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OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
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MEMORANDUM FOR DISTRIBUTION

Subject: Change 03-14 to the Navy Marine Corps Acquisition Regulation Supplement (NMCARS) and Change 03-11 to the Navy Marine Corps Acquisition Guide (NMCAG)

Encl: (1) NMCARS Change 03-14
(2) NMCAG Change 03-11

The changes identified in Enclosures (1) and (2) are hereby incorporated into the November 2003 NMCARS and NMCAG. These changes are effective immediately and will be reflected in the NMCARS and NMCAG online.

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(NMCARS) and Change 03-11 to the Navy Marine Corps Acquisition Guide
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The following changes are hereby incorporated into the November 2003 NMCARS:

1. Under SUBPART 5206.3--OTHER THAN FULL AND OPEN COMPETITION, **5206.303-1 Requirements** is added, **5205.303-2 Content** is changed to add subparagraph (a)(iv), and **5206.304 Approval of the justification** is changed to correct the e-mail address in subparagraph (a)(4) as follows:

5206.303 Justifications.

5206.303-1 Requirements.

(c) A class J&A is required when a class of contract actions will be executed for the same or related supplies or services that require essentially identical justification. Multiyear contracts and contracts with priced options are considered individual contract actions. A class of contracts includes but is not limited to: (i) a BOA and orders to be issued under it, (ii) consecutive years of production buys to be solicited as separate contract actions, (iii) multiple contracts to provide GFE for assembly into an end item.

5206.303-2 Content.

(a) Each justification must include:

(i) The period of performance for the proposed acquisition.

(ii) The total estimated dollar value for the acquisition(s) covered by the justification, identified by fiscal year and appropriation.

(iii) An expiration date if the justification is a class justification. Authority to act under a class justification expires on the expiration date specified in the document, which must be written as a calendar date and not a period of time.

(iv) An explanation of all actions attempted to make the immediate acquisition competitive and the cost/benefit analysis reflecting costs associated with obtaining competition and anticipated benefits.

5206.304 (DFARS 206.304) Approval of the justification.

(a) If the dollar value of the contract is negotiated at a level that exceeds the authority of the official who approved the original justification, a new approval shall be obtained from the appropriate official prior to award.

(2) DoN activities with contracting authority in excess of \$550,000 may be considered "procuring activities" solely for the purpose of enabling their competition advocate to exercise the approval authority provided by FAR 6.304(a)(2).

(4) Justifications for ASN(RDA) approval must be submitted electronically via DASN(A&LM) at RDAJ&As@navy.mil, accompanied by a forwarding memo. Both documents must be in the format prescribed at NMCAG G5206.303.

(i) The applicable Acquisition Strategy (or Acquisition Plan if no Acquisition Strategy exists) must be submitted with the justification. The documents should be reviewed concurrent with preparation of the justification and updated if required. Justifications and planning documentation should be consistent; unavoidable discrepancies should be highlighted and explained to the approving official. The technical/requirements certification in the justification includes affirmation of the currency of the planning documents.

(ii) Historic justification information must be submitted with the proposed justification. If the prior justification was approved locally within the DoN activity, provide the entire prior justification and approval. If the prior justification was approved by ASN(RDA), provide the identifying number of the prior justification.

(c) Class justifications shall be approved in the same manner as individual justifications with the same approval thresholds. The cumulative dollar value of all actions contemplated under the class justification will be used to determine the approval authority for the class justification.

2. Under PART 5211 DESCRIBING AGENCY NEEDS, **5211.174-2 Policy for unique item identification** is added as follows:

SUBPART 5211.2—USING AND MAINTAINING REQUIREMENTS DOCUMENTS

5211.274 Item Identification and valuation.

5211.274-2 (DFARS 211.274-2) Policy for unique item identification.

(b) A copy of a determination executed under DFARS 211.274-2(b)(1) or a determination and findings executed under DFARS 211.274-2(b)(2)(i)(B) must be provided to DASN(A&LM).

(1) HCAs are delegated the authority to make the determinations described in DFARS 211.274-2(b)(1).

3. Under PART 5213 SIMPLIFIED ACQUISITION PROCEDURES, **5213.003 Policy** is changed to include delegation to HCAs of determinations related to contingency operations as follows:

5213.003 (FAR 13.003) Policy.

Pursuant to 5201.601-90(b), NAVSUPSYSCOM has responsibility for providing DoN-wide policy for simplified acquisition procedures. Specific policy, procedures, and guidance will be promulgated by the Deputy Commander for Contracting Management, NAVSUPSYSCOM.

(g) Heads of Contracting Activities are delegated authority to make determinations that property or services are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack within the limits set forth in the FAR 2.101 definition of the simplified acquisition threshold.

4. Under SUBPART 5217.78—CONTRACTS OR DELIVERY ORDERS ISSUED BY A NON-DOD AGENCY, **5217.7802 Policy** is changed to add language covering direct acquisitions and update paragraph (e).

5217.7802 (DFARS 5217.7802) Policy.

ASN(RDA) is the decision authority for assisted acquisitions exceeding \$500,000,000.

DASN(A&LM) is the decision authority for assisted acquisitions exceeding \$50,000,000. At or below \$50,000,000, the Requiring Organization Commander/Commanding Officer is the decision authority. This authority may be delegated but, for requirements over \$5,000,000,

decision authority may only be delegated to an official in the Requiring Organization who is a Flag or General Officer; a member of the Senior Executive Service; or, for a requirement arising from a claimant activity without Flag/General Officer/SES, the commanding officer of that activity. For assisted acquisitions for services, see additional approval requirements at NMCARS 5237.170-2(b). The business clearance approval official is the decision authority for direct acquisitions.

(e) Data collection and reporting is as directed in the DoN Guidelines for Proper Use of Non-DoD Contracts dated December 14, 2004 and ASN(FM&C) memorandum on Proper Use of Non-DoD Contracts dated May 4, 2006.

5. Under PART 5239 ACQUISITION OF INFORMATION TECHNOLOGY, **5239.001 Applicability** is changed to update the referenced memorandum as follows:

5239.001 Applicability.

HCAs shall ensure compliance with ASN(RD&A) memorandum dated October 08, 2004, Subj: "Information Technology-Related Procurements."

6. Under SUBPART 5242.1—CONTRACT AUDIT SERVICES, **5242.191 Audit resolution and disposition** is changed to reflect use of the automated reporting system as follows:

5242.191 Audit resolution and disposition.

(a) Resolution of contract audit reports other than pre-award advisory audits, is required by law within six months of report issuance. When an audit is resolved, it shall be supported by specific written documentation in the file. Disposition, including fund recovery actions, shall take place as soon as possible after resolution.

(b) HCAs are responsible for establishing procedures to accomplish resolution and disposition within the required times and to comply with the DoD Directive 7640.2 semiannual contract audit follow-up (CAFU) status reporting requirement through timely entry of data into the CAFU system in eTools at www.dema.mil. DASN(A&LM) PABT is the DoN liaison.

7. PART 5250 is rewritten to correspond to the FAR Part 50 rewrite (FAC 2005-21) as follows:

PART 5250 EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

SUBPART 5250.1—EXTRAORDINARY CONTRACTUAL ACTIONS

5250.101 General.

5250.101-3 Records.

HCAs are the officials responsible for preparation and submission of the required records. Forward records to DASN(A&LM).

5250.102 Delegation of and limitations on exercise of authority.

5250.102-1-70 Delegation of authority.

(a) *Military Departments*. Subject to the restrictions on delegations of authority in DFARS Part 250 and FAR 50.102-1 and 50.102-3, HCAs may exercise and redelegate the authority contained in the Act and Executive Order for amounts not exceeding \$55,000.

(i) HCAs may deny any request, regardless of dollar value.

(ii) Requests to obligate the Government in excess of \$55,000 shall be submitted to ASN(RD&A) for approval.

5250.102-2 Contract adjustment boards.

Members and alternate members will be appointed by DASN(A&LM).

5250.103 Contract adjustments.

5250.103-5 (FAR 50.103-5) Processing cases.

(b) The contracting activity responsible for processing a contractor's request for contractual adjustment under a DoN contract is responsible for establishing liaison and joint action with other Military Departments and other departments and agencies of the Government, until the case is submitted to the Navy Contract Adjustment Board for disposition.

5250.103-6 Disposition.

When a contractor's request is denied below the Secretarial level, the contracting officer of the activity that forwarded the case to the board shall furnish a letter to the contractor explaining the denial.

NAVY MARINE CORPS ACQUISITION GUIDE CHANGE 03-11

The following changes are hereby incorporated into the November 2003 NMCAG:

1. Under G5201.6 CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES, **G5201.602-3 Procedures for ratification of unauthorized commitments** is changed to correct the FAR citation shown as follows:

G5201.602-3 (FAR 1.602-3) Procedures for ratification of unauthorized commitments.

The following is provided as guidance for HCAs in establishing procedures to ratify unauthorized commitments. In establishing procedures, minimizing the need to ratify unauthorized commitments should be considered as a goal.

(a) The individual making the unauthorized commitment should forward to the activity's Commanding Officer, or civilian equivalent, documentation concerning the transaction, to include:

- (1) A signed statement describing--
 - (i) the circumstances surrounding the unauthorized commitment;
 - (ii) why normal procurement procedures were not followed;
 - (iii) what bona fide need of the Government necessitated the commitment;
 - (iv) whether any benefit was received and its value;
 - (v) how and when it was identified as an unauthorized commitment;
 - (vi) attempts to resolve the unauthorized commitment prior to requesting authorization (such as returning merchandise); and
 - (vii) any other pertinent facts.

(2) All orders, invoices, or other documentary evidence of the transaction.

(b) If the Commanding Officer, or civilian equivalent, concurs that the commitment should be ratified, then the Commanding Officer, or civilian equivalent, should forward the documentation described above in a report to the contracting officer with an endorsement that:

- (1) Verifies the accuracy and completeness of the documentation;
- (2) Describes any disciplinary action taken and the measures taken to prevent a recurrence of unauthorized commitments; and
- (3) Provides a complete purchase description and funding for the ratifying contract.

(c) If the statement required by (a)(1) is unavailable, the Commanding Officer, or civilian equivalent, should explain in the report the reason the individual's statement is not available and insure that all information required under (a)(1) is provided to the extent possible.

(d) The contracting officer should:

- (1) Review the documentation and endorsement provided;
- (2) Determine the adequacy of the facts and documentation, obtaining any additional material required;
- (3) Prepare a determination and findings for signature by the ratifying official addressing the limitations in FAR 1.602-3(c)(1) through (7);
- (4) Prepare a recommendation to the ratifying official;
- (5) Prepare appropriate contractual documents; and
- (6) Submit the contract and supporting documents to the appropriate counsel of the Office of the General Counsel for an opinion as to form and legality and for any additional pertinent comment or advice.

- (e) Comptroller review is recommended for all ratifications.
- (f) The ratifying official to whom authority has been delegated pursuant to NMCARS 5201.602-3(b)(3) should review the file, and if ratification is proper, sign the determination and findings.
- (g) Records. HCAs should ensure that a record of all ratification actions is maintained. This record should include the identity of the contracting office performing the ratification, the dollar value of the ratification action, and a copy of the required determination and findings

2. Under SUBPART G5247.5—OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS, **G5247.572 Procedures** is renumbered to G5247.573 based on DFARS Change Notice 20070828 and **G5247.573-3 Annual reporting requirement** is added as follows:

G5247.573 Procedures.

G5247.573-1 (DFARS 247.573-1) Ocean transportation incidental to a contract for supplies, services, or construction.

(c)(3)(iii) Forward the report to the Secretary of the Navy via DASN(A&LM), for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

G5247.573-2 (DFARS 247.573-2) Direct purchase of ocean transportation services.

(d)(3)(iii) Forward the report to the Secretary of the Navy via DASN(A&LM), for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

G5247.573-3 (DFARS 247.573-3) Annual reporting requirement.

(a)(2) A copy of the annual report on information received from offerors in response to the provision at 252.247-7026 must be provided to DASN(A&LM) PABT.

3. PART G5250 is rewritten to correspond to the FAR Part 50 rewrite (FAC 2005-21) as follows:

PART G5250 EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

SUBPART G5250.1—EXTRAORDINARY CONTRACTUAL ACTIONS

G5250.104 Residual powers.

G5250.104-3 (FAR 50.104-3) Special procedures for unusually hazardous or nuclear risks.

(b) Submit requests for authorization to use the clause prescribed at FAR 50.104-4 with sufficient justification to the Secretary of the Navy via DASN(A&LM).