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**DELETED in compliance with ABM memo of 20 Feb 97
Subj: DISTRIBUTION OF FACS AND DACS**

5201.601 General.

Within this supplement, any authorities assigned or delegated to a specific level may be delegated or redelegated, unless otherwise restricted.

Added back in for clarity and continuity. However, we have not reinstated the automatic designation of HCAs as contracting officers, due to potential conflicts with statutory DAWIA requirements for contracting officers. Individual situations will be dealt with on a case-by-case basis.

5201.602 Contracting officers.

5201.602-1 Responsibilities.

Contract documents **shall** [vice **should** - in the draft] be forwarded to the appropriate attorney or attorneys in the OGC for review as to form and legality and any additional pertinent comment or advice.

Original wording reinstated (Ref: SECNAVINST 5430.25D)

5201.690 Requirements to be met before entering into contracts.

(a) Generally, all significant contracting actions should be subject to some form of review prior to award. The formal review process is conducted and documented through the use of the business clearance. The purpose of the business clearance is to demonstrate that the proposed action conforms to law, regulation, good business practices and Navy acquisition policies.

(b) HCAs should establish written procedures for the review and approval of business clearances for:

(1) Contracts (including indefinite-delivery contracts) and contract modifications for the acquisition of supplies or services not within the scope or under the terms of an existing contract.

(2) Undefined contract actions (see DFARS Subpart 217.74.)

(3) Basic ordering agreements.

(4) Modifications and changes issued pursuant to contracts clauses such as the "Changes" or "Government Property" clauses,

(5) Retroactive pricing after completion.

(6) Definitization of any undefined/unpriced action under (2) or (4) above.

(c) The degree and complexity of documentation required, and approval levels/thresholds, for various actions should be governed by the magnitude and complexity of the action being reviewed.

Business clearance philosophy reinstated, but without procedural mandates

5201.691 Procurement Management Oversight.

5201.691-1 Purpose. The primary objective of procurement management oversight is to encourage and assist activities in making continuous improvements in their acquisition processes. It also provides a mechanism for sharing "best practices" throughout the Navy. Procurement management oversight in the Department of the Navy will be conducted through the Procurement Performance Measurement Assessment Program (PPMAP). The PPMAP is a flexible, performance-based, process-oriented self-assessment of:

- (a) control of and continuous improvement in critical procurement processes;
- (b) performance-based metrics; and
- (c) the results of employee and customer surveys.

5201.691-2 Responsibilities.

(a) ABM is responsible for oversight and review of HCAs and other designated Navy contracting activities, and shall oversee and provide guidance on the PPMAP.

(b) HCAs are responsible for oversight and review of their subordinate contracting organizations.

(c) The Commander, Naval Supply Systems Command (COMNAVSUPSYSCOM) is also responsible for oversight and review of all activities with NAVSUPSYSCOM-delegated contracting authority, and other activities as directed by ABM or higher level authority.

(d) Fleet and Type Commanders are responsible for oversight and review of afloat units. Reviews may be a part of regularly scheduled Logistics Management Assessments (LMAs).

(e) Each contracting activity assigned procurement management oversight responsibility should prepare and maintain a schedule of reviews, and conduct reviews of all subordinate organizations with delegated contracting authority.

(f) HCAs shall:

(1) When requested, nominate senior contracting personnel to serve on ABM PPMAP teams; and

(2) By 30 October of each year, provide ABM a summary of relevant findings (best practices, deficiencies, recommendations, etc.) from the results of the previous fiscal year's PPMAP activities.

(g) ABM shall be advised immediately any time an organization's contracting authority is revoked, suspended or reduced.

"PMR" replaced with PPMAP

~~SUBPART 5208.8--ACQUISITION OF PRINTING AND RELATED SUPPLIES~~

~~5208.802 Policy.~~

~~(a) Publications and printing may not be procured as an integral part of a DoN contract or grant unless authorized by the Congressional Joint Committee on Printing or unless a waiver has been obtained from the Public Printer (Government Printing Office).~~

FAR 8.802(b) already states:

(b) . . . Contracting officers shall obtain approval from their designated central printing authority before contracting in any manner, whether directly or through contracts for supplies or services, for [government printing and related supplies.]

SUBPART 5208.90--SERVICES OF SHIPS AND CRAFT

5208.9000 Services of ships and craft for other than transportation.

MSC shall purchase or otherwise provide for DoN activities, as requested, the services of ocean-going ships and craft (excluding harbor craft) for purposes other than transportation such as oceanographic research and survey including underwater research; cable laying; repair facilities; and range instrumentation. Requirements for such services or ships, except those met by ships and craft organic to the Military Services and those required in the installation phase of a system by the systems contractor, shall be placed upon MSC in a timely manner to permit maximum competition.

Coverage reinstated.

PART 5211

DESCRIBING AGENCY NEEDS

SUBPART 5211.2—USING AND MAINTAINING REQUIREMENTS DOCUMENTS

5211.271 (DFARS 211.271) Elimination of Use of Class I Ozone Depleting Substances

5211.271(90) Definitions.

"Appropriate technical representative (ATR)" (also referred to as approved technical representative) means an individual who has the sufficient technical experience and knowledge to provide a competent certification.

"Senior acquisition official (SAO)" means an official at a level no lower than a general or flag officer or member of the Senior Executive Service within the requiring activity or the requiring activity chain of command.

5211.271(91) Technical reviews and Approvals.

(a) The requiring activity shall review the requirements and applicable specifications and standards for class I ozone-depleting substances (ODS.) If adequate technical capability is not available, the configuration control manager (CCM) or other ATR shall conduct the review. Reviewers may use the current version of "DOD Specifications Referencing the Use of ODS" distributed by NAVSEA 03V.

(b) The ATR shall execute a technical certification and submit the certification to the appropriate SAO for approval. The technical certification is a good faith statement of the signer's knowledge of the requirements of the specifications and standards in the context of the requirements package. The technical certification is not intended to be a guarantee.

(c) The requiring activity shall include SAO approvals in the PR package submitted to the contracting office. Upon receipt of a PR package which does not include an SAO approval, the contracting officer may conclude, absent knowledge to the contrary, that the procurement uses no Class I ODS.

(d) A sample format for technical certification and SAO approval is shown in TABLE 5211-90.

5211.271(92) Reporting Requirements.

(a) *Responsibility.*

(i) Each SAO granting an approval or making a determination authorizing the use of an ODS shall report each approval to ABM, or to such other office as may be otherwise designated for purposes of submission of consolidated reports to ABM.

(ii) The report of SAO approvals shall include the estimated quantity of ODS through contract completion or for the period otherwise covered by the approval.

(iii) SAO approvals shall be reported for the year in which the approvals are signed, not when the contract is awarded.

(b) *Frequency.* SAO reports shall be submitted annually to ABM no later than January 15 for approvals executed during the preceding calendar year.

(c) *SAO Class Approvals.* Any activity using an SAO class approval for procurement

actions shall record and report such usage as set forth in the approval or as otherwise directed by the SAO. The SAO shall include this information in the annual report to ABM.

5211.271(93) Solicitation provisions and contract clauses.

Offerors should be encouraged to share with the Navy any knowledge they might have regarding Class I ozone-depleting substances required by specifications or standards in a solicitation. The contracting officer may include a provision substantially similar to the provision at 5252.211-9000, Notice to Offerors - Use of Class I Ozone Depleting Substances, in solicitations, if considered appropriate.

Outdated coverage on reviewing and reporting on existing contracts removed.

TABLE 5211-90

[For use in evaluating new contracts with no suitable substitute for Class I ODS]

CLASS I OZONE DEPLETING SUBSTANCE REVIEW

Program: _____

Procurement/Purchase Request #: _____

TECHNICAL CERTIFICATION

I have reviewed this procurement package and it includes specifications or standards which require the use of Class I ODS. To the best of my knowledge, there are no currently available suitable substitutes for the Class I ODS identified.

CLASS I ODS

APPLICATION

APPROPRIATE TECHNICAL REPRESENTATIVE

CODE

DATE

SENIOR ACQUISITION OFFICIAL APPROVAL

Based on the above technical certification that a suitable substitute of the ODS is not currently available, I authorize use of the ODS identified above for the application identified.

SENIOR ACQUISITION OFFICIAL

TITLE

DATE

EXISTING

5215.612 Formal source selection.

(a) *General.* A source selection process within the DoN is considered formal when it follows the policy and procedures of SECNAVINST 4200.33 dated 14 July 1986.

DRAFT

Silent.

NEW

5215.612 Formal source selection.

(a) *General.* A source selection process within the DoN is considered formal whenever a separate source selection authority outside the contracting office, or at the CCO level, is designated.

**SECNAVINST 4200.33 was canceled December 12, 1992
by SECNAVINST 5000.2A**

5215.808 (DFARS 215.808) Price negotiation memorandum.

5215.808(90) Business clearance.

(a) Generally, “pre-negotiation“ and “post-negotiation” business clearances are required for each negotiated contract action. Business clearance memoranda (BCM) document the basis for approval of the action, and the basis for determination that the negotiated prices are fair and reasonable.

(b) For competitive acquisitions, the pre-BCM presents a chronology of the acquisition up to the determination of competitive range, and provides the basis for the competitive range decision. The post-BCM continues the chronology to contract award, and provides the basis for the award decision. If award is made without discussions, on the basis of original offers, the pre- and post-BCM may be combined.

(c) For contracts and modifications requiring price negotiations, the pre-BCM demonstrates to the approving official that the Government is ready to enter into negotiations. It addresses salient legal and regulatory requirements, and sets forth the Government’s negotiation objectives. It generally includes a discussion, by cost element, of the bases for the contractor’s proposal and the Government objective, DCAA and other Government pricing recommendations and the analysis done by the negotiating team. The post-BCM describes the results of negotiations, and documents the basis for determining the negotiated price is fair and reasonable. Using the objective in the pre-BCM as a base, it addresses the reasons for any difference between the initial objective and the final negotiated amount. The pre- and -post BCM together constitute the price negotiation memorandum described by FAR 15.808, and must provide all the information required therein. In particular, the BCMs must document the use made of field pricing assistance, and must describe the extent of Government reliance on the contractor’s cost or pricing data in sufficient detail to provide a basis for Government recovery in the event any of the data proves inaccurate, incomplete or not current.

Coverage moved to 5215.808

PART 5216

TYPES OF CONTRACTS

SUBPART 5216.5—INDEFINITE-DELIVERY CONTRACTS

5216.505 Ordering.

(b)(4) The task order contract and delivery order contract ombudsman responsible for reviewing complaints from contractors on task order contracts and delivery order contracts is the Navy Competition Advocate General. Contractors should be encouraged to settle their complaints through the Competition Advocate chain of command, seeking review by the Command Competition Advocate at the cognizant HCA before taking their complaints to the Navy Competition Advocate General.

Coverage added to implement FAR requirements for designating an ombudsman

PART 5217

SPECIAL CONTRACTING METHODS

SUBPART 5217.2—OPTIONS

5217.204 Contracts.

(e) The CCO may approve contracts in excess of the limits specified in FAR 17.204(e), when not otherwise restricted.

Authority for CCO to approve contracts over 5 years reinstated

SUBPART 5225.2—BUY AMERICAN ACT—CONSTRUCTION MATERIALS

5225.202 Policy

(a)(3) The Commander, NAVFACENGCOC is delegated authority to make this determination.

(a)(4) The Commander, NAVFACENGCOC is delegated authority to make this determination.

Additional delegations added.

SUBPART 5233.1—PROTESTS

5233.104 Protests to GAO.

(g) HCAs shall consult with ABM before any final decision is reached not to implement GAO's recommendations. A copy of each report shall be provided to ABM concurrent with the submission to the Comptroller General.

Contemplated delegation to CCO changed back to HCA, as stated in FAR.

5233.9001 Claims approval requirements.

(a) All proposed claim settlements in excess of \$25 million, and final decisions of the contracting officer involving payments in an amount greater than \$25 million, shall be submitted to ABM for review and approval. Other proposed claim settlements and final decisions of the contracting officer, shall be reviewed and approved as specified by the HCA.

Threshold for ABM review/approval of claim settlements/final contracting officer decisions raised from \$10 million to \$25 million. Limitations on internal review/approval levels removed, and discretion returned to HCA to establish internal review/approval levels below \$25 million

~~5237.270 (DFARS 237.270) Master agreements.~~

~~5237.270-3 Limitations.~~

~~—(a) The determination and finding shall be completed as prescribed in FAR 1.704 and DFARS 201.704. Upon signature, provide a copy to ABM.~~

~~—(b) HCAs are responsible for publication of the notice of waiver in the Federal Register. All notices shall be forwarded to the Office of the Federal Register via the Navy Judge Advocate General (Code 133) (see 5201-90).~~

~~5237.270-4 Reporting requirements.~~

~~—Submit the annual report to ABM not later than 29 October.~~

~~(a)~~

**Master agreement authority for advisory and assistance services
expired 30 SEP 94.**

5242.192 Commercial advertising by DoN contractors.

~~—(a) DoN does not object to commercial advertisements by contractors which reference their participation in DoN programs, provided such advertisements do not:~~

~~—(1) Directly or indirectly constitute an endorsement of the contractor's product or service by the Department or any member thereof;~~

~~—(2) Indicate or imply in any manner Departmental preference of the contractor;~~

~~—(3) Contain reference to contract number or other contractual detail; or~~

~~—(4) Disclose classified military information.~~

~~—(b) Contractors are not required to obtain prior clearance for advertisements.~~

~~However, any Departmental office that becomes aware of any advertisement which appears to conflict with the conditions of (a) above should notify the cognizant field contract administration office.~~

Coverage deleted as unnecessary

SUBPART 5242.3—CONTRACT ADMINISTRATION OFFICE FUNCTIONS

5242.302 (DFARS 242.302) Contract administration functions.

~~—(b)(4) Subject to the limitations prescribed in (i) below, the CAO is hereby delegated authority to execute bilateral contract modifications providing for the deobligation of unexpended dollar balances (thereby reducing the dollar balance of the contract) considered excess to known contract requirements with specific authorization by the contracting office. If more than one appropriation is involved, the excess amount for each appropriation shall be identified.~~

~~—(i) *Limitations.* This delegation does not apply to that portion of:~~

~~——(A) DoN cost reimbursement contracts where DoN funds are involved; and~~

~~——(B) DoN fixed-price contracts where DoN funds are obligated or committed pursuant to provisioning procedures, or where DoN funds for engineering services and related support are involved.~~

Deleted as unnecessary

SUBPART ~~5242.71~~ (DFARS ~~242.71~~) VOLUNTARY REFUNDS

~~5242.7101~~ (DFARS ~~242.7101~~) Solicited refunds.

~~The HCA is authorized to solicit voluntary refunds.~~

DFARS already allows contracting officers to request voluntary refunds with the approval of the HCA.

5250.201 Delegation of authority.

5250.201-70 (DFARS 250.201-70) Delegations.

(a) Authority to approve actions under the Act and Executive Order is delegated to the HCA, subject to the limitations in FAR 50.201 and 50.203.

**Authority to delegate to Deputy/Assistant Commander for Contracts removed,
since it conflicts with DFARS 250.201**