



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(Research, Development and Acquisition)
WASHINGTON, D.C. 20350-1000

7 May 1996

DFARS Case: 94-D316
95-D039
96 -D302
96 -D3 08
96 -D3 09

MEMORANDUM FOR DISTRIBUTION

Subj : DEPARTMENTAL MEMORANDUMS

- Encl : (1) 94-D316, Restructuring Costs Under Defense Contracts, dated 18 Apr 96
(2) 95-D039, Small Disadvantaged Business Concerns, dated 29 Apr 96
(3) 96-D302, Leasing of Commercial Vehicles and Equipment, dated 18 Apr 96
(4) 96-D308, Designation of Singapore, dated 18 Apr 96
(5) 96-D309, Pricing for Sales of Defense Articles, dated 30 Apr 96

Enclosures (1) thru (5) are forwarded for immediate implementation.

Elliott B Branch

Elliott B. Branch
Executive Director
Acquisition & Business
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OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

April 18, 1996



In **reply** refer to
DFARS Case: 94-D316
D. L. 96-006

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN (RD&A) / ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING) , SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA (RD&A) / SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Restructuring Costs Under Defense Contracts

We have amended Parts 231 and 242 of the Defense Federal Acquisition Regulation Supplement (**DFARS**) to implement Section 818 of the FY 1995 Defense Authorization Act (Pub. L. 103-337) . Section 818 restricts DoD from reimbursing **external** restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met.

The attached **DFARS** rule revises and finalizes the interim rule which was published as Item XXIII of DAC 91-7.

This final **DFARS** rule is effective immediately and will be published in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

ENCLOSURE(1)



MAY 01 1996

**DFARS CASE 94-D316, RESTRUCTURING COSTS UNDER DEFENSE CONTRACTS
FINAL RULE**

PART 231--CONTRACT COST PRINCIPLES AND PROCEDURES

* * * * *

SUBPART 231.2--CONTRACTS WITH COMMERCIAL ORGANIZATIONS

* * * * *

231.205-70 [External] [r]Restructuring costs.

(a) Scope.

This subsection prescribes policies and procedures for allowing ~~appropriate~~ contractor **[external]** restructuring costs when **[net savings]** ~~allowing such costs~~ would result ~~in net savings~~ for DoD. This subsection **also** implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337).

(b) *Definitions.*

As used in this subsection:

- (1) "Business combination" means a transaction whereby assets or operations of two ~~for morel previously separate~~ **[or morel previously separate]** companies **[not previously under common ownership or control]** are combined, whether by merger, acquisition, or sale/purchase of assets.
- (2) "External restructuring activities" means restructuring activities occurring after a business combination that **[affect the operations of] involve facilities or workforce from both of the previous¹ separate** companies= **[not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.]**
- ~~(3) "Internal restructuring activities" means restructuring activities occurring after a business combination that~~

~~involve facilities or workforce from only one of the previously separate companies, or, when there has been no business combination, restructuring activities undertaken within one company.~~

- (3) "Restructuring activities" means nonroutine, nonrecurring, or extraordinary activities [to combine] ~~associated with the reduction of~~ facilities [, **operations,**] or workforce, ~~or consolidation of facilities or operations (including disposal or abandonment undertaken to effect such consolidation), in an effort to~~ [**in order to eliminate redundant capabilities,**] improve future operations [,] and reduce overall costs. Restructuring activities do not include routine or ongoing repositionings and redeployments of a contractor's productive facilities or workforce (e.g., normal plant rearrangement or employee relocation) [, nor do they **include other routine or ordinary activities charged as indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support)**] .
- (4) "Restructuring costs" means the costs, including both direct and indirect, [~~of associated with~~ restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. **[For purposes of this definition, if restructuring costs associated with external restructuring activities allocated to DoD contracts are less than \$2.5 million, the costs shall not be subject to the audit, review, and certification requirements of 231.205-70(c)(1); instead, the normal rules for determining cost allowability in accordance with FAR Part 31 shall apply.]**
- (5) "Restructuring savings" means cost reductions, including both direct and indirect cost reductions, that ~~are direct¹ associated with or~~ result **directly** from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) *Limitations on cost allowability.*

- (1) Restructuring costs associated with external restructuring activities shall not be allowed unless--

- (i) Such costs are allowable in accordance with FAR Part 31 and **DFARS** Part 231;
 - (ii) **An** audit of projected restructuring costs and restructuring savings is performed;
 - (iii) The cognizant administrative contracting officer (**ACO**) reviews the audit report and the Projected costs and projected savings, determines that overall reduced costs should result for DoD, and negotiates an advance agreement in accordance with 231.205-70(d) (8); and
 - (iv) A certification is made by the Under Secretary of Defense (Acquisition & Technology), **his** Principal Deputy or designee (in **all cases, an** individual appointed by the President and confirmed by the Senate), that projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD.
- (2) The **[audit, review, and]** certification required by 231.205-70(c) (1) ~~(iv)~~ shall not **apply** to any business combination for which payments for restructuring costs were made before August 15, 1994, or for which the cognizant **ACO** executed an advance agreement establishing cost ceilings based on audit/negotiation of detailed cost proposals for individual restructuring projects before August 15, 1994.

- ~~(3) Costs that may be incurred after a business combination but are not allowed in accordance with FAR Part 31 and DFARS Part 231 include, but are not limited to:~~
- ~~(i) Incorporation fees, costs of attorneys, accountants, brokers, promoters, organizers, management consultants, and investment counselors (see FAR 31.205-27).~~
 - ~~(ii) The cost of any change in the contractor's financial structure (see FAR 31.205-27).~~
 - ~~(iii) Interest or other costs of borrowing to finance~~

- ~~(iv) When the purchase method of accounting for a business combination is used, increased depreciation, amortization, or cost of money attributable to increases in the book value of plant, equipment, and other tangible assets of the acquired company above the amount that would have been allowed if the business combination had not taken place (see FAR 31.205-52).~~
- ~~(v) Any costs for amortization, expensing, write-off, or write down of goodwill (however represented) (see FAR 31.205-49).~~
- ~~(vi) Payments to employees of special compensation in excess of the contractor's normal severance pay practice if their employment terminates following a change in the management control over, or ownership of, the company or a substantial portion of its assets (see FAR 31.205-6(1)(1)).~~
- ~~(vii) Payments to employees of special compensation which is contingent upon the employee remaining with the contractor for a specified period of time following a change in the management control over, or ownership of, the company or a substantial portion of its assets (see FAR 31.205-6(1)(2)).~~

(d) *Procedures and ACO responsibilities.*

As soon as it is known that the contractor will incur restructuring costs ~~associated with~~ **[for]** external restructuring activities, the cognizant ACO shall:

- [(1)]** Promptly execute **a novation agreement, if one is required, in accordance with FAR Subpart 42.12 and DFARS Subpart 242.12 and include the provision at DFARS 242.1204(0).1**
- [(2)]** Direct the contractor to segregate restructuring costs and to suspend these amounts from any billings, final contract price settlements, and overhead settlements until the certification in (c) (1) (iv) is obtained.
- [(3)]** Require the contractor to submit an overall plan of restructuring activities and an adequately supported proposal for planned restructuring

projects. The proposal must include a **detailed** breakout by year by cost element, showing the projected restructuring ~~costs, both direct and indirect,~~ and projected restructuring ~~savings, both direct and indirect.~~

- ~~(3) Negotiate a Memorandum of Understanding with the contractor setting forth, at a minimum, the types and treatments of restructuring costs and the methodology to be used to demonstrate reduced costs to DoD.~~
- (4) Notify major buying activities of contractor restructuring actions and inform them about any potential monetary impacts on major weapons programs, when known.
- (5) Upon receipt of the contractor's proposal, ~~immediately~~ **[as soon as practicable,]** adjust forward pricing rates to reflect the impact of projected restructuring savings. **[If restructuring costs are included in forward pricing rates prior to]** ~~Pending~~ execution of an advance agreement in accordance with 231.205-70(d) (8), **[the contracting officer shall include]** ~~restructuring costs may be include in forward pricing rates if~~ a repricing clause ~~is included~~ in each fixed-price action that is priced based on the rates. The repricing clause must provide for a downward price adjustment to remove restructuring costs if the certification required by 231.205-70(c) (1) (iv) is not obtained.
- (6) Upon receipt of the contractor's proposal, immediately request an audit review of the contractor's proposal.
- (7) **Upon** receipt of the audit report, determine if restructuring savings will exceed restructuring costs on a present value basis.
- (8) Negotiate an advance agreement with the contractor setting forth, at a minimum, [a cumulative] **cost ceiling [for] amounts on** restructuring projects and, when necessary, a cost amortization schedule. **[The] C[c]ost ceilings may not exceed the amount** of projected restructuring savings on a present value basis. The advance agreement shall not be

executed until the certification required by 231.205-70(c) (1) (iv) is obtained.

- (9) Submit to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), **ATTN: OUSD(A&T)DP/CPF**, a recommendation for certification of net benefit. Include the information described in **231.205-70(e)**.

(e) *Information **needed** to obtain certification of net benefit.*

- (1) The novation agreement (if one is required) .
- (2) The contractor's restructuring proposal.
- (3) The proposed advance agreement.
- (4) The audit report.
- (5) Any other pertinent information.
- (6) The cognizant **ACO's** recommendation for certification. This recommendation must clearly indicate that contractor projections of future cost savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for the Department.

SUBPART 242.12--NOVATION AND CHANGE-OF-NAME AGREEMENTS

* * * * *

242.1204 Agreement to recognize a successor in interest (novation agreement) .

(e) When a **novation** agreement is required and the transferee intends to incur restructuring costs as defined at 231.205-70, the cognizant contracting officer shall include **the** following provision as paragraph (b) (7) of the **novation** agreement instead of the paragraph (b) (7) provided in the sample format at FAR 42.1204(e):

(7) (i) Except as set forth in subparagraph (7) (ii) below, the Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(ii) The Government recognizes that restructuring by the Transferee incidental to the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under Part 31 of the Federal Acquisition Regulation (FAR) or Part 231 of the Defense Federal Acquisition Regulation Supplement (**DFARS**) may be reimbursed under flexibly-priced **novated** contracts, provided the Transferee demonstrates that the restructuring will reduce overall costs to the Department of Defense (DoD) **[(and to the National Aeronautics and Space Administration (NASA), where there is a mix of DoD and NASA contracts)] and/or the National Aeronautics and Space Administration (NASA)**, and the requirements included in DFARS 231.205-70 are met. ~~These costs and the contracting parties' responsibilities shall be addressed in a Memorandum of Understanding to be negotiated between the cognizant contracting officer and the Transferee. The Memorandum of Understanding will specify the types and treatment of restructuring costs and the methodology to be used to demonstrate reduced costs to DoD and/ * NASA.~~ Restructuring costs shall not be allowed on **novated** contracts unless there is an audit of the restructuring proposal; a determination by the contracting officer of overall reduced costs to DoD/NASA; **and** an Advance Agreement setting forth **[a cumulative]** cost ceiling **[for]** ~~amounts on~~ restructuring projects and the period to which such costs shall be assigned."



ACQUISITION AND
TECHNOLOGY

DP (DAR)

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

April 29, 1996



In reply refer to
DFARS Case: 95-D039
D. L. 96-009

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RD&A) /ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING) , SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS
AGENCY

SUBJECT: Small Disadvantaged Business Concerns

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement initiatives designed to facilitate awards to small disadvantaged businesses (SDBs) while taking account of the Supreme Court's decision in Adarand Constructors, Inc. v. Pena, 63 U.S.L.W. 4523 (U.S. June 12, 1995).

The attached final rule includes contracting procedures that: (1) expand the use of the evaluation factor for SDBs, to include competitive awards based on other than price or price related factors; (2) consider small, small disadvantaged, and women-owned small business subcontracting as a factor in the evaluation of past performance; (3) clarify that the contracting officer will weigh enforceable commitments to use small businesses, SDBs, women-owned small businesses, and historically black colleges and universities, and minority institutions more heavily than non-enforceable ones, if the commitment to use such firms is included in the solicitation as a source selection criterion; (4) require prime contractors to notify the contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan; and (5) establish a test program of an SDB evaluation preference that would remove



ENCLOSURE(2)

MAY 01 1996

bond cost differentials between SDBS and other businesses as a factor in most source selections for construction acquisitions.

This DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

A handwritten signature in black ink, reading "Eleanor Spector". The signature is written in a cursive, flowing style.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft Belvoir

PART 215--CONTRACTING BY NEGOTIATION

* * * * *

SUBPART 215. 6--SOURCE SELECTION

215.605 Evaluation factors [and subfactors].

(b) * * *

(-j) * * *

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

* * * * *

(E) [When not otherwise required by 215.608 (a) (2) ,] **Prior [past]** performance of offerors in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small [,] ~~Business Concerns and Small Disadvantaged [and Women-owned Small]~~ Business Concerns, and 52.219-9, Small[, Small Disadvantaged and Women-Owned Small] Business ~~and Small Disadvantaged Business~~ Subcontracting Plan; and

* * * * *

[(iv) When an evaluation includes the criterion in paragraph (b) (ii) (A) of this section, the **small, small disadvantaged, or women-owned small businesses** considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003 (g) .1

* * * * *

215.608 Proposal evaluation.

(a) [(1)] * * *

[(2) when a past performance evaluation is **required by FAR 15.605**, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation shall include the past performance

of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation shall include the past performance of offerors in complying with requirements of that clause.]

* * * * *

P A R T 2 1 9 - - ~~CONCERNS~~
[SMALL BUSINESS PROGRAMS]

219.704 Subcontracting plan requirements.

(a) * * *

[(4) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small **businesses**, prime contractors shall notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time **after award of the subcontract. Contractor-specified formats shall be acceptable.]**

* * * * *

219.1006 Procedures.

(b) * * *

(1) * * *

(B) The evaluation preference at 219.70 shall not be used. [However, note the test program at 219.72 for construction acquisitions.]

● ← ← ← ←

219.7001 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions ~~where award is based on price and price related factors. The preference may be used at the discretion of the source selection~~

~~authorities in other competitive acquisitions~~ [except as provided in paragraph (b) of this section and in 219.1006(b) (1) (B)].
* * * * *

[219 .72- -EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS IN CONSTRUCTION ACQUISITIONS--TEST PROGRAM

219.7200 Policy.

DoD policy is to ensure that, during this test program, offers from small disadvantaged business (SDB) concerns shall be given an evaluation preference in construction acquisitions.

219.7201 Administration of the test program.

The test program will be conducted over a 36-month period. The test program will be conducted by all DoD contracting activities that award construction contracts. The focal point for the test program is the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology (Director, SADBU). The military departments and defense agencies shall submit status reports to the Director, SADBU. The first status report shall be submitted 18 months after initiation of the test program; the second status report shall be submitted 36 months after initiation of the test program. These reports shall specify the impact of the evaluation preference over each of the reporting periods of the test program, and shall provide recommendations with respect to continuation and/or modification of the evaluation preference.

219.7202 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions for construction (see definition in FAR Subpart 36.1) when work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) Do not use the evaluation preference in acquisitions which--

(1) Are less than or equal to the simplified acquisition threshold;

(2) Are set aside for small businesses; or

(3) Are awarded under section 8(a) procedures.

(c) The evaluation preference need not be applied when the head of the contracting activity determines that the evaluation preference is having a disproportionate impact on non-SDB concerns or non-disadvantaged small business concerns.

219.7203 Procedures.

(a) Solicitations that require bonding shall require offerors to separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no preference-based evaluation is required under this subpart.

(c) If the apparently successful offeror is not an SDB concern, evaluate offers excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, add bond costs back to all offers, and give offers from SDB concerns a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except--

(1) Offers from SDBS which have not waived the evaluation preference; and

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference.

(d) When using the procedures in 236.303-70, Additive or deductive items, the evaluation preference in this subpart shall be applied.

219.7204 Contract clause.

Use the clause at 252.219-7008, Notice of Evaluation Preference for Small Disadvantaged Business Concerns--Construction Acquisitions--Test Program, in all solicitations--

(1) That involve the evaluation preference of this subpart;

and

(2) Where work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.]

* * * * *

PART 236--CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

* * * * *

236.303-70 Additive or deductive items.

* * * * *

(c) * * *

(2) Evaluate all bids[, including those using the procedures in 219.7203,] on the basis of the same additive or deductive bid items.

* * * * *

PART 242--CONTRACT ADMINISTRATION

[SUBPART 242.15--Contractor Performance Information

242.1503 Procedures.

Evaluations should consider any notifications submitted under paragraph (g) of the clause at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) .1

* * * * *

PART 252--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

* * * * *

**SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS
SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 1996)**

* * * * *

[(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the

Contractor shall notify the Administrative Contracting Officer of **any** substitutions of firms that **are** not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall **occur** within a reasonable period of time after award of the subcontract. Contractor-specified formats shall **be acceptable.**]

* * * * *

[252.219-7008 **Notice of Evaluation Preference for Small Disadvantaged Business Concerns--Construction Acquisitions--Test Program.** As prescribed in 219.7204, use the following clause:

NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS CONCERNS--CONSTRUCTION ACQUISITIONS--TEST PROGRAM (APR 1996)

(a) Definitions.

As used in this clause--

'Historically black colleges and universities (HBCUs)," means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

'Minority institutions," means institutions meeting the requirements of paragraphs (3), (4), and (5) of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b) (1) of such Act (20 U.S.C. 1059c(b) (1)).

'Small disadvantaged business (SDB) concern," means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of **earnings of which** directly accrue to such individuals. This term also means a **small business** concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) Evaluation--Deference.

(1) Offerors shall separately state bond costs in the offer. Bond costs include the costs of bid, performance, and **payment** bonds.

(2) Offers will be evaluated initially based on their total prices. If the apparently successful offeror is an SDB concern, no preference-based evaluation will be conducted.

(3) If the apparently successful offeror is not an SDB concern, offers will be evaluated **based** on their prices excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, bond costs will be added back to all offers, and offers from SDB concerns will be given a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except--

(i) Offers from SDBs which have not waived-the evaluation preference; and

(ii) Offers from HBCUs or minority institutions, which have not waived the evaluation preference.

(c) Waiver of evaluation preference.

A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference. The agreements in paragraph (d) of this clause do not apply to offers which waive the preference.

_____ Offeror elects to waive the preference.

(d) Agreements.

A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for--

(i) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(ii) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(End of clause) 1

● * * * *

PART 253- -FORMS

* * * * *

253.204-70 DD Form 350, Individual Contracting Action Report.

● - - - -

(e) * * *

(3) Block E3, Next Low Offer.

(i) Complete Block E3 only if Block **E2** is **completed** [, or the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in Subpart 219.72 is applied.] Otherwise, leave Block E3 blank.

(ii) [**If Block E2 is completed e**]Enter the offered price from the small business firm that would have been the low offeror if qualified nonprofit agencies employing people who are blind or severely disabled had not participated in the acquisition. [**If the** evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in **Subpart** 219.72 is applied, enter the offered price from the **non-SDB** concern that would have been the successful offeror if the evaluation preference had not been applied.] Enter the amount in whole dollars.

* * * * *



ACQUISITION AND TECHNOLOGY
DP (DAR)

OFFICE OF THE UNDER SECRETARY OF DEFENSE

Info

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

April 18, 1996



In reply refer to
DFARS Case: 96-D302
D. L. 96-007

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RD&A) /ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING) , SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Leasing of Commercial Vehicles and Equipment

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 807 of the FY96 Defense Authorization Act (pub. L. 104-106), which revises 10 U.S.C. 2401a to permit the use of leasing in the acquisition of commercial vehicles and equipment.

The attached interim DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense procurement

Attachment

cc: DSMC, Ft. Belvoir

ENCLOSURE(3)



MAY 01 1996

SUBPART 207.4- EQUIPMENT LEASE OR PURCHASE

• -----

207.470 Statutory requirement[s].

[(a) Limitation on contracts with terms of 18 months or more.]

As required by 10 U.S.C. 2401 a, the contracting officer shall not enter into any contract for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement with a term of 18 months or more, or extend or renew any such contract for a term of 18 months or more, unless the head of the contracting activity has--

~~(a)~~[(1)] Considered all costs of such a contract (including estimated termination liability); and

~~(b)~~[(2)] Determined in writing that the contract is in the best interest Of the Government.

[(b) Leasing of commercial vehicles and equipment.

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



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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April 18, 1996



DP (DAR)

In reply refer to
DFARS Case: 96-D308
DAR Tracking No.: 96-00004
D. L. 96-008

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND **BUSINESS MANAGEMENT,**
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DEPUTY ASSISTANT **SECRETARY** OF THE AIR FORCE
(CONTRACTING) , **SAF/AQC**
DIRECTOR, PROCUREMENT POLICY, **ASA (RD&A) / SARD-PP**
DEPUTY DIRECTOR (**ACQUISITION**) , **DEFENSE LOGISTICS**
AGENCY

SUBJECT: Designation of Singapore

We have amended the Defense Federal Acquisition Regulation Supplement (**DFARS**) (**Atch 1**) and issued a **class deviation** to the Federal Acquisition Regulation (FAR) (**Atch 2**) to add **Singapore** as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative (**USTR**) (61 FR 11233, March 19, 1996) (**Atch 3**). The class deviation does not apply to procurements by the Army Corps of Engineers. The **USTR** may revoke this designation if Singapore has not completed negotiations on its accession to the World Trade Organization Government Procurement Agreement by **July 31, 1996**.

The attached final **DFARS** rule and FAR **class deviation** are effective immediately. **Unless** I rescind **them**, due to revocation by the **USTR** of Singapore's designation, **the DFARS rule will be** included in a future Defense Acquisition Circular and the FAR deviation will remain in effect until the FAR is revised.

Eleanor R. Spector

Eleanor R. Spector
Director, Defense Procurement

Attachments

cc: DSMC, Ft. Belvoir

ENCLOSURE(4)



MAY 01 1996

**DFARS Case 96-D308
Final Rule**

PART 225--FOREIGN ACQUISITION

SUBPART 225.4--TRADE AGREEMENTS

●

225.408 Solicitation provisions] and contract clauses.

●

(a)(Z) Use the clause at 252.225-7007, Trade Agreements, instead of the clause at FAR 52.225-9, Buy American Act-Trade Agreements-Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(d)(1)(i)). 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 1.]

PART 252--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2--TEXTS OF PROVISIONS AND CLAUSES

252.225-7007 Trade Agreements

As prescribed in 225.408(a)(2), use the following clause:

TRADE AGREEMENTS ACT (JAN 1996) [APR 1996]

(a) **Definitions.**

- (3) "Designated country" means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed in Section 25.401 of the Federal Acquisition Regulation (FAR).[:]

Atch 1

[Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Finland
France
Gambia
Germany
Greece
Guinea
Haiti
Ireland
Israel
Italy

Japan
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Singapore
Somalia
Spain
Sudan
Sweden
Switzerland
Tanzania U.R.
Uganda
United Kingdom
Western Samoa
Yemen]

* * * * *

[Alternate I (APR 1996). As prescribed in 2X.408(a)(2), delete Singapore from the list of designated countries in paragraph(a)(3) of the basic clause-]

FAR DEVIATION 96-00004

PART 25--FOREIGN ACQUISITION

● ****

SUBPART 25.4--TRADE AGREEMENTS

25.401 Definitions.

● ****

'Designated **country**, " as used in this subpart, **means** a **country or** instrumentality designated under the Trade Agreements Act of 1979 and listed below:

Aruba	Japan
Austria	Lesotho
Bangladesh	Liechtenstein
Belgium	Luxembourg
Benin	Malawi
Bhutan	Maldives
Botswana	Mali
BurkinaFaso	Nepal
Burundi	Netherlands
Canada	Niger
Cape Verde	Norway
Central African Republic	Portugal
Chad	Republic of Korea
Comoros	Rwanda
Denmark	[Singapore]
Finland	Somalia
France	Spain
Gambia	Sudan
Germany	Sweden
Greece	Switzerland
Guinea	Tanzania U.R.
Haiti	Uganda
Ireland	United Kingdom
Israel	Western Samoa
Italy	Yemen

● ****

Atch 2

PART 52--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

SUBPART 52.2--TEXTS OF PROVISIONS AND CLAUSES

● * * * * *

52.225-15 Buy American Act--Construction Materials under Trade Agreements Act and North American Free Trade Agreement.

As prescribed in 25.205(b)(1), insert the following clause:

BUY AMERICAN ACT--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS ACT AND NORTH AMERICAN FREE TRADE AGREEMENT (JAN 1996) [(DEVIATION)] .

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

* * * * *

[“Designated country” means:

Aruba	Japan
Austria	Lesotho
Bangladesh	Liechtenstein
Belgium	Luxembourg
Benin	Malawi
Bhutan	Maldives
Botswana	Mali
Burkina Faso	Nepal
Burundi	Netherlands
Canada	Niger
Cape Verde	Norway
Central African Republic	Portugal
Chad	Republic of Korea
Comoros	Rwanda
Denmark	Singapore
Finland	Somalia
France	Spain
Gambia	Sudan
Germany	Sweden
Greece	Switzerland
Guinea	Tanzania U.R.
Haiti	Uganda
Ireland	United Kingdom
Israel	Western Samoa
Italy	Yemen]

"Designated country construction material" means a construction material that (a) is wholly the growth, product, or manufacture of a designated country (as defined at FAR 25.401), or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into anew and different construction material distinct from the materials from which it was transformed.

* * * * *

(Contact: Shirley Fortuna, 301-415-7804)

Week of April 8—Tentative

There are no meetings scheduled for the Week of April 8.

The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording) (301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415-1661.

This notice is distributed by mail to several hundred subscribers if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301-415-1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: March 15, 1996.

William M. Hill, Jr.

SECY Tracking Officer, Office of the Secretary.

[FR Dec. 96-6746 Filed 3-15-96; 3:25 pm]

BILLING CODE 7590 01 M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Designation of Singapore Under 19 U.S.C. 2511(b)(3)

Under the authority delegated to me by the President in section 1-201 of Executive Order 12260 of December 31, 1980, I hereby direct that products of Singapore be treated as eligible products for purposes of section 1-101 of Executive Order 12260. Such treatment shall not apply to procurements by the Department of Energy, the Department of Transportation, the Army Corps of Engineers, the Tennessee Valley Authority and the Bureau of Reclamation. If Singapore has not completed negotiations on its accession to the WTO Government Procurement Agreement by July 31, 1996, this designation may be revoked.

Michael Kantor,

United States Trade Representative.

[FR Doc. 96-6514 Filed 3-18-96; 8:45 am]

BILLING CODE 3190 01 M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission

will hold the following open meeting during the week of March 18, 1996.

An open meeting will be held on Thursday, March 21, 1996, at 10:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Thursday, March 21, 1996, at 10:00 a.m., will be:

(1) The Commission will consider whether to adopt amendments to rule 2a-7, the rule under which money market funds are regulated under the Investment Company Act of 1940, and related rules and forms. The amendments are intended to tighten the risk limiting conditions of rule 2a-7, particularly as they apply to tax exempt funds, and to provide investors in those funds with protections similar to those provided to taxable money market fund investors. The amendments would revise the diversification and credit quality conditions which tax exempt money market funds are required to meet, and make limited changes to the rule for taxable money market funds. The Commission will also consider a new rule under the Investment Company Act—rule 17a-9—which would permit certain affiliated transactions involving money market funds. For further information, contact Martha Platt at (202) 942-0725.

(2) The Commission will consider whether to propose for public comment amendments to rule 10f-3, and new rule 17a-10, both under the Investment Company Act of 1940. The proposed amendments to rule 10f-3 would address the various conditions of the rule. The proposed amendments would broaden the scope of the rule, for example, by permitting funds that are subject to the rule to purchase securities of foreign issuers sold in offerings not registered under the Securities Act of 1933, subject to certain conditions. Proposed rule 17a-10 would provide an exemption from section 17(a)(1) of the Investment Company Act for certain transactions that would be permitted by the proposed amendments to rule 10f-3. For further information, contact David M. Goldenberg at (202) 942-4525.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: March 15, 1996.

Jonathan G. Katz

Secretary.

[FR Dec. 96-6762 Filed 3-15-96; 3:50 pm]

BILLING CODE 8010 01 M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08 96 005]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) will meet to discuss waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. The meeting will be open to the public.

DATES: The meeting will be held from 9:30 a.m. to approximately 1 p.m. on Thursday, May 23, 1996.

ADDRESSES: The meeting will be held in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. M.M. Ledet, Recording Secretary, Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone (504) 589-4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act (5 U.S.C. app.). The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

The tentative agenda for the meeting will consist of the following items:

- (1) Approval of the January 18, 1996 minutes.
 - (2) Report from the Navigation Subcommittee.
 - (3) Report from the Waterways Subcommittee.
 - (4) Gulf Coast Trailing presentation on types of dredging projects.
- Under Keel clearance.

Dated: March 1, 1996.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 96-6549 Filed 3-18-96; 8:45 am]

BILLING CODE 4s1014 M

[CGD0696 006]

Houston/Galveston Navigation Safety Advisory Committee; Waterways Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Waterways Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee will meet to discuss various navigation safety matters affecting the waterways of the Houston/Galveston area.

DATES: The meeting will be held from 9:30 a.m. to 11 a.m., on Thursday, May 9, 1996.

Atch 3

INFO



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

April 30, 1996



ACQUISITION AND
TECHNOLOGY

DP (DAR)

In reply refer to
DFARS Case: 96-D309
D. L. 96-010

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS-MANAGEMENT,
ASN (RD&A) / ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA (RD&A) / SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS
AGENCY

SUBJECT: pricing for Sales of Defense Articles

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 531A of the FY 1996 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104-107), which requires that sales of defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis as is applicable to like items purchased by the Department of Defense for its own use.

The attached interim DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense procurement

Attachment

cc: DSMC, Ft. Belvoir

ENCLOSURE(5)



MAY 01 1996

PART 225--FOREIGN ACQUISITION

SUBPART 225.73-ACQUISITIONS FOR FOREIGN MILITARY SALES

225.7303 Pricing acquisitions for foreign military sales [(FMS)].

Price foreign military sale contracts using the same principles as are used in pricing other defense contracts. Application of the pricing principles in FAR Parts 15 and 31 to a foreign military sale contract, however, may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

225.7303-2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303-1 do not exist, [except as provided in 225.7303-5,] recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to-- * * *

(c) The provisions of IO U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the cost limitations on independent research and development and bid and proposal (IR&D/B&P) costs in FAR 31.205-18 do not apply to such contracts, except as provided in 225.7303-5]. The allowability of IR&D/B&P costs on contracts for foreign military sales [not wholly paid for from funds made available on a nonrepayable basis] shall be limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for [such] foreign military sales- * * *

[225.7303-5 Acquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), foreign military sales wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, IR&D/B&P, and other costing elements, as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer's additional or unique requirements will be allowable under such contracts. Indirect burden rates applicable to such direct costs shall be permitted at the same rates applicable to acquisition of like items purchased by DoD for its own use.

(c) A U.S. defense contractor may not recover costs incurred to implement its offset agreement with a foreign government or international organization if the foreign military sale Letter of Offer and Acceptance is financed with funds made available on a nonrepayable basis.]