear contract may be awarded under the authority described in paragraph (a) of this section:

(1) The multiyear exhibits required by DoD 7000.14-R, Financial Management Regulation, are included in the agency's budget estimate submission and the President's budget request.

(2) The Secretary of Defense certifies to Congress that the current 5-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A)). Information supporting this certification shall be submitted to USD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(3) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 2306b(i)(1)(B)). Information supporting the agency's determination that this requirement has been met shall be submitted to USD(C)(P/B) with the information supporting the certification required by paragraph (b)(2) of this section.

(4) If the value of the multiyear contract exceeds \$500,000,000, the applicable Defense appropriations act specifically provides that a multiyear

contract may be used to procure the particular system or system component (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(5) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request shall—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD(A&T)DP for transmission to Congress via the Secretary of Defense and the President (10 U.S.C. 2306b(i)(2)).

217.174 Multiyear contracts that employ economic order quantity procurement.

(a) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before awarding—

(1) A multiyear contract providing for economic order quantity purchases in excess of \$20 million in any year; or

(2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any year (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(b) Before initiating an advance procurement, the contracting officer shall verify that it is consistent with DoD policy (e.g., Part 3 of DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, and the full funding policy in Volume 2A, Chapter 1, of DoD 7000.14-R, Financial Management Regulation).

22. Subpart 217.5 is revised to read as follows:

Subpart 217.5—Interagency Acquisitions Under the Economy Act

Sec.

217.503 Determinations and findings requirements.

217.504 Ordering procedures.

217.503 Determinations and findings requirements.

(c) If requested, the contracting officer who normally would contract for the requesting activity should advise in the determination process.

217.504 Ordering procedures.

(a) When the requesting agency is within DoD, a copy of the executed D&F shall be furnished to the servicing agency as an attachment to the order. When a DoD contracting office is acting as the servicing agency, a copy of the executed D&F shall be obtained from the requesting agency and placed in the contract file for the Economy Act order.

PART 219—SMALL BUSINESS PROGRAMS

23. Section 219.703 is amended in paragraph (a) by revising the introductory text to read as follows:

291.703 Eligibility requirements for participating in the program.

(a) Qualified nonprofit agencies for the blind and other severely disabled, that have been approved by the Committee for Purchase from People Who Are Blind or Severely Disabled under the Javits-Wagner-O'Day Act (41 U.S.C. 46-48), are eligible to participate in the program as a result of 10 U.S.C. 2410d and Section 9077 of Pub. L. 102-396 and similar sections in subsequent Defense appropriations acts. Under this authority, subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal through fiscal year 1999.

* * * * *

219.7104 [Amended]

24. Section 219.7104 is amended in the last sentence of paragraph (b) and in paragraph (d) by revising the date "October 1, 1999" to read "October 1, 2000".

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

25. Section 223.404 is amended by revising paragraph (b)(3) introductory text and paragraph (b)(4) to read as follows:

223.404 Procedures.

(b)(3) A contract for an EPA designated item that does not meet the EPA minimum recovered material standards shall not be awarded before approval of the written determination required by FAR 23.404(b)(3). The approving official shall be—

(4) Departments and agencies shall centrally collect information submitted in accordance with the clause at FAR 52.223-9 for reporting to the cognizant activity in the Office of the Secretary of Defense.

PART 225—FOREIGN ACQUISITION

26. Section 225.000-70 is amended by revising paragraphs (c), (j), and (m) to read as follows:

225.000-70 Definitions.

(c) *Domestic end product* has the meaning given in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the meaning in FAR 25.101.

(j) *Qualifying country component and qualifying country end product* are defined in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. “Qualifying country end product” is also defined in the clause at 252.225-7021, Trade Agreements.

(m) *U.S. made end product* is defined in the clause at 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program and; 252.225-7021, Trade Agreements.

27. Section 225.000-71 is amended by revising paragraphs (a)(1)(i) and (c)(2) to read as follows:

225.000-71 General guidelines.

(i) Defense authorization or appropriations acts (see Subpart 225.70); or

(2) If the product is an eligible product under Subpart 225.4, evaluate the offer under FAR 25.402, 225.105, and 225.402.

28. Section 225.102 is amended by revising paragraph (a)(3)(A); by redesignating paragraphs (a)(3)(B) and (a)(3)(C) as paragraphs (a)(3)(C) and (a)(3)(D), respectively; and by adding a new paragraph (a)(3)(B) to read as follows:

225.102 Policy.

(3)(A) Specific public interest exceptions for DoD for certain countries are in 225.872.

(B) The Under Secretary of Defense (Acquisition and Technology) has determined that, for procurements subject to the Trade Agreements Act, it is inconsistent with the public interest to apply the Buy American Act to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

29. Section 225.105 is amended by revising the introductory text and paragraphs (1), (2), and (3); and in Table 25-1 by revising Examples 2 and 3 to read as follows:

225.105 Evaluating offers.

Use the following procedures instead of those in FAR 25.105. These procedures do not apply to acquisitions of information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

(1) Treat offers of eligible end products under acquisitions subject to the Trade Agreements Act or NAFTA as if they were qualifying country offers. As used in this section, the term “nonqualifying country offer” may also apply to an offer that is not an eligible

offer under a trade agreement (see Example 4 in Table 25-1, Evaluation).

(2) Except as provided in paragraph (3) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see Example 1 in Table 25-1, Evaluation).

(i) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225-10, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225-7003, Information for Duty-Free Entry Evaluation. See Example 1, Alternate II, in Table 25-1, Evaluation.

(ii) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(A) On an item-by-item basis; or

(B) On a group of items, if the solicitation specifically provides for award on a group basis.

(3) When application of the factor would not result in the award of a domestic end product, i.e., when no domestic offers are received (see Example 3 of Table 25-1, Evaluation) or when a qualifying country offer is lower than the domestic offer (see Example 2 of Table 25-1, Evaluation), evaluate nonqualifying country offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225-10, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225-7003, Information for Duty-Free Entry Evaluation (see Examples 2 and 3, Alternate II, of Table 25-1, Evaluation). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty. (See Examples 2 and 3, Alternate I, of Table 25-1, Evaluation.)

TABLE 25-1.—EVALUATION

| | |
|--|---------|
| * * * * * | |
| Example 2 | |
| Alternate I: Duty Not Exempted for Nonqualifying Country Offers: | |
| Nonqualifying Country Offer (including \$100 duty) | \$6,000 |
| Domestic Offer | 8,500 |
| Qualifying Country Offer | 7,800 |

TABLE 25-1.—EVALUATION—Continued

Award on Nonqualifying Country Offer. Since the qualifying country offer is lower than the domestic offer, the nonqualifying country offer is evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty (\$6,000).

Alternate II: Duty Exempted:

| | |
|--|-----------|
| Nonqualifying Country Offer (including \$1,000 duty) | \$880,500 |
| Domestic Offer | 950,000 |
| Qualifying Country Offer | 880,000 |

Award on Nonqualifying Country Offer. Again, the qualifying country offer is lower than the domestic offer. The nonqualifying country offer is, therefore, evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at \$879,500.

Example 3

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

| | |
|--|---------|
| Nonqualifying Country Offer (including \$150 duty) | \$9,600 |
| Qualifying Country Offer | 9,500 |

Award on Qualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

Alternate II: Duty Exempted:

| | |
|--|-----------|
| Nonqualifying Country Offer (including \$1,000 duty) | \$880,500 |
| Qualifying Country Offer | 880,000 |

Award on Nonqualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at \$879,500.

* * * * *

30. Section 225.109 is amended in paragraph (a) by revising the last sentence; in the introductory text of paragraph (d) by removing the word “which” and inserting in its place the word “that”; and by revising paragraph (d)(i) to read as follows:

225.109 Solicitation provisions and contract clauses.

(a) * * * Use the provision in any solicitation that includes the clause at 252.225-7001, Buy American Act and Balance of Payments Program.

* * * * *

(d) * * *

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply or if using the clause at 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225-7021, Trade Agreements; or 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

* * * * *

31. Section 225.109-70 is revised to read as follows:

225.109-70 Additional provisions and clauses.

(a) Use the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(1) 252.225-7001, Buy American Act and Balance of Payments Program.

(2) 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(3) 252.225-7021, Trade Agreements.

(4) 252.225-7036, Buy American Act—North American Trade Agreement Implementation Act—Balance of Payments Program.

(b) When only domestic end products are acceptable, the solicitation must make a statement to that effect.

32. Section 225.302 is amended by revising paragraphs (a)(iii) and (a)(iv); by adding a new paragraph (a)(v); in paragraph (b)(i) under the heading “ARMY” by removing the entry “Deputy Chief of Staff for Procurement U.S. Army Material Command” and inserting in its place the entry “Deputy Chief of Staff for Research, Development and Acquisition, Headquarters, U.S. Army Material Command”; and in paragraph (b)(i) by removing the heading “DEFENSE MAPPING AGENCY” and inserting in its place the heading “NATIONAL IMAGERY AND MAPPING AGENCY”. The revised and added text reads as follows:

225.302 Policy.

(a) * * *

(iii) Do not apply to qualifying country end products;

(iv) Do not apply to articles, materials, or supplies produced or manufactured in Panama when purchased by and for the use of U.S. forces in Panama; and

(v) For acquisitions subject to the Trade Agreements Act, do not apply to information technology products in Federal Supply Group 70 or 74 that are

substantially transformed in the United States.

* * * * *

33. Section 225.402 is amended by revising paragraph (a)(1) to read as follows:

225.402 Policy.

(a) * * *

(1) See 225.105 for evaluation of eligible products and U.S. made end products, except when acquiring information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

* * * * *

34. Section 225.408 is revised to read as follows:

225.408 Solicitation provisions and contract clauses.

(a)(i) Use the provision at 252.225-7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-8, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(ii) Except as provided in paragraph (a)(iv) of this section, use the clause at 252.225-7007, Buy American—Trade Agreements—Balance of Payment Program, instead of the clause at FAR 52.225-9, Buy American Act-Trade Agreements-Balance of Payment Program. The clause need not be used where purchase from foreign sources is

restricted (see 225.403(c)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction. For procurements by the U.S. Army Corps of Engineers, use the clause with its Alternate I.

(iii) Use the provision at 252.225-7020, Trade Agreements Certificate, in all solicitations that include the clause at 252.225-7021, Trade Agreements.

(iv) Use the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-9, Buy American Act—Trade Agreements—Balance of Payments Program, when acquiring information technology products in Federal Supply Group 70 or 74. For procurements by the U.S. Army Corps of Engineers, use the clause with its Alternate I.

(v)(A) Use the provision at 252.225-7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payment Program Certificate, instead of the provision at FAR 52.225-20, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(B)(1) Use the basic provision when the basic clause at 252.225-7036 is used.

(2) Use the provision with its Alternate I when the clause at 252.225-7036 is used with its Alternate I.

(vi)(A) Use the clause at 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225-21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(c)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(B)(1) Use the clause in all solicitations and contracts for the items listed at 225.403-70, when the estimated value is \$53,150 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(2) Use the clause with its Alternate I when the estimated value is between \$25,000 and \$53,150.

(C) Application of the procedures in 225.402(a) and the acquisition of noneligible and eligible products under the same solicitation may result in the

application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the schedule those items covered by the Act.

35. Section 225.602 is amended by revising the introductory text of paragraph (3) to read as follows:

225.602 Policy.

* * * * *

(3) Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (e.g., the Caribbean Basin Economic Recovery Act or NAFTA), or unless the supplies already have entered into the customs territory of the United States and duty already has been paid, DoD will issue duty-free entry certificates for—

* * * * *

36. Section 225.603 is amended by redesignating the text preceding paragraph (b) as paragraph (a); by revising newly designated paragraph (a); and in paragraph (b)(i)(D) introductory text, paragraph (b)(i)(E), and twice in paragraph (b)(ii) by removing "DCMAO" and inserting in its place "DCMC". The revised text reads as follows:

225.603 Procedures.

(a) General.

(i) Preaward.

(A) Unless duty was paid prior to submission of the offer, an offer of domestic end products with no nonqualifying country components, an offer of qualifying country end products, or an offer of eligible products under the Trade Agreements Act or NAFTA, should not include duty.

(B) Offers of U.S. made end products with nonqualifying country components, and offers that are neither qualifying country offers nor offers of eligible products under a trade agreement, should contain applicable duty.

(C) Exclude from the evaluation of domestic end products, or information technology end products in Federal Supply Group 70 or 74 in acquisitions subject to the Trade Agreements Act, any duty for nonqualifying country components listed in the provision at 252.225-7003, Information for Duty-Free Entry Evaluation, for which duty-free entry will be granted.

(D) Except for acquisitions of information technology end products in Federal Supply Group 70 or 74 subject to the Trade Agreements Act, apply the evaluation procedures for the Buy American Act in accordance with 225.105.

(ii) *Award.* Exclude duty from the contract price for supplies (end products or components) that are to be accorded duty-free entry. If duty-free entry is granted to the successful offeror in accordance with the clause at FAR 52.225-10, Duty-Free Entry, and the clause at 252.225-7003, Information for Duty-Free Entry Evaluation, request that the offeror provide the list of foreign supplies that are subject to such duty-free entry, and list such supplies in the contract clause at 252.225-7008, Supplies to be Accorded Duty-Free Entry.

(iii) Postaward.

(A) Issue duty-free entry certificates for all qualifying country supplies in accordance with the policy at 225.602(3)(i) and the clause at 252.225-7009, Duty-Free Entry—Qualifying Country Supplies (End Products and Components); for all eligible products subject to trade agreements in accordance with the policy at 225.602(3)(ii) and the clause at 252.225-7037, Duty-Free Entry—Eligible End Products; and for other foreign supplies in accordance with the policy at 225.602(3)(iii) on contracts containing the clause at FAR 52.225-10, Duty-Free Entry; or (following to the extent practicable the procedures required by the clause at FAR 52.225-10, Duty-Free Entry, and the clause at 252.225-7010, Duty-Free Entry—Additional Provisions) on other contracts—

(1) That fall within one of the following categories:

(i) Direct purchases of foreign supplies under a DoD prime contract, whether title passes at point of origin or at destination in the United States, provided the contract states that the final price is exclusive of duty.

(ii) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, follow the criteria stated in paragraph (a)(iii)(A)(1)(ii) of this section.

(iii) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price contract or fixed-price subcontract intervenes, provided the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty.

(2) For which the supplies so purchased will be delivered to the

Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and for which duty will be paid if such supplies or any portion are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

(3) For which such acquisition abroad is authorized by the terms of the contract or subcontract or by the contracting officer.

(B) Under a fixed-price contract, negotiate an equitable reduction in the contract price if duty-free entry is granted for any nonqualifying country component not listed in the Schedule as duty-free, even if contract award was based on furnishing a domestic component or a qualifying country component.

* * * * *

37. Section 225.605-70 is revised to read as follows:

225.605-70 Additional solicitation provisions and contract clauses.

(a) Use the clause at 252.225-7009, Duty-Free Entry—Qualifying Country Supplies (End Products and Components), in solicitations and contracts for supplies and in solicitations and contracts for services involving the furnishing of supplies, except for solicitations and contracts for supplies for exclusive use outside the United States.

(b) Use the clause at 252.225-7037, Duty-Free Entry—Eligible End Products, in solicitations and contracts for supplies and services when the clause at 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225-7021, Trade Agreements; or 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, is used.

(c) Use the clause at 252.225-7010, Duty-Free Entry—Additional Provisions, in solicitations and contracts that include the clause at FAR 52.225-10, Duty-Free Entry.

(d) Use the provision at 252.225-7003, Information for Duty-Free Entry Evaluation, in solicitations that include the clause at FAR 52.225-10, Duty-Free Entry. Use the provision with its Alternate I when the clause at 252.225-7021, Trade Agreements, is used.

(e) Use the clause at 252.225-7008, Supplies to be Accorded Duty-Free Entry, in solicitations and contracts that provide for duty-free entry and that include the clause at FAR 52.225-10, Duty-Free Entry.

38. Section 225.872-4 is amended by revising the last sentence of the introductory text of paragraph (c), and paragraph (c)(2)4, to read as follows:

225.872-4 Evaluation of offers.

* * * * *

(c) * * * If the offer, as evaluated, is low or otherwise eligible for award, the contracting officer shall request an exemption of the Buy American Act/ Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies.

* * * * *

(2) * * *

4. To achieve the above objectives, the solicitation contained the *(title and number of the Buy American Act clause contained in the contract)*. Offers were solicited from other sources and the offer received for *(qualifying country end item)* is found to be otherwise eligible for award.

* * * * *

225.7011-4 [Amended]

39. Section 225.7011-4 is amended in paragraph (b)(3) by removing the reference “15.5” and inserting in its place the reference “15.6”.

40. Section 225.7303-4 is revised to read as follows:

225.7303-4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under DoD contracts, provided the fees are determined by the contracting officer to be fair and reasonable and are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR Part 31 and FAR Subpart 3.4).

(b)(1) Under DoD 5105.38-M, Security Assistance Management Manual, Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the Letters of Offer and Acceptance prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the payments have been identified and approved in writing by the foreign customer before contract award (see 225.7308(a)).

(2) For FMS to countries not listed in paragraph (b)(1) of this subsection, contingent fees exceeding \$50,000 per FMS case shall be unallowable under DoD contracts, unless payment has been

identified and approved in writing by the foreign customer before contract award.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

41. Section 226.103 is revised to read as follows:

226.103 Procedures.

(f) The contracting officer shall submit a request for funding of the Indian incentive to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology, OUSD(A&T)SADBU, Room 2A340, 3061 Defense Pentagon, Washington, DC 20301-3061. Upon receipt of funding from OUSD(A&T)SADBU, the contracting officer shall issue a contract modification to add the Indian incentive funding for payment of the contractor's request for equitable adjustment as described at FAR 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

42. Section 226.104 is added to read as follows:

226.104 Contract clause.

(a) Also use the clause at FAR 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in contracts—

(i) With contractors that have comprehensive subcontracting plans approved under the test program described at 219.702(a); and

(ii) That contain the clause at 252.219-7004, Small, Small disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program).

PART 227—PATENTS, DATA, AND COPYRIGHTS

43. Section 227.676 is amended by revising paragraph (b) to read as follows:

227.676 Foreign patent interchange agreements.

* * * * *

(b) Assistance with patent rights and royalty payments in the United States European Command (USEUCOM) area of responsibility is available from HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128; Telephone: DSN 430-8001/7263, Commercial 49-0711-680-8001/7263; Telefax: 49-0711-680-5732.

PART 229—TAXES

44. Section 229.101 is amended in paragraph (d)(i) by revising the last sentence to read as follows:

229.101 Resolving tax problems.

* * * * *

(d)(i) * * * For further information contact HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128; Telephone: DSN 430-8001/7263, Commercial 49-0711-680-8001/7263; Telefax. 49-0711-680-5732.

* * * * *

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES**231.205-71 [Removed]**

45. Section 231.205-71 is removed.

PART 232—CONTRACT FINANCING

46. Sections 232.006, 232.006-5, 232.070, 232.071, 232.072, 232.072-1, 232.072-2 and 232.072-3 are added to read as follows:

232.006 Reduction or suspension of contract payments upon finding of fraud.**232.006-5 Reporting.**

Departments and agencies in accordance with department/agency procedures, shall prepare and submit to the Under Secretary of Defense (Acquisition and Technology), through the Director of Defense Procurement, annual reports (Report Control Symbol DD-ACQ(A) 1891) containing the information required by FAR 32.006-5.

232.070 Responsibilities.

(a) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)DP) is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures. Agency discretion under FAR Part 32 is at the DoD level and is not delegated to the departments and agencies. Proposals by the departments and agencies, to exercise agency discretion, shall be submitted to OUSD(A&T)DP through the DoD Contract Finance Committee (see 232.071).

(b) Departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to OUSD(A&T)DP for consideration through the department/agency Contract Finance Committee members (also see Subpart 204.1 for deviation request and approval procedures).

(c) The Under or Assistant Secretary, or other designated official, responsible for the comptroller function within the department or agency is the focal point for financing matters at the department/

agency headquarters. Departments and agencies may establish contract financing offices at operational levels.

(1) Department/agency contract financing offices are—

(i) Army: Office of the Assistant Secretary of the Army (Financial Management);

(ii) Navy: Office of the Assistant Secretary of the Navy (Financial Management and Comptroller), Office of Financial Operations;

(iii) Air Force: Air Force Contract Financing Office (SAF/FMPB);

(iv) Defense agencies: Office of the agency comptroller.

(2) Contract financing offices should participate in—

(i) Developing regulations for contract financing;

(ii) Developing contract provisions for contract financing; and

(iii) Resolving specific cases that involve unusual contract financing requirements.

232.071 Contract Finance Committee.

(a) The Contract Finance Committee consists of—

(1) A representative of OUSD(A&T)DP, serving as the Chair;

(2) A representative of the Comptroller of the Department of Defense;

(3) A representative of the Defense Finance and Accounting Service;

(4) A representative of the Civilian Agency Acquisition Council (for matters pertaining to the FAR);

(5) A representative of the National Aeronautics and Space Administration (for matters pertaining to the FAR);

(6) An advisory consultant from the Defense Contract Audit Agency; and

(7) Two representatives of each military department and the Defense Logistics Agency (one representing contracting and one representing the contract finance office).

(b) The Committee—

(1) Advises and assists OUSD(A&T)DP in ensuring proper and uniform application of policies, procedures, and forms;

(2) Is responsible for formulating, revising, and promulgating uniform contract financing regulations;

(3) May recommend to the Secretary of Defense through OUSD(A&T)DP further policy directives on financing; and

(4) Meets at the request of the Chair or a member.

232.072 Financial responsibility of contractors.

Use the policies and procedures in this section in determining the financial capability of current or prospective contractors.

232.072-1 Required financial reviews.

The contracting officer shall perform a financial review when the contracting officer does not otherwise have sufficient information to make a positive determination of financial responsibility. In addition, the contracting officer shall consider performing a financial review—

(a) Prior to award of a contract, when—

(1) The contractor is on a list requiring preaward clearance or other special clearance before award;

(2) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or is otherwise known to be indebted to the Government;

(3) The contractor may receive Government assets such as contract financing payments or Government property;

(4) The contractor is experiencing performance difficulties on other work; or

(5) The contractor is a new company or a new supplier of the item.

(b) At periodic intervals after award of a contract, when—

(1) Any of the conditions in paragraphs (a)(2) through (a)(5) of this subsection are applicable; or

(2) There is any other reason to question the contractor's ability to finance performance and completion of the contract.

232.072-2 Appropriate information.

(a) The contracting officer shall obtain the type and depth of financial and other information that is required to establish a contractor's financial capability or disclose a contractor's financial condition. While the contracting officer should not request information that is not necessary for protection for the Government's interests, the contracting officer must insist upon obtaining the information that is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and to use in the professional management of a business, may be a material fact in the determination of the contractor's responsibility and prospects for contract completion.

(b) The contracting officer shall obtain the following information to the extent required to protect the Government's interest. In addition, if the contracting officer concludes that information not listed in paragraphs (b)(1) through (b)(10) of this subsection is required to comply with 232.072-1, that

information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, the contracting officer shall obtain the required information for each individual/joint venturer/partner:

(1) Balance sheet and income statement—

(i) For the current fiscal year (interim);

(ii) For the most recent fiscal year and, preferably, for the 2 preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and

(iii) Forecasted for each fiscal year for the remainder of the period of contract performance.

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies—corporate or personal, and describing its products or services.

(3) Statement of all affiliations disclosing—

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

(iii) Material affiliations of owners, officers, directors, major stockholders; and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation.

(4) Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate—

(i) Planned for the current year;

(ii) Paid during the past 2 years; and

(iii) Deferred to future periods.

(5) Business base and forecast that—

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract (see 232.072-3).

(7) Financing arrangement information that discloses—

(i) Availability of cash to finance contract performance;

(ii) Contractor's exposure to financial crisis from creditor's demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications;

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory contributions, e.g., environmental superfund.

(9) Description and explanation of the financial effect of issues such as—

(i) Leases, deferred purchase arrangements, or patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

(10) Significant ratios such as—

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

232.072-3 Cash flow forecasts.

(a) A contractor must be able to sustain a sufficient cash flow to perform the contract. When there is doubt regarding the sufficiency of a contractor's cash flow, the contracting officer should require the contractor to submit a cash flow forecast covering the duration of the contract.

(b) A contractor's inability of refusal to prepare and provide cash flow forecasts or to reconcile actual cash flow with previous forecasts is a strong indicator of serious managerial deficiencies or potential contract cost or performance problems.

(c) Single or one-time cash flow forecasts are of limited forecasting power. As such, they should be limited to preaward survey situations. Reliability of cash flow forecasts can be established only by comparing a series of previous actual cash flows with the corresponding forecasts and examining the causes of any differences.

(d) Cash flow forecasts must—

(1) Show the origin and use of all material amounts of cash within the entire business unit responsible for contract performance, period by period, for the length of the contract (or until the risk of a cash crisis ends); and

(2) Provide an audit trail to the data and assumptions used to prepare it.

(e) Cash flow forecasts can be no more reliable than the assumptions on which

they are based. Most important of these assumptions are—

(1) Estimated amounts and timing of purchases and payments for materials, parts, components, subassemblies, and services;

(2) Estimated amounts and timing of payments of purchase or production of capital assets, test facilities, and tooling;

(3) Amounts and timing of fixed cash charges such as debt installments, interest, rentals, taxes, and indirect costs;

(4) Estimated amounts and timing of payments for projected labor, both direct and indirect;

(5) Reasonableness of projected manufacturing and production schedules;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amount and timing of cash receipt from other sources.

(f) The contracting officer should review the assumptions underlying the cash flow forecasts. In determining whether the assumptions are reasonable and realistic, the contracting officer should consult with—

(1) The contractor;

(2) Government personnel in the areas of finance, engineering, production, cost, and price analysis; or

(3) Prospective supply, subcontract, and loan or credit sources.

47. Subpart 232.1 is revised to read as follows:

Subpart 232.1—Non-Commercial Item Purchase Financing

Sec.

232.102 Description of contract financing methods.

232.102-70 Provisional delivery payments.

232.108 Financial consultation.

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102), shipbuilding, and ship conversion, alteration, or repair. However, percentage or state of completion methods of measuring contractor performance may be used for performance-based payments in accordance with FAR Subpart 32.10.

232.102-70 Provisional delivery payments.

(a) The contracting officer may establish provisional delivery payments

to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following contract actions if undefinitized:

- (1) Letter contracts contemplating a fixed-price contract.
- (2) Orders under basic ordering agreements.
- (3) Spares provisioning documents annexed to contracts.
- (4) Unpriced equitable adjustments on fixed-price contracts.
- (5) Orders under indefinite-delivery contracts.
- (b) Provisional delivery payments shall be—
 - (1) Used sparingly;
 - (2) Priced conservatively; and
 - (3) Reduced by liquidating previous progress payments in accordance with the Progress Payments clause.
- (c) Provisional delivery payments shall not—
 - (1) Include profit;
 - (2) Exceed funds obligated for the undefinitized contract action; or
 - (3) Influence the definitized contract price.

232.108 Financial consultation.

See 232.070 for offices to be consulted regarding financial matters with DoD.

48. Subpart 232.2 is added to read as follows:

Subpart 232.2—Commercial Item Purchase Financing

Sec.

232.202–4 Security for Government financing.

232.206 Solicitation provisions and contract clauses.

232.207 Administration and payment of commercial financing payments.

232.202–4 Security for Government financing.

(a)(2) When determining whether an offeror's financial condition is adequate security, see 232.072–2 and 232.072–3 for guidance. It should be noted that an offeror's financial condition may be sufficient to make the contractor responsible for award purposes, but may not be adequate security for commercial contract financing.

232.206 Solicitation provisions and contract clauses.

(d) *Instructions for multiple appropriations.* If the contract contains foreign military sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country's account.

(f) *Prompt payment for commercial purchase payments.* The contracting officer shall incorporate the following

standard prompt payment terms for commercial item contract financing:

(i) *Commercial advance payments:* The contractor entitlement date specified in the contract, or 30 days after receipt by the designated billing office of a proper request for payment, whichever is later.

(ii) *Commercial interim payments:* The contractor entitlement date specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later. The prompt payment standards for commercial delivery payments shall be the same as specified in FAR Subpart 32.9 for invoice payments for the item delivered.

(g) *Installment payment financing for commercial items.* Installment payment financing shall not be used for DoD contracts, unless market research has established that this form of contract financing is both appropriate and customary in the commercial marketplace. When installment payment financing is used, the contracting officer shall use the ceiling percentage of contract price that is customary in the particular marketplace (not to exceed the maximum rate established in FAR 52.232–30).

232.207 Administration and payment of commercial financing payments.

(b)(2) If the contract contains foreign military sales requirements, each approval shall specify the amount of contract financing to be charged to each country's account.

232.502–1–71 [Amended]

49. Section 232.502–1–71 is amended in paragraph (b)(3) by removing the reference “15.801” and inserting in its place the reference “15.401”.

232.970 through 232.970–2 [Removed]

50. Sections 232.970 through 232.970–2 are removed.

51. Subpart 232.10 is added to read as follows:

Subpart 232.10—Performance-Based Payments

Sec.

232.1001 Policy.

232.1004 Procedure.

232.1007 Administration and payment of performance-based payments.

232.1001 Policy.

(d) The contracting officer shall use the following standard prompt payment terms for performance-based payments: The contractor entitlement date, if any, specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later.

232.100 Procedure.

(c) *Instructions for multiple appropriations.* If the contract contains foreign military sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country's account.

232.1007 Administration and payment of performance-based payments.

(b)(2) If the contract contains foreign military sales requirements, each approval shall specify the amount of contract financing to be charged to each country's account.

PART 233—PROTESTS, DISPUTES, AND APPEALS

52. Section 233.204–70 is added to read as follows:

233.204–70 Limitations on payment.

See 10 U.S.C. 2410(b) for limitations on Congressionally directed payment of a claim under the Contract Disputes Act of 1978, a request for equitable adjustment to contract terms, or a request for relief under Pub. L. 85–804.

PART 234—MAJOR SYSTEM ACQUISITION

234.005–70 [Amended]

53. Section 234.005–70 is amended in the first sentence by inserting the phrase “paragraph (b) of” after the phrase “in accordance with”.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

54. Section 235.001 is revised to read as follows:

235.001 Definitions.

As defined in DoD 7000.14–R, Financial Management Regulations, and as used in this part—

(a) *Basic research* (Category 6.1) means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, and life sciences related to long-term national security needs. It provides farsighted, high-payoff research, including critical enabling technologies that provide the basis for technological progress. It forms a part of the base for:

- (1) Subsequent applied research (exploratory development); and advanced technology developments in Defense-related technologies; and
- (2) New and improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation,

energy conversion, materials and structures, and personnel support.

(b) *Applied research* (Category 6.2) means effort that translates promising basic research into solutions for broadly defined military needs, short or major development projects. This type of effort may vary from fairly fundamental applied research to sophisticated broad-broad hardware, study, programming, and planning efforts that establish the initial feasibility and practicality of proposed solutions to technologies challenges. It includes studies, investigations, and nonsystem specific development efforts. The dominant characteristic of this category of effort is that it be pointed toward specific military needs with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

(c) *Advanced technology development* (Category 6.3A) means all efforts that have moved into the development and integration of hardware for field experiments and tests. The results of this type of effort are proof of technological feasibility and assessment of operability and producibility rather than the development of hardware for Service use. Projects in this category have a direct relevance to identified military needs. Advanced technology development is system specific (particularly for major platforms, i.e., aircraft, ships, missiles, and tanks, etc.) and includes advanced technology development that is used to demonstrate the general military utility or cost reduction potential of technology when applied to different types of military equipment or techniques. Advanced technology developments also includes evaluation and synthetic environment and proof-of-principle demonstrations in field exercises to evaluate system upgrades or provide new operational capabilities.

(d) *Demonstration and validation* (Category 6.3B) means all efforts necessary to evaluate integrated technologies in as realistic an operating environment as possible to assess the performance or cost reduction potential of advanced technology. The demonstration and validation phase is system specific and also includes advanced technology demonstrations that help expedite technology transition from the laboratory to operational use.

(e) *Engineering and manufacturing development* (Category 6.4) means those projects in engineering and manufacturing development for Service use but that have not received approval for full-rate production. This area is characterized by major line item

projects, and program control will be exercised by review of individual projects. Engineering development includes engineering and manufacturing development projects consistent with the definitions within DoDD 5000.1.

(f) *Management support* (Category 6.5) means research and development effort directed toward support of installations or operations required for general research and development use. Included would be test ranges, military construction, maintenance support of laboratories, operation and maintenance of test aircraft and ships, and studies and analyses in support of the research and development program. Costs of laboratory personnel, either in-house or contractor-operated, would be assigned to appropriate projects or as a line item in the basic research, applied research, or advanced technology development program areas, as appropriate.

(g) *Operational system development* (Category 6.6) means those development projects, in support of development acquisition programs or upgrades, still in engineering and manufacturing development (DoDD 5000.1) but that have received approval for production through Defense Acquisition Board or other action, or for which production funds have been included in the DoD budget submission for the budget or subsequent fiscal year. All items in this area are major line item projects that appear as research, development, test, and evaluation costs of weapon system elements in other programs. Program control will be exercised by review of individual projects.

(h) *Research and development* ordinarily covers only the following categories:

- (1) Basic research.
- (2) Applied research.
- (3) Technology development.
- (4) Demonstration/validation.
- (5) Engineering and manufacturing development.
- (6) Operational system development.

235.002 [Removed]

55. Section 235.002 is removed.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

56. Section 236.102 is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by adding a new paragraph (3) to read as follows:

236.102 Definitions.

* * * * *

(3) *Marshallse firm* is defined in the provision at 252.236-7012, Military

Construction on Kwajalein Atoll—Evaluation Preference.

* * * * *

57. Section 236.274 is amended by revising paragraph (a) to read as follows:

236.274 Construction in foreign countries.

(a) In accordance with Section 112 of Pub. L. 105-45, military construction contracts funded with military construction appropriations, that are estimated to exceed \$1,000,000 and are to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms, unless—

(1) The lowest responsive and responsible offer of a United States firm exceeds the lowest responsive and responsible offer of a foreign firm by more than 20 percent; or

(2) The contract is for military construction on Kwajalein Atoll and the lowest responsive and responsible offer is submitted by a Marshallse firm.

* * * * *

58. Section 236.570 is amended by revising paragraph (c) to read as follows:

236.570 Additional provisions and clauses.

* * * * *

(c) Use the following provisions in solicitations for military construction contracts that are funded with military construction appropriations and are estimated to exceed \$1,000,000:

(1) 252.236-7010, Overseas Military Construction—Preference for United States Firms, when contract performance will be in a United States territory or possession in the Pacific or in a country bordering the Arabian Gulf.

(2) 252.236-7012, Military Construction on Kwajalein Atoll—Evaluation Preference, when contract performance will be on Kwajalein Atoll.

* * * * *

59. Sections 236.602-2 and 236.602-4 are revised to read as follows:

236.602-2 Evaluation boards.

(a) Preselection boards may be used to identify to the selection board the qualified firms that have a reasonable chance of being considered as most highly qualified by the selection board.

236.602-4 Selection authority.

(a) The selection authority shall be at a level appropriate for the dollar value and nature of the proposed contract.

(c) A finding that some of the firms on the selection report are unqualified does not preclude approval of the report, provided that a minimum of three most highly qualified firms remains. The

reasons for finding a firm or firms unqualified must be recorded.

60. Section 236.609-70 is amended by revising paragraph (b) to read as follows:

236.609-70 Additional provision and clause.

* * * * *

(b) Use the provision at 252.236-7011, Overseas Architect-Engineer Services—Restriction to United States Firms, in solicitations for A-E contracts that are—

(1) Funded with military construction appropriations;

(2) Estimated to exceed \$500,000; and

(3) To be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

PART 237—SERVICE CONTRACTING

237.102 [Removed]

61. Section 237.102 is removed.

62. Section 237.104 is amended by revising paragraph (f)(i) to read as follows:

237.104 Personal services contracts.

* * * * *

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS-15 (see 5 CFR 304.105(a)).

* * * * *

237.170 through 237.170-3 [Removed]

63. Sections 237.170 through 237.170-3 are removed.

64. Section 237.201 is added to read as follows:

237.201 Definitions.

Advisory and assistance services.

(c) *Engineering and technical services.* Engineering and technical services consist of—

(i) Contract field services, which are engineering and technical services provided on site at Defense locations by the trained and qualified engineers and technicians of commercial or industrial companies;

(ii) Contract plant services, which are engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components in the manufacturer's own plants and facilities; and

(iii) Field service representatives, who are employees of a manufacturer of military equipment or components that provide a liaison or advisory service between their company and the military users of their company's equipment or components.

65. Section 237.203 is revised to read as follows:

237.203 Policy.

(1) Every contract for engineering and technical services, alone or as part of an end item, shall—

(i) Show those services as a separately priced line item;

(ii) Contain definitive specifications for the services; and

(iii) Show the work-months involved.

(2) Agency heads may authorize personal service contracts for contract field services to meet an unusual essential mission need. The authorization will be for an interim period only.

237.203-70 [Redesignated and Amended]

66. Section 237.203-70 is redesignated as section 237.270 and amended in paragraph (b) by revising "one year" to read "1-year" and by revising "two" to read "2".

237.205 and 237.206 [Redesignated]

67. Sections 237.205 and 237.206 are redesignated as sections 237.271 and 237.272 respectively.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

68. Section 239.7405 is revised to read as follows:

239.7405 Multiyear contracting authority for telecommunications resources.

(a) The General Services Administration (GSA) has exclusive multiyear contracting authority for telecommunications resources. However, GSA may delegate this authority in certain instances (see Federal Property Management Regulations (FPMR) 101-35.6).

(b) In accordance with FPMR 101-35.6, executive agencies may enter into multiyear contracts for telecommunications resources if—

(1) The agency notifies GSA prior to using GSA's multiyear contracting authority;

(2) The contract life, including options, does not exceed 10 years; and

(3) The agency complies with OMB budget and accounting procedures relating to appropriated funds.

239.7406 [Amended]

69. Section 239.7406 is amended in the introductory text of paragraph (c) by removing reference "15.804-2" and adding in its place the reference "15.403-4"; and by removing the reference "15.804-5" and adding in its place the reference "15.403-3".

70. Part 241 is revised to read as follows:

PART 241—ACQUISITION OF UTILITY SERVICES

Subpart 241.1—General

Sec.

241.101 Definitions.

241.102 Applicability.

Subpart 241.2—Acquiring Utility Services

241.201 Policy.

241.202 Procedures.

241.203 GSA assistance.

241.205 Separate contracts.

241.270 Preaward contract review.

Subpart 241.5—Solicitation Provisions and Contract Clauses

241.501-70 Additional clauses.

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

Subpart 241.1—General

241.101 Definitions.

As used in this part—

Definite term contract means a contract for utility services for a definite period of not less than one nor more than ten years.

Dual service area means a geographical area in which two or more utility suppliers are authorized under State law to provide services.

Indefinite term contract means a month-to-month contract for utility services which may be terminated by the Government upon proper notice.

Independent regulatory body means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

Nonindependent regulatory body means a body that regulates a utility supplier which is owned or operated by the same entity that created the regulatory body, e.g., a municipal utility.

Regulated utility supplier means a utility supplier regulated by an independent regulatory body.

Service power procurement officer means for the—

Army, the Chief of Engineers;

Navy, the Commander, Naval

Facilities Engineering Command;

Air Force, the head of a contracting activity; and

Defense Logistics Agency, the Executive Director of Contracting.

241.102 Applicability.

(a) This part applies to purchase of utility services from nonregulated and regulated utility suppliers. It includes the acquisition of liquefied petroleum gas as a utility service when purchased from regulated utility suppliers.

(b)(7) This part does not apply to third party financed projects. However, it may be used for any purchased utility services directly resulting from such projects, including those authorized by—

(A) 10 U.S.C. 2394 for energy, fuels, and energy production facilities for periods not to exceed 30 years;

(B) 10 U.S.C. 2394a for renewable energy for periods not to exceed 25 years;

(C) 10 U.S.C. 2689 for geothermal resources that result in energy production facilities;

(D) 10 U.S.C. 2809 for potable and waste water treatment plants for periods not to exceed 32 years; and

(E) 10 U.S.C. 2812 for lease/purchase of energy production facilities for periods not to exceed 32 years.

Subpart 241.2—Acquiring Utility Services

241.201 Policy.

(1) Except as provided in FAR 41.201, DoD, as a matter of comity, will comply with the current regulations, practices and decisions of independent regulatory bodies which are subject to judicial appeal. This policy does not extend to regulatory bodies whose decisions are not subject to appeal nor does it extend to nonindependent regulatory bodies.

(2) Purchases of utility services outside the United States may use—

(i) Formats and technical provisions consistent with local practice; and

(ii) Dual language forms and contracts.

(3) Rates established by an independent regulatory body are considered “prices set by law or regulation” and do not require submission of cost or pricing data (see FAR Subpart 15.4).

241.202 Procedures.

(a)(i) Competitive proposals.

When a new major utility service load develops or a new military installation is established, the contracting officer shall—

(A) Determine whether more than one supplier can provide the required utility services.

(1) Competition may be possible where dual franchises exist or where no franchise exists.

(2) Competition should also be considered when an installation is served by one supplier and other potential suppliers exist even though one supplier has entered into a General Services Administration area-wide contract.

(B) Where competition exists, solicit competitive proposals from all potential suppliers.

(ii) Periodic reviews for competition.

Conduct periodic review of ongoing contracts to determine the availability of competition. If available, evaluate the need to rewrite the contract considering—

(A) The possible loss of rights vested in the Government under the existing contract;

(B) The age and quality of the contract; and

(C) The number of contract modifications and the ease of administration with the existing contract documents.

(iii) Connection and service charges.

The Government may pay a connection charge when required to cover the cost of the necessary connecting facilities. A connection charge based on the estimated labor cost of installing and removing the facility shall not include salvage cost. A lump-sum connection charge shall be no more than the agreed cost of the connecting facilities less net salvage. The order of precedence for contractual treatment of connection and service charges is—

(A) No connection charge.

(B) Termination liability. Use when an obligation is necessary to secure the required services. The obligation must be not more than the agreed connection charge, less any net salvage material costs. Use of a termination liability instead of a connection charge requires the approval of the service power procurement officer or designee.

(C) Connection charge, refundable. Use a refundable connection charge when the supplier refuses to provide the facilities based on lack of capital or published rules which prohibit providing up-front funding. The contract should provide for refund of the connection charge within five years unless a longer period or omission of the refund requirement is authorized by the service power procurement officer or designee.

(D) Connection and service charges, nonrefundable. The Government may pay certain nonrefundable, nonrecurring charges including service initiation charges, a contribution in aid of construction, membership fees, and charges required by the supplier's rules and regulations to be paid by the customer. If possible, consider sharing with other than Government users the use of (and costs for) facilities when large nonrefundable charges are required.

(iv) *Construction and labor requirements.* (A) Do not use the connection charge provisions for the installation of Government-owned distribution lines and facilities. The acquisition of such facilities must be

authorized by legislation and accomplished in accordance with FAR Part 36. Also, do not use the connection charge provisions for the installation of new facilities related to the supplier's production and general “backbone” system unless authorized by legislation.

(B) Construction labor standards ordinarily do not apply to construction accomplished under the connection charge provisions of this part. However, if installation includes construction of a public building or public work as defined in FAR 36.102, construction labor standards may apply.

241.203 GSA assistance.

The General Services Administration (GSA) has delegated to DoD the authority to enter into utility service contracts (see FAR 41.103); therefore, contracting officers need not seek assistance or approval from GSA.

241.205 Separate contracts.

(a)(i) Requests for proposals shall state the anticipated service period in terms of months or years. Where the period extends beyond the current fiscal year, evaluate offers of incentives for a definite term contract.

(ii) The solicitation may permit offerors the choice of proposing on the basis of—

(A) A definite term not to exceed the anticipated service period; or

(B) An indefinite term contract.

(iii) Where the expected service period is less than the current fiscal year, the solicitation shall be on the basis of an indefinite term contract.

(iv) Contracts for utility services for leased premises shall identify the lease document on the face of the contract.

(d) Use an indefinite term utility service contract when it is considered to be in the Government's best interest to—

(i) Have the right to terminate on a 30-day (or longer) notice. A notice of up to one year may be granted by an installation if needed to obtain a more favorable rate, more advantageous conditions, or for other valid reasons; or

(ii) Grant the supplier the right to terminate the contract when of benefit to the Government in the form of lower rates, larger discounts or more favorable terms and conditions.

241.270 Preaward contract review.

Departments/agencies shall conduct their owned preaward contract reviews.

Subpart 241.5—Solicitation Provision and Contract Clauses

241.501–70 Additional clauses.

(a) If the Government must execute a superseding contract and capital credits, connection charge credits, or

termination liability exist, use the clause at 252.241-7000, Superseding Contract.

(b) Use the clause at 252.241-70001, Government Access, when the clause at FAR 52.241-5, Contractor's Facilities, is used.

PART 242—CONTRACT ADMINISTRATION

71. Section 242.302 is amended by revising paragraphs (a)(4)(A) and (a)(19) to read as follows:

242.302 Contract administration functions.

(a)(4) * * *

(A) Contractor estimating systems (see FAR 15.407-5); and

* * * * *

(19) Also negotiate and issue contract modifications reducing contract prices in connection with the provisions of paragraph (b) of the clause at FAR 52.225-10, Duty-Free Entry.

* * * * *

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

242.1107-70 Solicitation provision and contract clause.

(a) Use the clause at 252.242-7005, Cost/Schedule Status Report, in solicitations and contracts for other than major systems that require cost/schedule status reports (i.e., when the Contract Data Requirements List includes DI-MGMT-81467 in accordance with DoD 5000.2-R).

(b) Use the provision at 252.242-7006, Cost/Schedule Status Report Plans, in solicitation for other than major systems that require cost/schedule status reports.

PART 243—CONTRACT MODIFICATIONS

73. Section 243.204-70 is amended in paragraph (b) by revising the reference "15.804-2(a)(1)(iii)" to read "15.403-4(a)(1)(iii)" and by adding paragraph (c) to read as follows:

243.204-70 Certification of requests for equitable adjustment.

* * * * *

(c) The certification required by 10 U.S.C. 2410(a), as implemented in the clause at 252.243-7002, is different from the certification required by the Contract Disputes Act of 1978 (41 U.S.C. 605(c)). If the contractor has certified a request for equitable adjustment in accordance with 10 U.S.C. 2410(a), and desires to convert the request to a claim under the Contract Disputes Act, the contractor shall certify the claim in accordance with FAR Subpart 33.2.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

74. Section 250.102-70 is added to read as follows:

250.102-70 Limitations on payment.

See 10 U.S.C. 2410b for limitations on Congressionally directed payment of a request for equitable adjustment to contract terms or a request for relief under Pub. L. 85-804.

250.201 [Amended]

75. Section 250.201 is amended in paragraph (b) by revising the reference "FAR subpart 50.2" to read FAR Subpart 50.4".

PART 252—SOLICITATION PROVISIONS AND CONTRAST CLAUSES

76. Section 252.212-7001 is amended by revising the clause date; and in paragraph (b) by revising the entries at 252.225-7001, 252.225-7007, and 252.225-7036; by adding, in numerical order, an entry at 252.225-7021; and by removing the entries at 252.242-7002 and 252.249-7001. The revised and added text reads as follows:

252.212-7001 Contract terms and conditions required to implement statutes or Executive Orders applicable to Defense Acquisitions of commercial items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes of Executive Orders Applicable to Defense Acquisitions of Commercial Items (Mar 1998)

* * * * *

(b) * * *

252.225-7001 Buy American Act and Balance of Payments Program (41 U.S.C. 10a-10d, E.O. 10582).

252.225-7007 Buy American Act—Trade Agreements—Balance of Payments Program (____ Alternate I) (41 U.S.C. 10a-10d, 19 U.S.C. 2501-2518, and 19 U.S.C. 3301 note).

* * * * *

252.225-7021 Trade Agreements (____ Alternate I) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

* * * * *

252.225-7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payment Program (____ Alternate I) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

* * * * *

77. Section 252.225-7001 is revised to read as follows:

252.225-7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.109(d), use the following clause:

Buy American Act and Balance of Payments Program (Mar 1998)

(a) *Definitions.*

As used in this clause—

(1) *Components* means those articles, materials, and supplies directly incorporated into end products.

(2) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind—

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(4) *Nonqualifying country end product* means an end product that is neither a domestic end product nor a qualifying country end product.

(5) *Qualifying country* means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(6) *Qualifying country component* means an item mined, produced, or manufactured in a qualifying country.

(7) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products.

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act—Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

(d) The offered price of qualifying country end products should not include custom fees or duty. The offered price of nonqualifying country end products, and products manufactured in the United States that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty. (End of clause)

78. Section 252.225–7003 is revised to read as follows:

252.225–7003 Information for duty-free entry evaluation.

As prescribed in 225.605–70(d), use the following provision:

Information for Duty-Free Entry Evaluation (Mar 1998)

(a) Does the offeror propose to furnish—
(1) A domestic end product with nonqualifying country components for which the offeror requests duty-free entry; or
(2) A foreign end product consisting of end items, components, or material of foreign origin other than those for which duty-free entry is to be accorded pursuant to the Duty-Free Entry—Qualifying Country Supplies (End Products and Components) clause or, if applicable, the Duty-Free Entry—Eligible End Products clause of this solicitation?

Yes () No ()

(b) If the answer in paragraph (a) is yes, answer the following questions:

(1) Are such foreign supplies now in the United States?

Yes () No ()

(2) Has the duty on such foreign supplies been paid?

Yes () No ()

(3) If the answer to paragraph (b)(2) is no, what amount is included in the offer to cover such duty?

(c) If the duty has not been paid, the Government may elect to make award on a duty-free basis. If so, the offered price will be reduced in the contract award by the amount specified in paragraph (b)(3). The Offeror agrees to identify, at the request of the Contracting Officer, the foreign supplies which are subject to duty-free entry. (End of provision)

Alternate I (Mar 1998). As prescribed in 225.605–70(d), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Does the offeror propose to furnish a U.S. made end product with nonqualifying country components for which the offeror requests duty-free entry?

Yes () No ()

79. Section 252.225–7006 is amended by revising the introductory text, the clause date, paragraphs (a) and (c)(1)(i), the introductory text of paragraph (c)(2), and paragraph (c)(2)(vi) to read as follows:

252.225–7006 Buy American Act—Trade Agreements—Balance of Payments Program Certificate.

As prescribed in 225.408(a)(i), use the following provision:

Buy American Act—Trade Agreements—Balance of Payments Program Certificate (Mar 1998)

(a) *Definitions. Caribbean Basin country end product, designated country end product, domestic end product NAFTA country end product, nondesignated country end product, qualifying country end product, and U.S. made end product* have the meanings given in the Buy American Act—Trade Agreements—Balance of Payments Program clause of this solicitation.

* * * * *

(c) * * *

(1) * * *

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and
* * * * *

(2) The Offeror must identify all end products that are not domestic end products.
* * * * *

(vi) The following supplies are other nondesignated country end products.

| Insert line item number | Insert country of origin |
|-------------------------|--------------------------|
| | |

(End of provision)

80. Sections 252.225–7007 and 252.225–7008 are revised to read as follows:

252.225–7007 Buy American Act—trade agreements—Balance of Payments Program.

As prescribed in 225.408(a)(ii), use the following clause:

Buy American Act—Trade Agreements—Balance of Payments Program (Mar 1998)

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

(1) *Caribbean Basin country* means—

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala

Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
St. Kitts-Nevis
St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

(2) *Caribbean Basin country end product—*

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C 2703(b)). These exclusions presently consist of—

(A) Textiles and apparel articles that are subject to textile agreements;

(B) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(C) Tuna, prepared or preserved in any manner in airtight containers; and

(D) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which Harmonized Tariff Schedule column 2 rates of duty apply.

(3) *Components* means those articles, materials, and supplies directly incorporated into end products.

(4) *Designated country* means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Djibouti

Equatorial Guinea
 Finland
 France
 Gambia
 Germany
 Greece
 Guinea
 Guinea-Bissau
 Haiti
 Hong Kong
 Ireland
 Israel
 Italy
 Japan
 Kiribati
 Lesotho
 Liechtenstein
 Luxembourg
 Malawi
 Maldives
 Mali
 Mozambique
 Nepal
 Netherlands
 Niger
 Norway
 Portugal
 Republic of Korea
 Rwanda
 Sao Tome and Principe
 Sierra Leone
 Singapore
 Somalia
 Spain
 Sweden
 Switzerland
 Tanzania U.R.
 Togo
 Tuvalu
 Uganda
 United Kingdom
 Vanuatu
 Western Samoa
 Yemen

(5) *Designated country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; or
 (ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or
 (ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the

end product and U.S. duty (whether or not a duty-free entry certification may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind—

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(7) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(8) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(9) *Nondesignated country end product* means any end product that is not a U.S. made end product or a designated country end product.

(10) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(11) *Qualifying country* means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(12) *Qualifying country component* means an item mined, produced, or manufactured in a qualifying country.

(13) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced or manufactured in the United States exceeds 50 percent of the cost of all its components.

(14) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(15) *U.S. made end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the United States; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) Unless otherwise specified, the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative apply to all items in the Schedule.

(c)(1) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of U.S. made, qualifying country, designated country, Caribbean Basin country, NAFTA country, or other nondesignated country end products in the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product unless—

(i) It is a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product;

(ii) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, NAFTA, or Caribbean Basin country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(iii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979.

(d) The offered price of qualifying country end products and the offered price of designated country end products, NAFTA country end products, and Caribbean Basin country end products, for line items subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of end products listed in paragraph (c)(2)(vi) of the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation, or the offered price of U.S. made end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each offer of a U.S. made end product that does not meet the definition of "domestic end product" is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(End of clause)

Alternate I (Mar 1998). As prescribed in 225.408(a)(ii), delete Singapore from the list of designated countries in paragraph (a)(4) of the basic clause.

252.225-7008 Supplies to be accorded duty-free entry.

As prescribed in 225.605-70(e), use the following clause:

Supplies To Be Accorded Duty-Free Entry (Mar 1998)

In accordance with paragraph (b) of the Duty-Free Entry clause of this contract, in addition to duty-free entry for all qualifying country supplies (end products and components) and all eligible end products subject to applicable trade agreements (if this contract contains the Buy American Act—Trade Agreements—Balance of Payments Program clause or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause), the following foreign end products that are neither qualifying country end products nor eligible end products under a trade agreement, and the following nonqualifying country components, are accorded duty-free entry.

(End of clause)

81. Section 252.225–7009 is amended by revising the section heading, the introductory text, the clause title and date, and paragraphs (a), (b), (c), (f)(2)(iv), (f)(2)(vii), and (g) to read as follows:

252.225–7009 Duty-free entry—qualifying country supplies (end products and components).

As prescribed in 225.605–70(a), use the following clause:

Duty-Free Entry—Qualifying Country Supplies (End Products and Components) (Mar 1998)

(a) *Definitions. Qualifying country and qualifying country end products* have the meaning given in the Buy American Act and Balance of Payments Program clause, Buy American Act—Trade Agreements—Balance of Payments Program clause, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause, or Trade Agreements clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, or unless supplies were imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the subcontract, no amount is or will be included in the contract price for duty for—

(1) End items that are qualifying country end products; or

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end items to be delivered under this contract, provided that the end items are

manufactured in the United States or in a qualifying country.

* * * * *

(f) * * *

(2) * * *

(iv)(A) For direct shipments to a U.S. military installation, the notation: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Command (DCMC) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, New York, 10305–5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.

(B) In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, Defense Contract Management Command (DCMC) New York, for execution of the duty-free certificate.

* * * * *

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCMC Dayton, S3605A.

(g) *Preparation of customs forms.* (1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCMC NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

* * * * *

82. Section 252.225–7010 is amended by revising the introductory text, the clause date, the introductory text of paragraph (c), the first sentence of the introductory text of paragraph (e), paragraph (e)(3), and in the second sentence of paragraph (f) by removing “DCMAO” and inserting in its place “DCMC”. The revised text reads as follows:

252.225–7010 Duty-free entry—additional provisions.

As prescribed in 225.605–70(c), use the following clause:

Duty-Free Entry—Additional Provisions (Mar 1998)

* * * * *

(c) In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, the Contractor shall furnish the following for all foreign supplies to be imported pursuant to paragraph (a) or (b) of the Duty-Free Entry clause. The Contractor shall furnish this information to the Contracting Officer administering the prime contract immediately upon award of any contract or subcontract involving supplies to be accorded duty-free entry.

* * * * *

(e) To properly complete the shipping document instructions as required by paragraph (f) of the Duty-Free Entry clause, the Contractor shall insert Defense Contract Management Command (DCMC) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, New York 10305–5013, as the cognizant contract administration office (for paragraph (f) only) in those cases when the shipment is consigned directly to a military installation.

(3) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCMC Dayton, S3605A.

* * * * *

83. Section 252.225–7014 is amended by revising the clause date and paragraphs (a) and (c)(2), the Alternate I date, and paragraph (c)(2) of Alternate I to read as follows:

252.225–7014 Preference for domestic specialty metals.

* * * * *

Preference for Domestic Specialty Metals (Mar 1998)

(a) *Definitions.*

As used in this clause—

(1) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(2) *Specialty metals* means—

(i) Steel—

(A) Where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) That contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

* * * * *

(c) * * *

(2) The specialty metal is melted in a qualifying country or is incorporated in an article manufactured in a qualifying country;

* * * * *

Alternate I (Mar 1998)

* * * * *

(c) * * *

(2) The specialty metal is melted in a qualifying country or is incorporated in an article manufactured in a qualifying country; or

* * * * *

84. Sections 252.225–7020 and 252.225–7021 are added to read as follows:

252.225–7020 Trade Agreements Certificate.

As prescribed in 225.408(a)(iii), use the following provision:

Trade Agreements Certificate (Mar 1998)

(a) *Definitions.* *Caribbean Basin country end product, designated country end product, NAFTA country end product, nondesignated country end product, qualifying country end product, and U.S. made end product* have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* Offers will be evaluated in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement. Offers of foreign end products that are not U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products will not be considered for award, unless the Contracting Officer determines that there are not offers of such end products; or the offers of such end products are insufficient to fulfill the requirements; or a national interest exception to the Trade Agreements Act is granted.

(c) *Certifications.* (1) The offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end product.

(2) The following supplies are other nondesignated country end products:

| insert line item number | insert country of origin |
|-------------------------|--------------------------|
| | |

(End of provision)

252.225–7021 Trade Agreements.

As prescribed in 225.408(a)(iv), use the following clause:

Trade Agreements (Mar 1998)

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

(1) *Caribbean Basin country* means—

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada

Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
St. Kitts-Nevis
St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

(2) *Caribbean Basin country end product*—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles and apparel articles that are subject to textile agreements;

(B) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(C) Tuna, prepared or preserved in any manner in airtight containers; and

(D) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which Harmonized Tariff Schedule column 2 rates of duty apply.

(3) *Components* means those articles, materials, and supplies directly incorporated into end products.

(4) *Designated country* means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark

Djibouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

(5) *Designated country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(7) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been

substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) *Nondesignated country end product* means any end product that is not a U.S. made end product or a designated country end product.

(9) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(10) *Qualifying country* means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(11) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(12) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(13) *U.S. made end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the United States; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) Unless otherwise specified, the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative apply to all items in the Schedule.

(c)(1) The Contractor agrees to deliver under this contract only U.S. made, qualifying country, designated country, Caribbean Basin country or NAFTA country end product unless, in its offer, it specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product other than a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product, unless—

(i) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, Caribbean Basin, or NAFTA country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979.

(d) The offered price of end products listed in paragraph (c)(2) of the Trade Agreements Certificate provision of the solicitation must include all applicable duty, whether or not a duty-free entry certificate will be granted. The offered price of qualifying country, designated country, Caribbean Basin country, or NAFTA country end products, for line items subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of U.S. made end products should not include duty for qualifying country components.

(End of clause)

Alternate I (Mar 1998). As prescribed in 225.408(a)(iv), delete Singapore from the list of designated countries in paragraph (a)(4) of the basic clause.

85. Section 252.225-7026 is amended by revising the clause date, the introductory text of paragraph (a)(3), and paragraph (c); and by redesignating paragraphs (d)(i), (d)(ii), and (d)(iii), as paragraphs (d)(1), (d)(2), and (d)(3), respectively. The revised text reads as follows:

252.225-7026 Reporting of contract performance outside the United States.

* * * * *

Reporting of Contract Performance Outside the United States (Mar 1998)

(a) * * *

(3) Contracts exceeding \$500,000, when any part that exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation will be performed outside the United States, unless a foreign place of performance is—

* * * * *

(c) *Flowdown requirements.* (1) The Contractor shall include a clause substantially the same as this one in all first-tier subcontracts exceeding \$500,000, except subcontracts for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

(2) The Contractor shall provide the prime contract number to subcontractors for reporting purposes.

* * * * *

86. Section 252.225-7027 is revised to read as follows:

252.225-7027 Restriction on contingent fees for foreign military sales.

As prescribed in 225.7308(a), use the following clause. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303-4(b).

Restriction on Contingent Fees for Foreign Military Sales (Mar 1998)

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of

this contract, are generally an allowable cost, provided the fees are paid to a bona fide employee of the Contractor or to a bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

(b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:

(1) For sales to the Government(s) of _____, contingent fees in any amount.

(2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding \$50,000 per foreign military sale case.

(End of clause)

87. Sections 252.225-7035, 252.225-7036, and 252.225-7037 are revised to read as follows:

252.225-7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

As prescribed in 225.408(a)(v), use the following provision:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (MAR 1998)

(a) *Definitions.* "Domestic end product," "foreign end product," "NAFTA country end product," and "qualifying country end product" have the meanings given in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* Offers will be evaluated in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement. For line items subject to the North American Free Trade Agreement Implementation Act, offers of qualifying country end products or NAFTA country end products will be evaluated without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications.* (1) The offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror must identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies are qualifying country (except Canada) end products:

| insert line item number | insert country of origin |
|-------------------------|--------------------------|
| | |

(ii) The Offeror certifies that the following supplies qualify as NAFTA country end products:

| insert line item number | insert country of origin |
|-------------------------|--------------------------|
| | |

(iii) The following supplies are other foreign end products:

| insert line item number | insert country of origin |
|-------------------------|--------------------------|
| | |

(End of provision)

Alternate I (Mar 1998)

As prescribed in 225.408(a)(v)(B)(2), substitute the phrase "Canadian end product" for the phrase "NAFTA country end product" in paragraph (a); and substitute the phrase "Canadian end products" for the phrase "NAFTA country end products" in paragraphs (b) and (c)(2)(ii) of the basic clause.

252.225-7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program

As prescribed in 225.408(a)(vi), use the following clause:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (Mar 1998)

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

(1) *Components* means those articles, materials, and supplies directly incorporated into end products.

(2) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind—

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(4) *Foreign end product* means an end product other than a domestic end product.

(5) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(6) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) *Qualifying country* means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(8) *Qualifying country component* means an item mined, produced, or manufactured in a qualifying country.

(9) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) Unless otherwise specified, the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note) applies to all items in the Schedule.

(c) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product or a NAFTA country end product will be supplied requires the Contractor to supply a qualifying country end product or a NAFTA country end product, whichever is certified, or, at the Contractor's option, a domestic end product.

(d) The offered price of qualifying country end products, or NAFTA country end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of

foreign end products listed in paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product listed in paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(End of clause)

Alternate I (Mar 1998)

As prescribed in 225.408(a)(vi)(B)(2), substitute the following paragraphs (a)(4), (c), and (d) for paragraphs (a)(4), (c), and (d) of the basic clause:

(a)(4) *Canadian end product*, means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it so was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself.

(c) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product or a Canadian end product will be supplied requires the Contractor to supply a qualifying country end product or a Canadian end product, whichever is certified, or, at the Contractor's option, a domestic end product.

(d) The offered price of qualifying country end products, or Canadian end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of foreign end products listed in paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product listed in

paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

252.225-7037 Duty-Free Entry—Eligible End Products.

As prescribed in 225.605-70(b), use the following clause:

Duty-Free Entry—Eligible End Products (Mar 1998)

(a) *Definition. Eligible end product*, as used in this clause, means—

(1) *Designated country end product, Caribbean Basin country end product, or NAFTA country end product*, as defined in the Trade Agreements clause of this contract;

(2) *NAFTA country end product*, as defined in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract; or

(3) *Canadian end product*, as defined in Alternate I of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve delivery of eligible end products to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for eligible end products.

(d) The Contractor warrants that—

(1) All eligible end products, for which duty-free entry is to be claimed under this clause, are intended to be delivered to the Government; and

(2) The Contractor will pay any applicable duty to the extent that such eligible end products, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free certificates and to afford such assistance as appropriate to obtain the duty-free entry of eligible end products for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering eligible end products for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information—

(i) Prime contract number, and delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv)(A) For direct shipments to a U.S. military installation, the notation:

UNITED STATES GOVERNMENT,
DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management Command (DCMC) New York, ATTN: Customs Team, DCMCN-GNIC, 207 New York Avenue, Staten Island, New York 10305-5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.

(B) In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, DCMC, NY, for execution of the duty-free certificate. (Note: In those instances where the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required, the contractor or its agent shall claim duty-free entry under NAFTA or other trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMC, NY, is required.

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCMC Dayton, S3605A.

(g) Preparation of customs forms. (1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of eligible end products in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCMC NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The Contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies, of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all packages as follows:

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;" and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of eligible end products to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the supplier of the eligible end products. The notice shall contain—

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for eligible end products;

(7) Total dollar value of the subcontract for eligible end products;

(8) Expiration date of the subcontract for eligible end products;

(9) List of items purchased;

(10) An agreement by the Contractor that any applicable duty shall be paid by the Contractor to the extent that such eligible end products are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and

(11) The scheduled delivery date(s).

(End of clause)

252.229-7004 [Amended]

88. Section 252.229-7004 is amended in the clause title by revising the word "CONTRACT" to read "CONTRACTOR".

252.232-7006 [Removed and Reserved]

89. Section 252.232-7006 is removed and reserved.

252.234-7000 [Amended]

90. Section 252.234-7000 is amended in the introductory text by revising the reference "234.005-71" to read "234.005-71(a)"; by revising the clause date to read "(MAR 1998)"; and at the end of paragraph (a) by removing the word "Government" and inserting in its place the phrase "Department of Defense".

91. Section 252.234-7001 is revised to read as follows:

252.234-7001 Earned value management system.

As prescribed in 234.005-71(b), use the following clause:

Earned Value Management System (Mar 1998)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the criteria provided in DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO as complying with EVMS criteria (or the Contractor does not have an existing cost/schedule control system that has been accepted by the Department of Defense), the Contractor shall apply the system to the contract and shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(c) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor-proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the following subcontractors to comply with the requirements of this clause:

(Contracting Officer to insert names of subcontractors selected for application of EVMS criteria in accordance with 252.234-7000(c).)

(End of clause)

252.236-7010 [Amended]

92. Section 252.236-7010 is amended in the introductory text by revising the reference "236.570(c)" to read "236.570(c)(1)".

93. Section 252.236-7012 is added to read as follows:

252.236-7012 Military construction on Kwajalein Atoll—evaluation preference.

As prescribed in 236.570(c)(2), use the following provision:

Military Construction on Kwajalein Atoll—Evaluation Preference (Mar 1998)

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

(1) *Marshallese firm* means a local firm incorporated in the Marshall Islands, or otherwise legally organized under the laws of the Marshall Islands, that—

(i) Is more than 50 percent owned by citizens of the Marshall Islands; or

(ii) Complies with the following:

(A) The firm has done business in the Marshall Islands on a continuing basis for not less than 3 years prior to the date of issuance of this solicitation;

(B) Substantially all of the firm's directors of local operations, senior staff, and operating personnel are resident in the Marshall Islands or are U.S. citizens; and

(C) Most of the operating equipment and physical plant are in the Marshall Islands.

(2) *United States firm* means a firm incorporated in the United States that complies with the following:

(i) The corporate headquarters are in the United States;

(ii) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(iii) The firm employs United States citizens in key management positions.

(b) *Evaluation.* Offers from firms that do not qualify as United States firms or Marshallese firms will be evaluated by adding 20 percent to the offer, unless application of the factor would not result in award to a United States firm.

(c) *Status.* The offeror is _____ a United States firm; _____ a Marshallese firm; _____ Other.

(End of provision)

252.237-7019 [Removed and Reserved]

94. Section 252.237-7019 is removed and reserved.

252.241-7000 [Amended]

95. Section 252.241-7000 is amended in the introductory text by revising the reference "241.007-70(a)" to read "241.501-70(a)".

252.241-7001 [Amended]

96. Section 252.241-7001 is amended in the introductory text by revising the reference "241.007-70(b)" to read "241.501-70(b)".

97. Section 252.242-7005 is amended by revising the clause date and paragraphs (b)(4) and (d) to read as follows:

252.242-7005 Cost/Schedule Status Report.

* * * * *

Cost/Schedule Status Report (Mar 1998)

* * * * *

(b) * * *

(4) Establishing constraints to preclude subjective adjustment of data to ensure that performance measurement remains realistic. The total allocated budget may exceed the contract budget base only after consultation with the Contracting Officer. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increase, other than for authorized changes to the contract scope; and

* * * * *

(d) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

* * * * *

98. Section 252.243-7002 is revised to read as follows:

252.243-7002 Requests for equitable adjustment.

As prescribed in 243.205-72, use the following clause:

Requests for Equitable Adjustment (Mar 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including—

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to—

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

(End of clause)

PART 253—FORMS

99. Section 253.204–70 is amended by revising paragraphs (c)(4)(xi)(A) and (c)(4)(xi)(C) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(c) * * *

(4) * * *

(xi) * * *

(A) *Code Y—Yes—Obtained.* Enter code Y when cost or pricing data were obtained (see FAR 15.403–4) and certified in accordance with FAR 15.406–2.

* * * * *

(C) *Code W—Not Obtained—Waived.* Enter code W when cost or pricing data were not obtained because the requirement was waived (see FAR 15.403–1(c)(4)).

* * * * *

Appendix G to Chapter 2 [Amended]

100. Appendix G to Chapter 2 is amended in Part 1, Section G–101, paragraph (c), under the heading “AIR FORCE”, by revising the symbol “SAF/AQCO” to read “SAF/AQCP”.

101. Appendix G to Chapter 2 is amended in Part 2 by removing entry DAAB24; by revising entry DACA81; and by adding, in alpha-numerical order, entries DAJN01, DAJN02, and DASW02 to read as follows:

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

* * * * *

DACA81, CA81, CN USA Engineer District, Far East, APO AP 96205–0610

* * * * *

DAJN01, JN01, 1B U.S. Southern Command, Contracting Office, HQCMDT, 7955 NW 12th Street, Suite 450, Miami, FL 33126–1823

DAJN02, JN02, 8V Fort Buchanan Contracting Office, Attn: AFZK–DOC, Fort Buchanan, PR 00934–5049

* * * * *

DASW02, SW02, 1W Joint Visual Information Activity, Attn: SAM–OPV–JC, 601 North Fairfax Street, Room 334, Alexandria, VA 22314–2007

* * * * *

102. Appendix G to Chapter 2 is amended in Part 5 by removing entry

F04704 R9; and by revising entry FA2550 to read as follows:

PART 5—AIR FORCE ACTIVITY ADDRESS NUMBERS

* * * * *

FA2550 50 CONS, 66 Falcon Parkway, Ste 49, Falcon AFB, CO 80912–6649

* * * * *

103. Appendix G to Chapter 2 is amended by revising Part 6 to read as follows:

PART 6—DEFENSE LOGISTICS AGENCY ACTIVITY ADDRESS NUMBERS

SP0100 Defense Personnel Support Center, TW Directorate of Clothing & Textiles, 2800 South 20th Street, Philadelphia, PA 19101–8419

SP0103 W7 Defense Personnel Support Center, Installation Support, 2800 South 20th Street, Philadelphia, PA 19101–8419

SP0200 TX Defense Personnel Support Center, Directorate of Medical Materiel, 2800 South 20th Street, Philadelphia, PA 19101–8419

SP0300 UE Defense Personnel Support Center, Directorate of Subsistence, 2800 South 20th Street, Philadelphia, PA 19101–8419

SP0302 W6 Defense Subsistence Region Pacific, Attn: DSR-Pacific, 2155 Mariner Square Loop, Alameda, CA 94501–1022

SP0303 U6 Defense Subsistence Region Europe, DSR Europe, APO AE 09052

SP0400 TY Defense Supply Center Richmond, Business Operations, 800 Jefferson Davis Highway, Richmond, VA 23297–5770

SP0410 XH Defense Supply Center Richmond, Base Spt Div, Dir of Spec Proc, 8000 Jefferson Davis Highway, Richmond, VA 23297–5312

SP0411 TY Defense Supply Center Richmond, Proc Br (ESOC), Customer Asst Ctr, 8000 Jefferson Davis Highway, Richmond, VA 23297–5871

SP0413 TY Defense Supply Center Richmond, Spec Purchase Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864

SP0414 TY Defense Supply Center Richmond, SASPS Phase I Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5863

SP0420 XK Defense Supply Center Richmond, DODDS Div, Dir Of Spec Proc, 8000 Jefferson Davis Highway, Richmond, VA 23297–5313

SP0430 TY Defense Supply Center Richmond, Proc Br, Product Center 5, 8000 Jefferson Davis Highway, Richmond, VA 23297–5813

SP0440 TY Defense Supply Center Richmond, Proc Br, Product Center 7, 8000 Jefferson Davis Highway, Richmond, VA 23297–5834

SP0441 TY Defense Supply Center Richmond, Proc Br, Product Center 6, 8000 Jefferson Davis Highway, Richmond, VA 23297–5822

SP0450 TY Defense Supply Center Richmond, Proc Br, Product Center 4, 8000

Jefferson Davis Highway, Richmond, VA 23297–5800

SP0451 TY Defense Supply Center Richmond, Proc Br, Product Center 2, 8000 Jefferson Davis Highway, Richmond, VA 23297–5772

SP0454 TY Defense Supply Center Richmond, Proc Br, Product Center 4, Enhanced Vendor Delivery Program, 8000 Jefferson Davis Highway, Richmond, VA 23297–5800

SP0460 TY3 Defense Supply Center Richmond, Proc Br, Product Center 1, 8000 Jefferson Davis Highway, Richmond, VA 23297–5772

SP0461 TY Defense Supply Center Richmond, Special Purchase Branch (SPUR), 8000 Jefferson Davis Highway, Richmond, VA 23297–5864

SP0480 TY Defense Supply Center Richmond, Aircraft Engines, 8000 Jefferson Davis Highway, Richmond, VA 23297–5876

SP0490 TY Defense Supply Center Richmond, Proc Br, Product Center 1, 8000 Jefferson Davis Highway, Richmond, VA 23297–5846

SP0499 Defense Supply Center Richmond-FCIM, 8000 Jefferson Davis Highway, Richmond, VA 23297–5770

SP0500 TZ, WU Defense Industrial Supply Center, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SP0510 W2 Defense Industrial Supply Center, Base Operating Support System, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SP0520 Defense Industrial Supply Center, Product Verification Testing Acquisition, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SP0599 Defense Industrial Supply Center-FCIM, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SP0600 UA Defense Fuel Supply Center, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22304–6160

SP0700 UB, UZ Defense Supply Center Columbus, PO Box 32990, Columbus, OH 43216–3990

SP0701 Defense Supply Center Columbus, Attn: DSCC–OT, Bldg 20, Fourth Floor, Columbus, OH 43216–5000

SP0710 YL Defense Supply Center Columbus, Base Contracting, PO Box 16704, Columbus, OH 43216–5010

SP0720 YM Defense Supply Center Columbus, Lumber Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

SP0730 WZ Defense Supply Center Columbus, Military Interdepartmental PR MIPR Division, PO Box 3990, Columbus, OH 43216–5000

SP0740 XJ Defense Supply Center Columbus, Aerospace Solicitations/Awards, PO Box 3990, Columbus, OH 43216–5000

SP0750 UB Defense Supply Center Columbus, Land Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

SP0760 UB Defense Supply Center Columbus, Maritime Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

SP0770 UB Defense Supply Center Columbus, Commodities Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

- SP0780 Defense Supply Center Columbus, Government Furnished Property Account, ATTN: DSCC-PAPB GFP, Building 20 A2N, 3990 E Broad Street, Columbus, OH 43216-5000
- SP0799 Defense Supply Center Columbus-FCIM, PO Box 3990, Columbus, OH 43216-5000
- SP0833VS Defense National Stockpile Center, 8725 John J. Kingman Road, Suite 3339, Fort Belvoir, VA 22060-6223
- SP0900UD Defense Supply Center Columbus, Equipment, PO Box 16704, Dayton, OH 43216-5010
- SP0905 Defense Supply Center Columbus, PO Box 16704, Dayton, OH 43216-5010
- SP0910U7 Defense Supply Center Columbus, Base Contracting Section, PO Box 16704, Dayton, OH 43216-5010
- SP0920W4 Defense Supply Center Columbus, Electro Mechanical, PO Box 16704, Dayton, OH 43216-5010
- SP0930 Defense Supply Center Columbus, Switches, PO Box 16704, Dayton, OH 43216-5000
- SP0935 Defense Supply Center Columbus, Connectors, PO Box 16704, Dayton, OH 43216-5000
- SP0960 Defense Supply Center Columbus, Active Devices, PO Box 16704, Dayton, OH 43216-5000
- SP0970 Defense Supply Center Columbus, PO Box 16704, Dayton, OH 43216-5000
- SP0980 Defense Supply Center Columbus, Tailored Logistics Acquisitions, PO Box 16704, Dayton, OH 43216-5000
- SP0999 Defense Supply Center Columbus-FCIM, PO Box 16704, Dayton, OH 43216-5000
- SP3100WX Defense Distribution Region East, Office of Contracting, New Cumberland, PA 17070-5001
- SP3200TV Defense Distribution Region West, Office of Contracting, Building S-4, Lathrop, CA 95330-5000
- SP3500UN Defense Distribution Region East, Office of Contracting, New Cumberland, PA 17070-5001
- SP4400X1 Defense Reutilization Marketing Service, 74 Washington Avenue North, Battle Creek, MI 49017-3092
- SP4410X1 Defense Reutilization Marketing Service, Special Contracts Division, Attn: DRMS-PO, 74 Washington Avenue North, Battle Creek, MI 49017-3092
- SP4420XI Defense Reutilization Marketing Service, Attn: DRMS-PMG, APO AE 09096
- SP4700YK DLA Administrative Support Center, Office of Contracting, 8725 John J. Kingman Road, Suite 0119, Fort Belvoir, VA 22060-6220
- SP4800 Defense Logistics Agency, Office of Small and Disadvantaged, Business Utilization, 8725 John J. Kingman Road, Suite 1127, Fort Belvoir, VA 22060-6221
- SAS01A UY DCMC Pacific—Australia, Unit 11009, APO AP 96551
- SBL00A MJ DCMC Northern Europe—Belgium, PSC 82, Box 002, APO AE 09724
- SCN01A WV DCMC Americas, 275 Bank Street, Suite 200, Ottawa, Canada K2P 2L6
- SGR18A DCMC Southern Europe, CMR 410, Box 764, APO AP 09096
- SJP10A Y9 DCMC Pacific—Japan, PSC 477, Box 39, FPO AP 96306-2739
- SKR08A R1 DCMC Pacific, Unit 2000, APO AE 96214-5000
- SML04A XC DCMC Pacific—Kuala Lumpur, American Embassy, APO AP 96535-5000
- SPR01A QF DCMC Americas—Puerto Rico, Box DLA NSGA, FPO AA 34053-0007
- SSA20A DCMC Southern Europe—Spain, PSC 61, Box 3000, APO AE 09642-5000
- SSN05A DCMC Pacific—Singapore, PSC 470, Box 2700, FPO AP 96534-2100
- SSR01A YE DCMC Southern Europe—Israel, American Embassy Unit 7228, APO AE 09830-7228
- SSU01A U4 DCMC Saudi Arabia—Air DCMCI Unit 61305, APO AE 09803-1305
- SSU03A US DCMC Saudi Arabia—Land, DCMCI Unit 61301, APO AE 09803-1301
- STA21A DCMC Southern Europe—Italy (Brindisi), PSC 817, Box 61, FPO AE 09622-0061
- STA23A DCMC Southern Europe—Italy, Unit 31401, Box 71, APO AE 09630-0071
- STR02A TQ DCMC Southern Europe—Turkey, Unit 9050, APO AE 09822-9050
- SUK12A VN DCMC Northern Europe, PSC 821, Box 55, APO AE 09421-0055
- SUK14A DCMC Northern Europe—UK Bristol, Unit 4825, APO AE 09456-4825
- SUK15A DCMC Northern Europe—UK Rochester, PSC 30, Box 100, APO AE 09447-0100
- SZA01A DCMC Pacific—New Zealand, PSC 467, Box 298, FPO AP 96531-2000
- S0101A DCMC Birmingham, 1910 Third Avenue North, Room 201, Birmingham, AL 35203-2376
- S0102A WA DCMC Pemco Aeroplex Birmingham, PO Box 12447, Birmingham, AL 35202-2447
- S0302A WY DCMC Phoenix, 215 North 7th Street, Phoenix, AZ 85034-1012
- S0305A SR DCMC Hughes Tucson, PO Box 11337, Bldg 801, M/5 D-4, Tucson, AZ 85734-1337
- S0506A WL DCMC West, 222 North Sepulveda Boulevard, El Segundo, CA 90245-4320
- S0507A XR DCMC San Francisco, 1265 Borregas Avenue, Sunnyvale, CA 94089
- S0512AYC DCMC Van Nuys, 6230 Van Nuys Boulevard, Van Nuys, CA 91401-2713
- S0513AUG DCMC Santa Ana, 34 Civic Center Plaza, PO Box C-12700, Santa Ana, CA 92712-2700
- S0514AVH DCMC San Diego, 7675 Dagget Street, Suite 200, San Diego, CA 92111-2241
- S0520AVR DCMC San Francisco—ULDP San Jose, M/SX65, PO Box 367, San Jose, CA 95103-0367
- S0530AX9 DCMC McDonnell Douglas, 5301 Bolsa Avenue, Huntington Beach, CA 92647-2099
- S0539AQT DCMC Hughes, Los Angeles, PO Box 92463, Los Angeles, CA 90009-2463
- S0542ARY DCMC Rockwell, Canoga Park, PO Box 7922, Canoga Park, CA 91303-7922
- S0543AQX DCMC Lockheed Martin Missiles & Space, PO Box 3504, Sunnyvale, CA 94088-3504
- S0544ATC DCMC McDonnell Douglas, 1570 Hughes Way, Mail Code 54-79, Long Beach, CA 90846-0001
- S0546AQR DCMC Northrop, Gumman Hawthorne, One Northrop Avenue, Hawthorne, CA 90250-3277
- S0602AVK DCMC Denver, Orchard Place 2, Suite 200, 5975 Greenwood Plaza Boulevard, Englewood, CO 80111-4715
- S0605ARE DCMC Lockheed Martin Astronautics, PO Box 179, Denver, CO 80201-0179
- S0701AWB DCMC Hartford, 130 Darlin Street, East Hartford, CT 06108-3234
- S0702AUP DCMC Stratford, 550 Main Street, Stratford, CT 06497-7593
- S0703AXT DCMC Hamilton Standard, 1 Hamilton Road, Windsor Locks, CT 06096-0463
- S0707ALF DCMC Sikorsky, 6900 Main Street, Stratford, CT 06497-9131
- S0708AT5 DCMC Pratt & Whitney, East Hartford, 400 Main Street, Mail Stop 104-08, East Hartford, CT 06108-0969
- S1002AWW DCMC Orlando, 3555 Maguire Boulevard, Orlando, FL 32803-3726
- S1005AXL DCMC Lockheed Martin, Orlando, 5600 Sand Lake Road, MP49, Orlando, FL 32819-8907
- S1009AV1 DCMC Orlando-Harris, 1425 Troutman Boulevard, NE, Palm Bay, FL 32905-4102
- S1011AT2 DCMC Pratt & Whitney, West Palm Beach, PO Box 109600, West Palm Beach, FL 33410-9600
- S1103AY1 DCMC Atlanta, 805 Walker Street, Marietta, GA 30060-2789
- S1104A DCMC Atlanta-Rockwell, PO Box 1356, Duluth, GA 30136-1357
- S1109AZA DCMC Clearwater, Gadsden Building, Suite 200, 9549 Koger Blvd., St. Petersburg, FL 33702-2455
- S1110A Z5 DCMC Grumman, St. Augustine, 5000 US Highway 1, North, PO Drawer 3447, St. Augustine, FL 32085-3447
- S1111A RK DCMC Lockheed Martin Marietta, 86 South Cobb Drive, Bldg B-2, Marietta, GA 30063-0260
- S1211A U8 DCMC Aircraft Program Management Officer, 805 Walker Street, Marietta, GA 30060-2789
- S1221A X5 DCMC Grumman Melbourne, PO Box 9650, Melbourne, FL 32902-9650
- S1403A YP DCMC Chicago, PO Box 66911, Chicago, IL 60666-0911
- S1501A WG DCMC Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249-5701
- S1505A X2 DCMC Indianapolis-Hughes, Defense Communications, 1616 Directors Row, Fort Wayne, IN 46808-1286
- S1510A Z9 DCMC Pacific-Honolulu, Box 64110, Camp HM Smith, Honolulu, HI 96861-4110
- S1701A YD DCMC Wichita, U.S. Courthouse, Suite B-34, 401 North Market, Wichita, KS 67202-2095
- S1903A DCMC Michoud-Stennis, 138000 Old Gentilly Hwy, Building 350, PO Box 29503, New Orleans, LA 70189-0503
- S2103A S2 DCMC Westinghouse Baltimore, PO Box 1693, M/S 1285, Baltimore, MD 21203-1693
- S2202A UT DCMC East, 495 Summer Street, Boston, MA 02210-2184
- S2203A XX DCMC Boston-GTE, Government Systems Corp, 200 First Avenue, Needham, MA 02194-9123
- S2205A XF DCMC Raytheon, 2 Wayside Avenue, Burlington, MA 01803-0901
- S2206A Y3 DCMC Boston, 495 Summer Street, Boston, MA 02210-2138

- S2207A7Q DCM GE Lynn, 1000 Western Avenue, Lynn, MA 01910-0445
- S2208A NJ DCMC Lockheed Martin Defense Systems, 100 Plastics Avenue, Pittsfield, MA 01201-3677
- S2209A SQ DCMC Boston-Telectron Systems Division, 201 Lowell Street, Wilmington, MA 01887-2941
- S2303A VW DCMC Grand Rapids, Riverview Center Building, 678 Front Street, Grand Rapids, MI 49504-5352
- S2305A Y7 DCMC Detroit, U.S. Army Tank-Automotive Command, ATTN: DCMDE-GD, Warren, MI 48397-5000
- S2401A WQ DCMC Twin Cities, 3001 Metro Drive, Bloomington, MN 55425-1573
- S2404A UR DCMC Baltimore, 200 Towsontown Boulevard, West, Towson, MD 21204-5299
- S2605A XS DCMC St Louis, 1222 Spruce Street, St. Louis, MO 63103-2812
- S2606A JZ DCMC McDonnell Douglas, St. Louis, P.O. Box 516, St. Louis, MO 63166-0516
- S3001A YS DCMC Lockheed Martin Sanders, P.O. Box 0868, NHQ-539, Nashua, NH 03061-0868
- S3101A WT DCMC Springfield, Building 1, ARDEC, Picatinny, NJ 07806-5000
- S3102A UU DCMC Allied Signal, Route 46, Mail Stop 1-37, Teterboro, NJ 07608-1173
- S3109A WC DCMC Springfield-GEC/Kearfott, 164 Totowa Road, MS 11A30, Wayne, NJ 07474-0975
- S3110A X7 DCMC Lockheed Martin Delaware Valley, Mail Stop AE 2-W, 1 Federal Street, Camden, NJ 08102-1013
- S3306A XU DCMC Syracuse, 615 Erie Boulevard West, Syracuse, NY 13402-2408
- S3309A VX DCMC Long Island, 605 Stewart Avenue, Garden City, NY 11530-4761
- S3310A DCMC New York, 207 New York City Avenue, Staten Island, NY 10305-5013
- S3315A YR DCMC Lockheed Martin, Federal Systems, Owego, 1801 State Route 17C, Owego, NY 13827-3998
- S3316A KK DCMC Grumman Bethpage, Bethpage, NY 11714-3593
- S3317A NH DCMC Lockheed Martin Tactical, Defense Systems, East, 365 Lakeville Road, Great Neck, NY 11020-1696
- S3619A SB DCMC GE Aircraft Engines, Evendale, Mail Drop N-1, Cincinnati, OH 45215-6303
- S3603A VB DCMC Cleveland, Admiral Kidd Building, 555 East 88th Street, Bratenahl, OH 44108-1068
- S3605A VL DCMC Dayton, Gentile Station, 1001 Hamilton Street, Dayton, OH 45444-5300
- S3613A YB DCMC Cleveland-Westinghouse, 18901 Euclid Avenue, Plant 2, Cleveland, OH 44117-1388
- S3616A X6 DCMC Cleveland-Lockheed Martin, Tactical Defense Systems, Akron, 1210 Massillon Road, Akron, OH 44315-0001
- S3618A YF DCMC General Dynamics Lima, 1155 Buckeye Road, Lima, OH 45804-1898
- S3620A VA DCMC International, 8725 John J. Kingman Road, Fort Belvoir VA 22060-6221
- S3911A X3 DCMC Pittsburgh, Federal Building, Room 1612, 1000 Liberty Avenue, Pittsburgh, PA 15222-4190
- S3912A XM DCMC Reading, 1125 Berkshire Blvd, Suite 160, Wyomissing, PA 19610-1249
- S3915A XD DCMC Philadelphia, South 20th Street, Philadelphia, PA 19101-7699
- S3916A TU DCMC Boeing Helicopters, PO Box 16859, Philadelphia, PA 19142-0859
- S4201A XY DCMC United Defense Limited Partnership, PO Box 15512, York, PA 17405-1512
- S4402A Z7 DCMC Dallas, 1200 Main Street, Dallas, TX 75202-4399
- S4404A XN DCMC San Antonio, 615 East Houston, PO Box 1040, San Antonio, TX 78294-1040
- S4407A WN DCMC E-Systems Greenville, PO Box 6379, Greenville, TX 75403-6379
- S4408A XZ DCMC Texas Instruments, PO Box 660246, MS 256, Dallas, TX 75266-0246
- S4418A WI DCMC Bell Helicopter Textron, PO Box 1605, Fort Worth, TX 76101-1605
- S4419A SL DCMC Lockheed, Fort Worth, PO Box 371, Fort Worth, TX 76101-0371
- S4420A WP DCMC Lockheed Martin Vought Systems, PO Box 655907, M/S 4915, Dallas, TX 75265-5907
- S4503A R6 DCMC Thiokol, PO Box 524, Mail Stop Z-10, Brigham City, UT 84302-0524
- S4801A XW DCMC Seattle, Corporate Campus East III, 3009 112th Ave, NE, Suite 200, Bellevue, WA 98004-8019
- S4804A SP DCMC Boeing, Seattle, PO Box 3707, Seattle, WA 98124-2207
- S4807A WM DCMC Stewart and Stevenson, Inc., PO Box 457, Sealy, TX 77474-0457

Appendix I to Chapter 2 [Amended]

104. 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, 1998" to read "September 30, 1999".

105. Appendix I to Chapter 2 is amended in section I-103, in the introductory text of paragraph (b) and in paragraph (c), by revising the date "September 30, 1999" to read "September 30, 2000".

106. Appendix I to Chapter 2 is amended in section I-109, in paragraph (e)(3), by revising the date "October 1, 1999, to read "October 1, 2000".

[FR Doc. 98-5272 Filed 3-6-98; 8:45 am]

BILLING CODE 5000-04-M