

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36437, July 31, 1991, unless otherwise noted.

242.002 Interagency agreements.

(b)(i) DoD requires reimbursement, at a rate set by the Under Secretary of Defense (Comptroller/Chief Financial Officer), from non-DoD organizations, except for—

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(A) Quality assurance, contract administration, and audit services provided under a no-charge reciprocal agreement;

(B) Services performed under subcontracts awarded by the Small Business Administration under FAR subpart 19.8; and

(C) Quality assurance and pricing services performed for the Supply and Services Canada.

(ii) Departments and agencies may request an exception from the reimbursement policy in paragraph (b)(i) of this section from the Under Secretary of Defense (Comptroller/Chief Financial Officer). A request must show that an exception is in the best interest of the Government.

(iii) Departments and agencies must pay for services performed by non-DoD activities, foreign governments, or international organizations, unless otherwise provided by reciprocal agreements.

(S-70)(i) Foreign governments and international organizations may request contract administration services on their direct purchases from U.S. producers. Direct purchase is the purchase of defense supplies in the United States through commercial channels for use by the foreign government or international organization.

(ii) Supply and Services Canada (SSC) is permitted to submit its requests for contract administration services directly to the cognizant contract administration office.

(iii) Other foreign governments (including Canadian government organizations other than SSC) and international organizations send their requests for contract administration services to the DoD Central Control Point (CCP) at the Headquarters, Defense Contract Management Agency, International and Federal Business Team. Contract administration offices provide services only upon request from the CCP. The CCP shall follow the procedures at PGI 242.002(S-70)(iii).

[64 FR 61029, Nov. 9, 1999, as amended at 65 FR 52952, Aug. 31, 2000; 65 FR 63804, Oct. 25, 2000; 70 FR 67920, Nov. 9, 2005]

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Subpart 242.2—Contract Administration Services

SOURCE: 64 FR 61029, Nov. 9, 1999, unless otherwise noted.

242.200-70 Scope of subpart.

This subpart does not address the contract administration role of a contracting officer's representative (see 201.602).

242.202 Assignment of contract administration.

(a)(i) DoD activities shall not retain any contract for administration that requires performance of any contract administration function at or near contractor facilities, except contracts for—

- (A) The National Security Agency;
- (B) Research and development with universities;
- (C) Flight training;
- (D) Management and professional support services;
- (E) Mapping, charting, and geodesy services;
- (F) Base, post, camp, and station purchases;
- (G) Operation or maintenance of, or installation of equipment at, radar or communication network sites;
- (H) Communications services;
- (I) Installation, operation, and maintenance of space-track sensors and relays;
- (J) Dependents Medicare program contracts;
- (K) Stevedoring contracts;
- (L) Construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;
- (M) Architect-engineer services;
- (N) Airlift and sealift services (Air Mobility Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts);
- (O) Subsistence supplies;
- (P) Ballistic missile sites (contract administration offices may perform supporting administration of these contracts at missile activation sites during the installation, test, and

checkout of the missiles and associated equipment);

(Q) Operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations; and

(R) The Defense Energy Support Center, Defense Logistics Agency.

(ii) Contract administration functions for base, post, camp, and station contracts on a military installation are normally the responsibility of the installation or tenant commander. However, the Defense Contract Management Agency (DCMA) shall, upon request of the military department, and subject to prior agreement, perform contract administration services on a military installation.

(iii) DCMA shall provide preaward survey assistance for post, camp, and station work performed on a military installation. The contracting office and the DCMA preaward survey monitor should jointly determine the scope of the survey and individual responsibilities.

(iv) To avoid duplication, contracting offices shall not locate their personnel at contractor facilities, except—

(A) In support of contracts retained for administration in accordance with paragraph (a)(i) of this section; or

(B) As permitted under subpart 242.74.

(e)(1)(A) In special circumstances, a contract administration office may request support from a component not listed in the Federal Directory of Contract Administration Services Components (available via the Internet at <http://home.dema.mil/casbook/casbook.htm>). An example is a situation where the contractor's work site is on a military base and a base organization is asked to provide support. Before formally sending the request, coordinate with the office concerned to ensure that resources are available for, and capable of, providing the support.

(B) When requesting support on a subcontract that includes foreign contract military sale (FMS) requirements, the contract administration office shall—

(1) Mark "FMS Requirement" on the face of the documents; and

(2) For each FMS case involved, provide the FMS case identifier, associated item quantities, DoD prime con-

tract number, and prime contract line/subline item number.

[64 FR 61029, Nov. 9, 1999, as amended at 65 FR 52953, Aug. 31, 2000; 66 FR 49861, Oct. 1, 2001; 66 FR 63335, Dec. 6, 2001; 70 FR 52034, Sept. 1, 2005; 70 FR 67920, Nov. 9, 2005]

Subpart 242.3—Contract Administration Office Functions

242.301 General.

Contract administration services performed outside the U.S. should be performed in accordance with FAR 42.301 unless there are no policies and procedures covering a given situation. In this case, coordinate proposed actions with the appropriate U.S. country teams or commanders of unified and specified commands.

242.302 Contract administration functions.

(a)(4) Also, review and evaluate—

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

(B) Contractor material management and accounting systems under subpart 242.72.

(7) See 242.7502 for ACO responsibilities with regard to receipt of an audit report identifying significant accounting system or related internal control deficiencies.

(9) For additional contract administration functions related to IR&D/B&P projects performed by major contractors, see 242.771-3(a).

(12) Also perform all payment administration in accordance with any applicable payment clauses.

(13)(A) Do not delegate the responsibility to make payments to the Defense Contract Management Agency (DCMA).

(B) Follow the procedures at PGI 242.302(a)(13)(B) for designation of payment offices.

(39) See 223.370 for contract administration responsibilities on contracts for ammunition and explosives.

(67) Also support program offices and buying activities in precontractual efforts leading to a solicitation or award.

(S-70) Serve as the single point of contact for all Single Process Initiative (SPI) Management Council activities. The ACO shall negotiate and execute facilitywide class modifications

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and agreements for SPI processes, when authorized by the affected components.

(S-71) DCMA has responsibility for reviewing earned value management system (EVMS) plans and for verifying initial and continuing contractor compliance with DoD EVMS criteria. The contracting officer shall not retain this function.

(b)(S-70) Issue, negotiate, and execute orders under basic ordering agreements for overhaul, maintenance, and repair.

[71 FR 44928, Aug. 8, 2006]

Subpart 242.5—Postaward Orientation

242.503 Postaward conferences.

242.503-2 Post-award conference procedure.

DD Form 1484, Post-Award Conference Record, may be used in conducting the conference and in preparing the conference report.

[70 FR 67920, Nov. 9, 2005]

Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.

(c)(2) If the agencies cannot agree, refer the matter to the Director of Defense Procurement and Acquisition Policy.

[56 FR 36437, July 31, 1991, as amended at 68 FR 7440, Feb. 14, 2003]

Subpart 242.7—Indirect Cost Rates

242.705 Final indirect cost rates.

242.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* (1) The corporate administrative contracting officer and individual administrative contracting officers shall jointly decide how to conduct negotiations. Follow the procedures at PGI 242.705-1(a)(1) when negotiations are conducted on a coordinated basis.

[70 FR 67920, Nov. 9, 2005]

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242.705-2 Auditor determination procedure.

(b) *Procedures.* (2)(iii) When agreement cannot be reached with the contractor, the auditor will issue a DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, in addition to the advisory report to the administrative contracting officer.

[56 FR 36437, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995; 64 FR 61030, Nov. 9, 1999; 70 FR 67920, Nov. 9, 2005]

242.771 Independent research and development and bid and proposal costs.

242.771-1 Scope.

This section implements 10 U.S.C. 2372, Independent research and development and bid and proposal costs: Payments to contractors.

[64 FR 8730, Feb. 23, 1999]

242.771-2 Policy.

Defense contractors are encouraged to engage in independent research and development and bid and proposal (IR&D/B&P) activities of potential interest to DoD, including activities cited in 231.205-18(c)(iii)(B).

[64 FR 8730, Feb. 23, 1999]

242.771-3 Responsibilities.

(a) The cognizant administrative contracting officer (ACO) or corporate ACO shall—

(1) Determine cost allowability of IR&D/B&P costs as set forth in 231.205-18 and FAR 31.205-18.

(2) Determine whether IR&D/B&P projects performed by major contractors (see 231.205-18(a)) are of potential interest to DoD; and

(3) Notify the contractor promptly of any IR&D/B&P activities that are not of potential interest to DoD.

(b) The Defense Contract Management Agency or the military department responsible for performing contract administration functions is responsible for providing the Defense Contract Audit Agency (DCAA) with IR&D/B&P statistical information, as necessary, to assist DCAA in the annual report required by paragraph (c) of this subsection.

(c) DCAA is responsible for submitting an annual report to the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics (OUSD (AT&L))) setting forth required statistical information relating to the DoD-wide IR&D/B&P program.

(d) The Director, Defense Research and Engineering (OUSD(AT&L)DDR&E), is responsible for establishing a regular method for communication—

(1) From DoD to contractors, of timely and comprehensive information regarding planned or expected DoD future needs; and

(2) From contractors to DoD, of brief technical descriptions of contractor IR&D projects.

[64 FR 8730, Feb. 23, 1999, as amended at 65 FR 39706, June 27, 2000; 65 FR 52953, Aug. 31, 2000; 68 FR 7440, Feb. 14, 2003]

Subpart 242.8—Disallowance of Costs

242.803 Disallowing costs after incurrence.

(a) *Contracting officer receipt of vouchers.* Contracting officer receipt of vouchers is applicable only for cost-reimbursement contracts with the Canadian Commercial Corporation. See 225.870-5(b) for invoice procedures.

(b) *Auditor receipt of voucher.* (i) The contract auditor is the authorized representative of the contracting officer for—

(A) Receiving vouchers from contractors;

(B) Approving interim vouchers for provisional payment (this includes approving the fee portion of vouchers in accordance with the contract schedule and administrative contracting officer instructions) and sending them to the disbursing office;

(C) Authorizing direct submission of interim vouchers for provisional payment to the disbursing office for contractors with approved billing systems;

(D) Reviewing completion/final vouchers and sending them to the administrative contracting officer; and

(E) Issuing DCAA Forms 1, Notice of Contract Costs Suspended and/or Dis-

approved, to deduct costs where allowability is questionable.

(ii) The administrative contracting officer—

(A) Approves all completion/final vouchers and sends them to the disbursing officer; and

(B) May issue or direct the issuance of DCAA Form 1 on any cost when there is reason to believe it should be suspended or disallowed.

[61 FR 25409, May 21, 1996, as amended at 61 FR 25409, May 21, 1996; 61 FR 50454, Sept. 26, 1996]

Subpart 242.11—Production Surveillance and Reporting

242.1104 Surveillance requirements.

(a) The cognizant contract administration office (CAO)—

(i) Shall perform production surveillance on all contractors that have Criticality Designator A or B contracts;

(ii) Shall not perform production surveillance on contractors that have only Criticality Designator C contracts, unless specifically requested by the contracting officer; and

(iii) When production surveillance is required, shall—

(A) Conduct a periodic risk assessment of the contractor to determine the degree of production surveillance needed for all contracts awarded to that contractor. The risk assessment shall consider information provided by the contractor and the contracting officer;

(B) Develop a production surveillance plan based on the risk level determined during a risk assessment;

(C) Modify the production surveillance plan to incorporate any special surveillance requirements for individual contracts, including any requirements identified by the contracting officer; and

(D) Monitor contract progress and identify potential contract delinquencies in accordance with the production surveillance plan. Contracts with Criticality Designator C are exempt from this requirement unless specifically requested by the contracting officer.

[69 FR 31912, June 8, 2004]

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242.1105 Assignment of criticality designator.

(1) Contracting officers shall—

(i) Assign criticality designator A to items with a priority 01, 02, 03, or 06 (if emergency supply of clothing) under DoD 4140.1-R, DoD Materiel Management Regulation; and

(ii) Ordinarily assign criticality designator C to unilateral purchase orders.

(2) Only the contracting officer shall change the assigned designator.

[56 FR 36437, July 31, 1991, as amended at 67 FR 61516, Oct. 1, 2002]

242.1106 Reporting requirements.

(a) See DoDI 5000.2, Operation of the Defense Acquisition System, for reporting requirements for defense technology projects and acquisition programs.

(b)(i) Within four working days after receipt of the contractor's report, the CAO must provide the report and any required comments to the contracting officer and, unless otherwise specified in the contract, the inventory control manager.

(ii) If the contractor's report indicates that the contract is on schedule and the CAO agrees, the CAO does not need to add further comments. In all other cases, the CAO must add comments and recommend a course of action.

[65 FR 39723, June 27, 2000, as amended at 70 FR 14575, Mar. 23, 2005; 73 FR 21848, Apr. 23, 2008]

242.1107 Contract clause.

(b) When using the clause at FAR 52.242-2, include the following instructions in the contract schedule—

(i) Frequency and timing of reporting (normally 5 working days after each reporting period);

(ii) Contract line items, exhibits, or exhibit line items requiring reports;

(iii) Offices (with addressees/codes) where reports should be sent (always include the contracting office and contract administration office); and

(iv) The following requirements for report content—

(A) The problem, actual or potential, and its cause;

(B) Items and quantities affected;

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(C) When the delinquency started or will start;

(D) Actions taken to overcome the delinquency;

(E) Estimated recovery date; and/or

(F) Proposed schedule revision.

Subpart 242.12—Novation and Change-of-Name Agreements

242.1203 Processing agreements.

The responsible contracting officer shall process and execute novation and change-of-name agreements in accordance with the procedures at PGI 242.1203.

[70 FR 67920, Nov. 9, 2005]

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

(i) When a novation agreement is required and the transferee intends to incur restructuring costs as defined at 213.205-70, 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(i):

“(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 the requirements included in DFARS 231.205-70 are met. 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 restructuring projects and the period to which such costs shall be assigned.”

[60 FR 1749, Jan. 5, 1995, as amended at 61 FR 16882, Apr. 18, 1996; 65 FR 63805, Oct. 25, 2000]

Subpart 242.14—Traffic and Transportation Management

242.1402 Volume movements within the contiguous United States.

(a)(2) In reporting planned and actual volume movements—

(A) The contracting officer—

(1) Provides production schedules and planned destinations to the servicing transportation office as soon as the information is available to permit the transportation office to determine if volume movements will occur. If a volume movement appears likely, the transportation office reports a planned volume movement in accordance with DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 201.

(2) Sends a copy of the volume movement report to the contract administration office.

(B) The contract administration office submits a volume movement report when—

(1) Significant changes are made to the movement requirements; or

(2) The contracting office did not submit a report.

(C) Include the destination country, freight forwarder, and, if known, port of embarkation on volume movement reports for foreign military sale shipments.

[56 FR 36437, July 31, 1991, as amended at 65 FR 50143, Aug. 17, 2000]

242.1403 Shipping documents covering f.o.b. origin shipments.

(a)(i) Procedures for the contractor to obtain Government bills of lading are in the clause at 252.242-7003, Application for U.S. Government Shipping Documentation/Instructions.

(ii) The term “commercial bills of lading” includes the use of any commercial form or procedure.

[56 FR 36437, July 31, 1991, as amended at 65 FR 50144, Aug. 17, 2000]

242.1404 Shipments by parcel post or other classes of mail.

242.1404-1 Parcel post eligible shipments.

(b)(1) See DoD 4525.8-M, DoD Official Mail Manual.

[56 FR 67220, Dec. 30, 1991]

242.1404-2 Contract clauses.

When using FAR 52.213-1, Fast Payment Procedures, do not use FAR clauses 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail.

242.1404-2-70 Additional clause.

Use the clause at 252.242-7003, Application for U.S. Government Shipping Documentation/Instructions, when using the clause at FAR 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or FAR 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail.

[62 FR 34127, June 24, 1997]

242.1405 Discrepancies incident to shipment of supplies.

(a) See also DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 210, for discrepancy procedures.

[65 FR 50144, Aug. 17, 2000]

242.1470 Demurrage and detention charges.

(a) Carrier demurrage rules usually allow for a “free time” for loading or unloading cars or for any other purpose, and impose charges for cars held beyond this period. If a contractor detains railroad cars beyond the “free time,” the contractor has to pay the carrier’s published tariff charges for demurrage.

(b) Detention results when a shipper or consignee holds motor carrier equipment beyond a reasonable period for loading, unloading, forwarding directions, or any other reason. Detention rules and charges are not uniform; they

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are published in individual carrier or agency tenders.

[56 FR 36437, July 31, 1991, as amended at 65 FR 50144, Aug. 17, 2000]

Subpart 242.70 [Reserved]

Subpart 242.71—Voluntary Refunds

242.7100 General.

A voluntary refund is a payment or credit (adjustment under one or more contracts or subcontracts) to the Government from a contractor or subcontractor that is not required by any contractual or other legal obligation. Follow the procedures at PGI 242.7100 for voluntary refunds.

[70 FR 67920, Nov. 9, 2005]

Subpart 242.72—Contractor Material Management and Accounting System

SOURCE: 65 FR 77833, Dec. 13, 2000, unless otherwise noted.

242.7200 Scope of subpart.

(a) This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

(b) The policies, procedures, and standards in this subpart—

(1) Apply only when the contractor has contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and are either—

(i) Cost-reimbursement contracts; or
(ii) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract; and

(2) Do not apply to small businesses, educational institutions, or nonprofit organizations.

242.7201 Definitions.

Material management and accounting system and *valid time-phased requirements* are defined in the clause at 252.242-7004, Material Management and Accounting System.

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242.7202 Policy.

DoD policy is for its contractors to have an MMAS that conforms to the standards in paragraph (e) of the clause at 252.242-7004, so that the system—

(a) Reasonably forecasts material requirements;

(b) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(c) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

242.7203 Review procedures.

(a) *Criteria for conducting reviews.* Conduct an MMAS review when—

(1) A contractor has \$40 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(2) The administrative contracting officer (ACO), with advice from the auditor, determines an MMAS review is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Qualifying sales.* Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(c) *System evaluation.* Cognizant contract administration and audit activities must jointly establish and manage programs for evaluating the MMAS systems of contractors and must annually establish a schedule of contractors to be reviewed. In addition, they must—

(1) Conduct reviews as a team effort.

(i) the ACO—

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (*e.g.*, industrial specialist, engineer, property administrator, auditor).

(ii) The team leader—

(A) Advises the ACO and the contractor of findings during the review and at the exit conference; and

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(iii) The contract auditor—

(A) Participates as a member of the MMAS team or serves as the team leader (see paragraph (c)(1)(i) of this section); and

(B) Issues an audit report for incorporation into the MMAS report based on an analysis of the contractor's books, accounting records, and other related data.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare the MMAS report.

(d) *Disposition of evaluation team findings.* The team leader must document the evaluation team findings and recommendations in the MMAS report to the ACO. If there are any significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) *Initial notification to the contractor.* The ACO must provide a copy of the report to the contractor immediately upon receipt from the team leader.

(i) The ACO must notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are any deficiencies, the ACO must request the contractor to provide a written response within 30 days (or such other date as may be mutually agreed to by the ACO and the contractor) from the date of initial notification.

(iii) If the contractor agrees with the report, the contractor has 60 days (or such other date as may be mutually agreed to by the ACO and the contractor) to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(iv) If the contractor disagrees with the report, the contractor must provide rationale in the written response.

(2) *Evaluation of the contractor's response.* The ACO, in consultation with the auditor, evaluates the contractor's response and determines whether—

(i) The MMAS contains any deficiencies and, if so, any corrective action is needed;

(ii) The deficiencies are significant enough to result in the reduction of progress payments or disallowance of costs on vouchers; and

(iii) Proposed corrective actions (if the contractor submitted them) are adequate to correct the deficiencies.

(3) *Notification of ACO determination.*

(i) The ACO must notify the contractor in writing (copy to auditor and functional specialists) of—

(A) Any deficiencies and the necessary corrective action;

(B) Acceptability of the contractor's corrective action plan (if one was submitted) or the need for a corrective action plan; and

(C) Any decision to reduce progress payments or disallow costs on vouchers.

(ii) The Government does not approve or disapprove the contractor's MMAS. ACO notifications should avoid any such implications.

(iii) From the time the ACO determines that there are any significant MMAS deficiencies until the time the deficiencies are corrected, all field pricing reports for that contractor must contain a recommendation relating to proposed adjustments necessary to protect the Government's interests.

(iv) The ACO should consider the effect of any significant MMAS deficiencies in reviews of the contractor's estimating system (see 215.407-5).

(4) *Reductions or disallowances.* (i) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503-6) and/or disallow costs on vouchers (in accordance with FAR 42.803). The reductions or disallowances must remain in effect until the ACO determines that—

(A) The deficiencies are corrected; or

(B) The amount of the impact is immaterial.

(ii) The maximum payment adjustment is the adverse material impact to the Government as specified in the MMAS report. The ACO should use the maximum adjustment when the contractor did not submit a corrective action plan with its response, or when the plan is unacceptable. In other cases,

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the ACO should consider the quality of the contractor's corrective action plan in determining the appropriate percentage.

(iii) As the contractor implements its accepted corrective action plan, the ACO should reinstate a portion of withheld amounts commensurate with the contractor's progress in making corrections. However, the ACO must not fully reinstate withheld amounts until the contractor corrects the deficiencies, or until the impact of the deficiencies become immaterial.

(5) *Monitoring contractor's corrective action.* The ACO and the auditor must monitor the contractor's progress in correcting deficiencies. When the ACO determines the deficiencies have been corrected, the ACO must notify the contractor in writing. If the contractor fails to make adequate progress, the ACO must take further action. The ACO may—

- (i) Elevate the issue to higher level management;
- (ii) Further reduce progress payments and/or disallow costs on vouchers;
- (iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system; and
- (iv) Issue cautions to contracting activities regarding the award of future contracts.

242.7204 Contract clause.

Use the clause at 252.242-7004, Material Management and Accounting System, in all solicitations and contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and—

- (a) Are not awarded to small businesses, educational institutions, or nonprofit organizations; and
- (b) Are either—
 - (1) Cost-reimbursement contracts; or
 - (2) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract.

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Subpart 242.73—Contractor Insurance/Pension Review

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the allowability of insurance/pension costs in Government contracts and for determining the need for a Contractor/Insurance Pension Review (CIPR). Defense Contract Management Agency (DCMA) insurance/pension specialists and Defense Contract Audit Agency (DCAA) auditors assist ACOs in making these determinations, conduct CIPRs when needed, and perform other routine audits as authorized under FAR 42.705 and 52.215-2. A CIPR is a DCMA/DCAA joint review that—

- (1) Provides an in-depth evaluation of a contractor's—
 - (i) Insurance programs;
 - (ii) Pension plans;
 - (iii) Other deferred compensation plans; and
 - (iv) Related policies, procedures, practices, and costs; or
 - (2) Concentrates on specific areas of the contractor's insurance programs, pension plans, or other deferred compensation plans.
- (b) DCMA is the DoD Executive Agency for the performance of all CIPRs.

(c) DCAA is the DoD agency designated for the performance of contract audit responsibilities related to Cost Accounting Standards administration as described in FAR Subparts 30.2 and 30.6 as they relate to a contractor's insurance programs, pension plans, and other deferred compensation plans.

[71 FR 9273, Feb. 23, 2006]

242.7302 Requirements.

Follow the procedures at PGI 242.7302 to determine if a CIPR is needed.

[71 FR 9273, Feb. 23, 2006]

242.7303 Responsibilities.

Follow the procedures at PGI 242.7303 when conducting a CIPR.

[71 FR 9273, Feb. 23, 2006]

Subpart 242.74—Technical Representation at Contractor Facilities

242.7400 General.

(a) Program managers may conclude that they need technical representation in contractor facilities to perform non-contract administration service (CAS) technical duties and to provide liaison, guidance, and assistance on systems and programs. In these cases, the program manager may assign technical representatives under the procedures in 242.7401.

(b) A technical representative is a representative of a DoD program, project, or system office performing non-CAS technical duties at or near a contractor facility. A technical representative is not—

(1) A representative of a contract administration or contract audit component; or

(2) A contracting officer's representative (see 201.602).

[70 FR 67921, Nov. 9, 2005]

242.7401 Procedures.

When the program, project, or system manager determines that a technical representative is required, follow the procedures at PGI 242.7401.

[70 FR 67921, Nov. 9, 2005]

Subpart 242.75—Contractor Accounting Systems and Related Controls

242.7501 Policy.

Contractors receiving cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, shall maintain an accounting system and related internal controls throughout contract performance which provide reasonable assurance that—

(a) Applicable laws and regulations are complied with;

(b) The accounting system and cost data are reliable;

(c) Risk of misallocations and mischarges are minimized; and

(d) Contract allocations and charges are consistent with invoice procedures.

[60 FR 29500, June 5, 1995. Redesignated at 70 FR 67921, Nov. 7, 2005]

242.7502 Procedures.

(a) Upon receipt of an audit report identifying significant accounting system or related internal control deficiencies, the ACO will—

(1) Provide a copy of the report to the contractor and allow 30 days, or a reasonable extension, for the contractor to respond;

(2) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(3) If the contractor disagrees, the contractor should provide rationale in its written response.

(4) The ACO will consider whether it is appropriate to suspend a percentage of progress payments or reimbursement of costs proportionate to the estimated cost risk to the Government, considering audit reports or other relevant input, until the contractor submits a corrective action plan acceptable to the ACO and corrects the deficiencies. (See FAR 32.503-6 (a) and (b) and FAR 42.302(a)(7)).

[60 FR 29500, June 5, 1995. Redesignated at 70 FR 67921, Nov. 7, 2005]

PART 243—CONTRACT MODIFICATIONS

Subpart 243.1—General

Sec.

243.107-70 Notification of substantial impact on employment.

243.170 Identification of foreign military sale (FMS) requirements.

243.171 Obligation or deobligation of funds.

Subpart 243.2—Change Orders

243.204 Administration.

243.204-70 Certification of requests for equitable adjustment.

243.205 Contract clauses.

243.205-70 Pricing of contract modifications.

243.205-71 Requests for equitable adjustment.

243.107-70

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36446, July 31, 1991, unless otherwise noted.

Subpart 243.1—General

243.107-70 Notification of substantial impact on employment.

The Secretary of Defense is required to notify the Secretary of Labor if a modification of a major defense contract or subcontract will have a substantial impact on employment. The clause prescribed at 249.7003(c) requires that the contractor notify its employees, its subcontractors, and State and local officials when a contract modification will have a substantial impact on employment.

[56 FR 67220, Dec. 30, 1991, as amended at 70 FR 67922, Nov. 9, 2005]

243.170 Identification of foreign military sale (FMS) requirements.

Follow the procedures at PGI 243.170 for identifying contract modifications that add FMS requirements.

[70 FR 67922, Nov. 9, 2005]

243.171 Obligation or deobligation of funds.

Follow the procedures at PGI 243.171 when obligating or deobligating funds.

[70 FR 67922, Nov. 9, 2005]

Subpart 243.2—Change Orders

243.204 Administration.

Follow the procedures at PGI 243.204 for review and definitization of change orders.

[70 FR 67922, Nov. 9, 2005]

243.204-70 Certification of requests for equitable adjustment.

(a) A request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold may not be paid unless the contract certifies the request in accordance with the clause at 252.243-7002.

(b) To determine if the dollar threshold for requiring certification is met, add together the absolute value of each cost increase and each cost decrease. See PGI 243.204-70(b) for an example.

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(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.

[62 FR 37147, July 11, 1997, as amended at 63 FR 11541, Mar. 9, 1998; 70 FR 67922, Nov. 9, 2005]

243.205 Contract clauses.

243.205-70 Pricing of contract modifications.

Use the clause at 252.243-7001, Pricing of Contract Modifications, in solicitations and contracts when anticipating and using a fixed price type contract.

[56 FR 36446, July 31, 1991. Redesignated at 66 FR 49865, Oct. 1, 2001]

243.205-71 Requests for equitable adjustment.

Use the clause at 252.243-7002, Requests for Equitable Adjustment, in solicitations and contracts estimated to exceed the simplified acquisition threshold.

[63 FR 17124, Apr. 8, 1998. Redesignated at 66 FR 49865, Oct. 1, 2001]

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 244.2—Consent to Subcontracts

Sec.

244.202 Contracting officer's evaluation.

244.202-2 Considerations.

Subpart 244.3—Contractors' Purchasing Systems Reviews

244.301 Objective.

244.303 Extent of review.

244.304 Surveillance.

244.305 Granting, withholding, or withdrawing approval.

244.305-70 Granting, withholding, or withdrawing approval.

Subpart 244.4—Subcontracts for Commercial Items and Commercial Components

244.402 Policy requirements.

244.403 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36447, July 31, 1991, unless otherwise noted.

Subpart 244.2—Consent to Subcontracts

244.202 Contracting officer’s evaluation.

244.202-2 Considerations.

(a) Where other than lowest price is the basis for subcontractor selection, has the contractor adequately substantiated the selection as offering the greatest value to the Government?

[60 FR 29501, June 5, 1995]

Subpart 244.3—Contractors’ Purchasing Systems Reviews

244.301 Objective.

The administrative contracting officer (ACO) is solely responsible for initiating reviews of the contractor’s purchasing systems, but other organizations may request that the ACO initiate such reviews.

[70 FR 67922, Nov. 9, 2005]

244.303 Extent of review.

Also review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of “commercial item” in FAR 2.101.

[67 FR 38023, May 31, 2002]

244.304 Surveillance.

(b) The ACO, or the purchasing system analyst (PSA) with the concurrence of the ACO, may initiate a special review of specific weaknesses in the contractor’s purchasing system. See PGI 244.304(b) for guidance on how weaknesses may arise and may be discovered.

[70 FR 67922, Nov. 9, 2005, as amended at 73 FR 4114, Jan. 24, 2008]

244.305 Granting, withholding, or withdrawing approval.

244.305-70 Granting, withholding, or withdrawing approval.

Use this subsection instead of FAR 44.305-2(c) and 44.305-3(b).

(a) At the completion of the in-plant portion of the review, the ACO shall hold an exit conference with the contractor. At the conference, the ACO should—

(1) Present the review team’s recommendations, signed by the ACO;

(2) Request the contractor submit its plan for correcting deficiencies or making improvements within 15 days; and

(3) Not comment on the pending or planned decision to grant or withhold approval of the contractor’s purchasing system.

(b) The PSA should submit the complete report to the ACO, or any department or agency established review board, within ten days after receipt of the contractor’s response under paragraph (a)(2) of this subsection.

(c) The ACO should completely review the report and consider the contractor’s response before making a decision on granting, withholding, or withdrawing purchasing system approval. The ACO shall notify the contractor of the decision within ten days after receipt of the report with a copy of the decision to the PSA and the contracting office, when requested.

(d) When a contractor advises that it has corrected deficiencies that led the ACO to withhold or withdraw the purchasing system approval, the ACO—

(1) Shall request the PSA to verify that the contractor has—

(i) Corrected the deficiencies; and

(ii) Implemented any other ACO recommendations.

(2) Should ask for a review of purchasing policies and procedures issued since the last review.

Subpart 244.4—Subcontracts for Commercial Items and Commercial Components

244.402 Policy requirements.

(a) Contractors shall determine whether a particular subcontract item meets the definition of a commercial item. This requirement does not affect

244.403

the contracting officer's responsibilities or determinations made under FAR 15.403-1(c)(3). Contractors are expected to exercise reasonable business judgment in making such determinations, consistent with the guidelines for conducting market research in FAR part 10.

[67 FR 38023, May 31, 2002]

244.403 Contract clause.

Use the clause at 252.244-7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts), in solicitations and contracts for supplies or services other than commercial items, that contain any of the following clauses:

- (1) 252.225-7014 Preference for Domestic Specialty Metals, Alternate I.
- (2) 252.246-7003 Notification of Potential Safety Issues.
- (3) 252.247-7023 Transportation of Supplies by Sea.
- (4) 252.247-7024 Notification of Transportation of Supplies by Sea.

[72 FR 2636, Jan. 22, 2006]

PART 245—GOVERNMENT PROPERTY

Subpart 245.1—General

Sec.

- 245.101 Definitions.
- 245.102 Policy.
- 245.105 Contractor's property management system compliance.
- 245.107-70 Contract clause.

Subpart 245.3—Authorizing the Use and Rental of Government Property

- 245.302 Contracts with foreign governments or international organizations.

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

- 245.601 Definitions.
- 245.603 Disposal methods.
- 245.603-70 Contractor performance of plant clearance duties.
- 245.603-71 Disposal of contractor inventory for NATO cooperative projects.
- 245.604 Restrictions on purchase or retention of contractor inventory.
- 245.606 Inventory schedules.
- 245.606-3 Acceptance.
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- 245.606-70 Instructions for completing DD Form 1342, DoD Property Record.
- 245.607 Scrap.
- 245.607-1 General.
- 245.607-2 Recovering precious metals.
- 245.607-70 Scrap warranty.
- 245.608 Screening of contractor inventory.
- 245.608-1 General.
- 245.608-2 Standard screening.
- 245.608-5 Special items screening.
- 245.608-7 Reimbursement of cost for transfer of contractor inventory.
- 245.608-70 Contractor inventory redistribution system (CIRS).
- 245.608-71 Screening industrial plant equipment.
- 245.608-72 Screening excess automatic data processing equipment (ADPE).
- 245.609 Donations.
- 245.610 Sale of surplus contractor inventory.
- 245.610-1 Responsibility.
- 245.610-3 Proceeds of sale.
- 245.610-4 Contractor inventory in foreign countries.
- 245.612 Removal and storage.
- 245.612-3 Special storage at the Government's expense.
- 245.613 Property disposal determinations.

Subpart 245.70—Appointment of Property Administrators and Plant Clearance Officers

- 245.7001 Selection, appointment, and termination.
- 245.7002 Duties and responsibilities of plant clearance officers.

Subpart 245.71—Plant Clearance Forms

- 245.7101 Forms.
- 245.7101-1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).
- 245.7101-2 DD Form 1149, Requisition and Invoice Shipping Document.
- 245.7101-3 DD Form 1348-1, DoD Single Line Item Release/Receipt Document.
- 245.7101-4 DD Form 1640, Request for Plant Clearance.

Subpart 245.72—Special Instructions

- 245.7201 Performing inventory verification and determination of allocability.
- 245.7202 Establishing a plant clearance case.
- 245.7203 Assigning plant clearance case numbers.
- 245.7204 Preparing inventory disposal report.
- 245.7205 Reporting excess and surplus contractor inventory.
- 245.7206 Transmitting DD Form 1342, DoD Property Record.

Subpart 245.73—Sale of Surplus Contractor Inventory

- 245.7301 Policy.
- 245.7302 Competitive sales.
- 245.7302-1 Property descriptions.
- 245.7302-2 Lotting.
- 245.7302-3 Alternate bids.
- 245.7302-4 Basis for sale.
- 245.7302-5 Mailing lists.
- 245.7303 Formal bid procedures.
- 245.7304 Informal bid procedures.
- 245.7305 Sale approval and award.
- 245.7306 Sales services.
- 245.7307 Non-competitive sales.
- 245.7307-1 General.
- 245.7307-2 Justification.
- 245.7308 Antitrust notification.
- 245.7309 Mandatory terms and conditions—formal invitations.
- 245.7309-1 Inspection.
- 245.7309-2 Condition and location of property.
- 245.7309-3 Consideration of bids.
- 245.7309-4 Payment.
- 245.7309-5 Title.
- 245.7309-6 Delivery and removal of property.
- 245.7309-7 Default.
- 245.7309-8 Variations in quantity or weight.
- 245.7309-9 Weighing.
- 245.7309-10 Risk of loss.
- 245.7309-11 Liability.
- 245.7309-12 Oral statements.
- 245.7309-13 Eligibility of bidders.
- 245.7309-14 Claims liability.
- 245.7310 Special term and conditions.
- 245.7310-1 Demilitarization.
- 245.7310-2 Performance bond.
- 245.7310-3 Liability and insurance.
- 245.7310-4 Dangerous property.
- 245.7310-5 Controlled substances.
- 245.7310-6 Radioactive material.
- 245.7310-7 Scrap warranty.
- 245.7310-8 Antitrust clearance.
- 245.7311 Optional conditions.
- 245.7311-1 Sales and use tax liability.
- 245.7311-2 Safety, security, and fire regulations.
- 245.7311-3 Bid deposits.
- 245.7311-4 Other special conditions.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36448, July 31, 1991, unless otherwise noted.

Subpart 245.1—General

SOURCE: 74 FR 37647, July 29, 2009, unless otherwise noted.

245.101 Definitions.

Mapping, charting, and geodesy property, as used in this subpart, is defined in the clause at 252.245-7000, Govern-

ment-Furnished Mapping, Charting, and Geodesy Property.

245.102 Policy.

(1) *Mapping, charting, and geodesy property*. All Government-furnished mapping, charting, and geodesy (MC&G) property is under the control of the Director, National Geospatial Intelligence Agency.

(i) MC&G property shall not be duplicated, copied, or otherwise reproduced for purposes other than those necessary for contract performance.

(ii) Upon completion of contract performance, the contracting officer shall—

(A) Contact the Director, National Geospatial Intelligence Agency, 4600 Sangamore Road, Bethesda, MD 20816-5003, for disposition instructions;

(B) Direct the contractor to destroy or return all Government-furnished MC&G property not consumed during contract performance; and

(C) Specify the destination and means of shipment for property to be returned to the Government.

(2) *Government supply sources*. When a contractor will be responsible for preparing requisitioning documentation to acquire Government-furnished property from Government supply sources, include in the contract the requirement to prepare the documentation in accordance with DoD 4000.25-1-M, Military Standard Requisitioning and Issue Procedures (MILSTRIP). Copies are available from the address cited at PGI 251.102.

(3) *Acquisition and management of industrial resources*. See Subpart 237.75 for policy relating to facilities projects.

245.105 Contractor’s property management system compliance.

The assigned property administrator shall perform property administration in accordance with department or agency procedures.

245.107-70 Contract clause.

Use the clause at 252.245-7000, Government-Furnished Mapping, Charting, and Geodesy Property, in solicitations and contracts when mapping, charting, and geodesy property is to be furnished.

Subpart 245.3—Authorizing the Use and Rental of Government Property

SOURCE: 74 FR 37647, July 29, 2009, unless otherwise noted.

245.302 Contracts with foreign governments or international organizations.

(1) *General.*

(i) *Approval.* A contractor may use Government property on work for foreign governments and international organizations only when approved in writing by the contracting officer having cognizance of the property. The contracting officer may grant approval, provided—

(A) The use will not interfere with foreseeable requirements of the United States;

(B) The work is undertaken as a DoD foreign military sale; or

(C) For a direct commercial sale, the foreign country or international organization would be authorized to contract with the department concerned under the Arms Export Control Act.

(ii) *Use charges.*

(A) The Use and Charges clause is applicable on direct commercial sales to foreign governments or international organizations.

(B) When a particular foreign government or international organization has funded the acquisition of property, do not assess the foreign government or international organization rental charges or nonrecurring recoupments for the use of such property.

(2) *Special tooling and special test equipment.*

(i) DoD normally recovers a fair share of nonrecurring costs of special tooling and special test equipment by including these costs in its calculation of the nonrecurring cost recoupment charge when major defense equipment is sold by foreign military sales or direct commercial sales to foreign governments or international organizations. “Major defense equipment” is defined in DoD Directive 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Items, as any item of significant military equipment on the United States Munitions List having a nonrecurring research, development,

test, and evaluation cost of more than \$50 million or a total production cost of more than \$200 million.

(ii) When the cost thresholds in paragraph (2)(i) of this section are not met, the contracting officer shall assess rental charges for use of special tooling and special test equipment pursuant to the Use and Charges clause if administratively practicable.

(3) *Waivers.*

(i) Rental charges for use of U.S. production and research property on commercial sales transactions to the Government of Canada are waived for all commercial contracts. This waiver is based on an understanding wherein the Government of Canada has agreed to waive its rental charges.

(ii) Requests for waiver or reduction of charges for the use of Government property on work for foreign governments or international organizations shall be submitted to the contracting officer, who shall refer the matter through contracting channels. In response to these requests, approvals may be granted only by the Director, Defense Security Cooperation Agency, for particular sales that are consistent with paragraph (1)(i)(C) of this section.

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.601 Definitions.

(1) *Controlled substances* means—

(i) Narcotic, depressant, stimulant, or hallucinogenic drug or substance;

(ii) Any other drug or substance controlled under Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(iii) A drug or substance required to be controlled by international treaty, convention or protocol.

(2) *Demilitarization* means the act of destroying the offensive or defensive characteristics of equipment or material to prevent its further military or lethal use.

(3) *Production scrap* means material left over from the normal production process that has only remelting or reprocessing value, e.g., textile and metal clippings, borings, and faulty castings and forgings.

(4) *Serviceable or usable property* means property that has a potential for use or sale value “as is” or with minor repairs or alterations; only property in Federal Condition Codes A1, A2, A4, A5, B1, B2, B4, B5, F7, or F8.

245.603 Disposal methods.

245.603-70 Contractor performance of plant clearance duties.

(a) *Authorization.* (1) Contract administration offices (CAOs) may, with head of the contracting activity approval and contractor concurrence, authorize selected contractors to perform certain plant clearance functions if the volume of plant clearance warrants performance by the contractor.

(2) The written authorization shall, as a minimum—

- (i) Designate the contractor as an “accredited contractor”;
- (ii) Identify the plant clearance actions to be performed;
- (iii) State that the Government may cancel part of or all of the authorization to perform plant clearance actions; and
- (iv) Provide for plant clearance officer participation when required.

(b) *Government oversight and assistance.* (1) The contract administration office will ensure regular evaluation of the contractor’s performance of the plant clearance function and any corrective action required.

(2) The plant clearance officer shall—

- (i) Evaluate the adequacy and ensure compliance with contractor procedures;
- (ii) Ensure discrepancies are promptly resolved;
- (iii) Advise the contractor of screening and inventory schedule requirements;
- (iv) Respond to contractor requests to withdraw Government-furnished property from inventory schedules;
- (v) Evaluate physical, quantitative, and technical allocability of contractor inventory prior to disposal using Standard Form 1423, Inventory Verification Survey, as a guide;
- (vi) Direct contractor to delay disposition of nonallocable inventory pending a contracting officer decision;
- (vii) With the contractor’s assistance, establish criteria for review and

approval of selected contractor disposal decisions;

(viii) Complete first endorsement section of DD Form 1640, Request for Plant Clearance, on referrals from plant clearance officers at prime contract administration offices for the disposal of subcontractor inventory; forward inventory schedules to the contractor for processing; and forward completed case file to the referring activity; and

(ix) Work with the contractor, screeners, and buyers to ensure that the Government receives maximum reutilization and disposal proceeds.

(c) *Accredited contractor plant clearance duties.* The accredited contractor shall—

(1) Ensure inventory schedule acceptability. Use DD Form 1637, Notice of Acceptance of Inventory, if desired;

(2) Suspend disposition of property when assets are determined nonallocable (FAR 45.606-3);

(3) Withdraw property from inventory schedules and notify the affected screening activities. Obtain plant clearance officer approval for withdrawal of Government furnished property from inventory schedules (FAR 45.606-4);

(4) Determine method of disposal under established priorities and document disposal decisions and actions;

(5) Assign the automatic release date and the surplus release date;

(6) Initiate prescribed screening and effect resulting transfers and donations;

(7) Account for disposal of all contractor inventory and application of proceeds and submit to the plant clearance officer a Standard Form 1424, Inventory Disposal Report, or equivalent;

(8) Maintain the donable file and release property to eligible donees (FAR 45.609);

(9) Prepare, approve, sign, and maintain official plant clearance files and required forms (245.7101);

(10) Not conduct noncompetitive sales of surplus contractor inventory; and

(11) Notify the plant clearance officer in advance when bidding on property.

[56 FR 36448, July 31, 1991, as amended at 56 FR 67220, Dec. 30, 1991]

245.603-71 Disposal of contractor inventory for NATO cooperative projects.

(a) North Atlantic Treaty Organization (NATO) cooperative project agreements may include disposal provisions of jointly acquired property without regard to any applicable disposal laws of the United States.

(b) Disposal of such property may include a transfer of the U.S. interest in the property to one of the other governments participating in the agreement, or the sale of the property.

(c) Payment for the transfer or sale of any U.S. interest shall be made in accordance with the terms of the project agreement.

245.604 Restrictions on purchase or retention of contractor inventory.

(1) Contractors authorized to sell inventory may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(i) Is a civilian employee of the DoD or the U.S. Coast Guard; or

(ii) Is a member of the armed forces of the United States, including the Coast Guard; and

(iii) Has any functional or supervisory responsibilities for or within the Defense Reutilization and Marketing Program, or for the disposal of contractor inventory.

(2)(i) A contractor's authority to approve a subcontractor's sale, purchase, or retention at less than cost, and the subcontractor's authority to sell, purchase, or retain at less than cost if approved by a higher-tier contractor, does not include authority to approve—

(A) A sale by a subcontractor to the next-higher tier contractor or to an affiliate of such contractor or of the subcontractor; or

(B) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

(ii) The written approval of the plant clearance officer is required for each excluded sale, purchase, or retention at less than cost.

(3) *Demilitarization.* The contractor shall demilitarize contractor inventory possessing offensive or defense characteristics, and not required within the

DoD, in accordance with Defense Demilitarization Manual, DoD 4160.21-M-1. In unusual cases the plant clearance officer may authorize the purchaser to perform the demilitarization; however, the purchaser shall not be granted such authorization if the inventory is dangerous.

(4) *Classified inventory.* Classified contractor inventory shall be disposed of in accordance with applicable security regulations or as directed by the contracting officer.

(5) *Dangerous inventory.* Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards have been provided.

245.606 Inventory schedules.**245.606-3 Acceptance.**

(a) If the schedules are acceptable, the plant clearance officer shall, within 15 days, complete and send the contractor a DD Form 1637, Notice of Acceptance of Inventory.

(b) To assist in verifying inventory allocability, the plant clearance officer shall follow the instructions in 245.7201.

245.606-5 Instructions for preparing and submitting schedules of contractor inventory.

(d) *General instructions for completing forms.* (4) The contractor shall use the following codes together with the disposal codes 1 through 9, X, and S (e.g., A1, F7, SS) to indicate the condition of the property—

A—New, used, repaired, or reconditioned property; serviceable and issuable to all customers without limitations or restrictions; includes material with remaining shelf life of more than six months.

B—New, used, repaired, or reconditioned property; serviceable and issuable or for its intended purpose but restricted from issue to specific units, activities, or geographical areas because of its limited usefulness or short service-life expectancy; includes material and remaining shelf life of three to six months.

F—Economically repairable property which requires repair, overhaul or reconditioning; includes repairable items which are radioactively contaminated.

H—Property which has been determined to be unserviceable and does not meet repair criteria.

S—Property that has no value except for its basic material content.

(e) *Instructions for completing specific forms.—(4) Inventory Schedule D (Special Tooling and Special Test Equipment) (SF 1432).*

(ii) *Description.* For termination inventory included in a settlement proposal, include cost of inventory acquired for performance of the entire contract in column F1 and cost of inventory acquired solely for the terminated portion of the contract in column F2. Cost of inventory acquired for the entire contract must be prorated between the terminated and nonterminated portions.

245.606-70 Instructions for completing DD Form 1342, DoD Property Record.

(a) The contractor shall list excess industrial plant equipment (IPE) on DD Form 1342, DoD Property Record, and submit it to the Government property administrator for review and transmittal to the plant clearance officer. For numerically controlled IPE, the contractor shall prepare and submit DD Form 1342, section VI, (page 2), Numerically Controlled Machine Data.

(b) Upon receipt of the DD Form 1342, the plant clearance officer will—

(1) Designate the 75th day from the date of receipt as the automatic release date (ARD) and the 90th day as the screening completion date (SCD); and

(2) Enter the ARD in Block 24 of the DD Form 1342.

245.607 Scrap.

245.607-1 General.

(a)(i) The contractor may request a pre-inventory scrap determination, made by the plant clearance officer after an on-site survey, if inventory is considered without value except for scrap. If approved, the contractor may make a single descriptive entry on an inventory schedule, generally describ-

ing the property and indicating its approximate total cost. The plant clearance officer will establish a plant clearance case and perform limited screening.

(ii) If the contractor has an approved scrap procedure, routine disposal of production scrap and spoilage is authorized, and a plant clearance case is unnecessary. The contractor may similarly dispose of worn, broken, mutilated, or otherwise rejected parts from overhaul and repair contracts with the approval of the plant clearance officer.

(iii) In addition to segregating scrap to maximize proceeds, the contractor may also consolidate sales of Government and contractor scrap if approved by the plant clearance officer. When a consolidated sale is approved, the plant clearance officer shall waive the scrap warranty required at 245.607-70.

(iv) When a contractor's approved scrap procedure does not require physical segregation of Government and contractor scrap, the plant clearance officer shall ensure the proceeds of scrap sale are equitably distributed.

245.607-2 Recovering precious metals.

(b) Precious metals are silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium.

(i) At the beginning of every fiscal year, the Defense Reutilization and Marketing Service (DRMS) will provide each contract administration office with disposition instructions for certain categories of precious metals-bearing property, including scrap and usable items containing recoverable quantities of these metals. The disposition instructions—

(A) Will remain in effect for the entire fiscal year, unless modified by DRMS; and

(B) Will contain a fund citation to be used when disposition requires shipment of precious metals-bearing property for recovery.

(ii) Plant clearance officers shall obtain disposition instructions for precious metals-bearing property not covered by the annual disposition instructions from the Defense Reutilization and Marketing Service, Attn: DRMS-OC, 74 N. Washington Avenue, Battle Creek, MI 49017-3092.

[59 FR 27674, May 27, 1994]

245.607-70 Scrap warranty.

(a) If the contractor sells its inventory as scrap to anyone, including a holding contractor, the contractor shall include in the sales contract a signed copy of DD Form 1639, Scrap Warranty.

(b) The contracting officer may release the contractor from the terms of the scrap warranty in return for consideration paid to the Government. The consideration will represent the difference between—

(1) The sale price of the scrap; and

(2) A fair and reasonable price for the material if it had been sold for purposes other than scrap.

(c) The contractor shall pay the consideration to the Government and the Government may execute the release even though the contract containing the warranty was not made directly with the Government.

(d) If the scrap is resold to a second buyer, the first buyer shall obtain a scrap warranty from the second buyer. Upon receipt of the second buyer's scrap warranty, the Government will release the first buyer from liability under the original warranty.

245.608 Screening of contractor inventory.**245.608-1 General.**

(a) The plant clearance officer shall arrange for inspection of property at the contractor's plant if requested by a prospective transferee, in such a manner as to avoid interruption of the contractor's operations.

245.608-2 Standard screening.

(b)(1) For the first 30 days, property screening will be limited to the contracting agency and the requiring agency, when they are not the same. The requiring agency shall have priority for retention of listed items.

245.608-5 Special items screening.

(a) *Special test equipment with standard components.* (1) The contractor shall report any excess special test equipment (STE) using SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment). The contractor shall list and describe on the inventory schedule all general-purpose compo-

nents which, if economically severable from the STE, would otherwise be classified as industrial plant equipment (IPE), other plant equipment (OPE), or automatic data processing equipment (ADPE).

(2) The plant clearance officer will perform the initial screening of the composite STE unit.

(A) If the contracting department/agency and the requiring department/agency decline the STE or the standard components or do not approve their transfer to another contract; then,

(B) The plant clearance officer will screen the STE and any severable components with the—

(1) General Services Administration—STE unit, less any standard components, and nonreportable standard components;

(2) Defense Supply Center Richmond—IPE components;

(3) Contractor Inventory Redistribution System—OPE components; and

(4) Defense Information Systems Agency, Chief Information Officer, Defense Automation Resources Management Program Division—ADPE components.

[56 FR 36448, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

245.608-7 Reimbursement of cost for transfer of contractor inventory.

The Defense Logistics Agency will pay for the movement of industrial plant equipment under the direction and control of the Defense Industrial Plant Equipment Center.

245.608-70 Contractor inventory redistribution system (CIRS).

(a) Screen serviceable and usable contractor inventory through CIRS when it—

(1) Is listed on SF 1428, Inventory Schedule B, or SF 1434, Inventory Schedule E; and

(2) Has a national stock number, and line item acquisition value in excess of \$50; or

(3) Has a line item acquisition value in excess of \$1,000 (\$500 for furniture) but no national stock number.

(b) Using Standard Form 120, Report of Excess Personal Property, the plant clearance officer will send two copies of SF 1428 or SF 1434 (or authorized

substitutes) to the Defense Reutilization and Marketing Service (DRMS). DRMS will notify the plant clearance officer of items processed, not accepted, or available for local area screening.

(c) Property subject to CIRS processing will be screened within DoD for 30 days. On the 31st day, unless otherwise specified on SF Form 120, appropriate items not requisitioned by DoD will be reported to the General Services Administration (GSA) for standard Federal agency and donation screening. Examples of items which are not reportable to GSA include usable hazardous cleaners and solvents.

(d) For requisitioned items, DRMS will issue shipping instructions to the plant clearance officer. During the first 45 days of the screening period, the plant clearance officer forwards any requisitions received to DRMS. After 45 days, the plant clearance officer forwards the requisition directly to GSA.

(e) The contractor sends one copy of the shipping document to DRMS when shipment has been made.

(f) Unless directed by the contracting officer, motor vehicles excess to Army and Navy contracts shall not be screened through CIRS.

[56 FR 36448, July 31, 1991, as amended at 60 FR 29501, June 5, 1995]

245.608-71 Screening industrial plant equipment.

(a) *Reporting.* Within 15 days of receipt, the plant clearance officer will forward two copies of the DD Form 1342, DoD Property Record, to the Defense Supply Center Richmond (DSCR), ATTN: JH, 8000 Jefferson Davis Highway, Richmond, VA 23297-5100, for all IPE not condition coded "X" or "S." Process IPE condition coded "X" or "S" in accordance with department or agency procedures.

(b) *Screening*—(1) First 30 days. DSCR will—

(i) Screen excess IPE against all DoD requirements with priority given to requirements of the owning department/agency through the 30th day.

(ii) For items selected, issue shipping instructions containing accounting, funding, transportation, routing recommendations, and preservation instructions.

(2) *31st through 75th day.* (i) DSCR will report excess IPE to GSA on 31st day.

(ii) GSA will—

(A) Approve department/agency requests on first come-first served basis;

(B) Approve and forward transfer orders to the contract administration office; and

(C) Forward copies of approved transfer orders to DSCR.

(3) *76th through 90th day.* GSA will—

(i) Provide for screening for donation;

(ii) Receive, approve and forward donation applications to the contract administration office; and

(iii) Send copies of approved applications to DSCR.

(4) *After 90th day.* If DoD requirement is identified, and item is available, ship item against the requirement unless compelling reasons exist for not shipping item.

(c) The plant clearance officer shall ensure that a copy of the shipping document is submitted to DSCR when IPE is transferred use-to-use or use-to-storage within DoD.

(d) When GSA sells IPE that is excess to ownership but not to DoD requirements, report the sale to DSCR in accordance with department/agency procedures.

[56 FR 36448, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

245.608-72 Screening excess automatic data processing equipment (ADPE).

Report ADPE that is Government-owned or leased by the contractor (with Government purchase option or other interests, including use rights) to the Defense Information Systems Agency, Defense Automation Resources Management Program Division (DARMP). DARMP does all required screening, including General Services Administration screening, for ADPE. (See the Defense Automation Resources Management Manual.)

[62 FR 34128, June 24, 1997]

245.609 Donations.

Agencies may donate, with GSA approval and without expense to the United States, certain material not needed by DoD to certain organizations such as veterans' organizations, soldiers' monument associations, State

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museums, and incorporated educational, not for profit museums. For further guidance, see DoD 4160 .21-M, Defense Materiel Disposition Manual.

[56 FR 36448, July 31, 1991, as amended at 67 FR 61517, Oct. 1, 2002]

245.610 Sale of surplus contractor inventory.

245.610-1 Responsibility.

(a) See Subpart 245.73 for sales of contractor inventory under the control of DoD.

245.610-3 Proceeds of sale.

(1) Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

(i) Credited to the Government as part of the settlement agreement;

(ii) Credited to the price or cost of the contract;

(iii) Applied as otherwise directed by the contracting officer; or

(iv) Forwarded to the plant clearance officer. The plant clearance officer—

(A) Within two days after receipt will send the proceeds and a DD Form 1131, Cash Collection Voucher, to the designated disbursing officer. Identify on the DD Form 1131 the contractor name and contract number; or

(B) For contractors with an approved scrap procedure, will ensure the proceeds are appropriately applied to an overhead account. The plant clearance officer may assign a representative who, with the assistance of the contract auditor, shall periodically validate that proceeds from sales of production generated scrap are collected and applied to the appropriate account.

(2) Except as prescribed in paragraph (1)(iv)(B) of this subsection, the plant clearance officer will not close the plant clearance case until verification is received that the credit has, in fact, been properly applied.

245.610-4 Contractor inventory in foreign countries.

(1) Normally, DRMS disposal activities shall be used to dispose of surplus contractor inventory located outside the United States or Canada. However, if authorized by the contracting officer, a contractor may sell or make

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other disposition of inventory in foreign countries.

(2) Sale or other disposition of foreign inventory by the contractor, including sale to foreign governments, requires that—

(i) The sales contract or other document transferring title include the following certificate:

The Purchaser certifies that the property covered by this contract will be used in (*name of country*). In the event of resale or export by the Purchaser of any of the property acquired at a price in excess of \$1,000 United States dollars or equivalent in other currency at the official exchange rate, the Purchaser agrees to obtain the approval of (*name and address of Contracting Officer*); and

(ii) The contracting officer approve sales contracts, resales, or exports. Approval is permitted only if—

(A) The proposed purchaser's name is not on the list of Parties Excluded from Procurement Programs; and

(B) The sales contract or other document forbids exports by purchasers and subpurchasers to communist areas (FAR 25.702) or other prohibited destinations.

245.612 Removal and storage.

245.612-3 Special storage at the Government's expense.

(a) Before authorizing storage, the contracting officer shall ensure funds are available to pay for the storage and related tasks. In addition, the contracting officer shall ensure an annual review of the need for continued storage at Government expense.

(b) All storage contracts or agreements shall be fully funded and separately priced and shall include all allocable costs.

245.613 Property disposal determinations.

The plant clearance officer shall—

(1) Record the reason for disposing of the property—

(i) As scrap and salvage;

(ii) By abandonment or destruction; and

(iii) By noncompetitive sale;

(2) Use DD Form 1641, Disposal Determination/Approval, to record disposal determinations; and

(3) File the completed form in the plant clearance case file.

Subpart 245.70—Appointment of Property Administrators and Plant Clearance Officers

245.7001 Selection, appointment, and termination.

(a) The head of a contracting activity for the Defense Logistics Agency, or the head of the contract administration office for other departments and agencies shall select, appoint, or terminate (in writing) property administrators and plant clearance officers.

(b) In selecting qualified property administrators and plant clearance officers, the appointment authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

245.7002 Duties and responsibilities of plant clearance officers.

The plant clearance officer shall—

(a) Instruct the contractor on the preparation of inventory schedules;

(b) Make pre-inventory scrap determinations;

(c) Determine the acceptability of inventory schedules and DD Forms 1342, DoD Property Record;

(d) Prepare and maintain plant clearance cases and disposal documents;

(e) Initiate screening and provide technical support to screeners in the selection of assets;

(f) Conduct or arrange for verification of the following—

(1) Quantity, condition, description, and special processing requirements of property listed on inventory schedules;

(2) Technical and quantitative allocability of property;

(g) Ensure the timely shipment or release by the contractor of property selected for transfer and donation;

(h) Determine the appropriate method of disposal for items not selected for Federal agency use or donation and ensure final plant clearance is accomplished;

(i) Evaluate and monitor the contractor's surplus property sales program;

(j) For individual surplus property sales—

- (1) Approve method of sale;
- (2) Ensure the sales offerings meet prescribed requirements;
- (3) Witness bid openings;
- (4) Evaluate bids;

- (5) Approve sale awards;
- (6) Secure anti-trust clearances, as required;
- (7) Recommend the reasonableness of selling expenses; and

(8) Ensure that sales proceeds are collected and property credited;

(k) Monitor ongoing plant clearance actions to ensure delays are minimized and, when necessary, work with the contractor and property administrator to implement improvements;

(l) Evaluate the adequacy of the contractor's property disposal procedures;

(m) Support the property administrator during the compliance analysis of the disposition portion of the contractor's property control procedures;

(n) Report all disposal deficiencies to the property administrator;

(o) Account for all contractor inventory reported for disposal by the contractor and prepare prescribed plant clearance reports; and

(p) Advise and assist the contractor, contracting officer, inventory manager, Federal agencies, and eligible donees in actions related to the proper and timely disposal of contractor inventory.

[57 FR 42632, Sept. 15, 1992]

Subpart 245.71—Plant Clearance Forms

245.7101 Forms.

Use the forms listed below in performance of plant clearance actions.

245.7101-1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).

Use for transfers, donations, and sales of motor vehicles. The contracting officer shall execute the SF 97 and furnish it to the purchaser.

245.7101-2 DD Form 1149, Requisition and Invoice Shipping Document.

Use for transfer and donation of contractor inventory. Donations of industrial plant equipment may be shipped via DD Form 1149. This form may also be used to consolidate contractor inventory redistribution system-directed shipments going to the same destination.

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245.7101-3 DD Form 1348-1, DoD Single Line Item Release/Receipt Document.

Use for shipments of excess industrial plant equipment and contractor inventory redistribution system (CIRS) inventory.

245.7101-4 DD Form 1640, Request for Plant Clearance.

Use to request plant clearance assistance or transfer plant clearance.

Subpart 245.72—Special Instructions

245.7201 Performing inventory verification and determination of allocability.

Use the following guidance for verifying inventory schedules—

(a) *Allocability.* (1) Review contract requirements, delivery schedules, bills of material, and other pertinent material. Determine whether schedules include material which—

(i) Is more than required or reasonably expected to be required for completion of the contract; or

(ii) Might be usable on the current contract, or diverted to other commercial work or Government use.

(2) Review the contractor's—

(i) Recent purchases of similar material;

(ii) Plans for current and scheduled production;

(iii) Stock record entries; and

(iv) Bills of material for similar items.

(b) *Quantity.* Ensure available inventory is in accordance with quantities listed on the inventory schedules. While a complete physical count of each item is not required, perform sufficient checks to ensure accurate quantities.

(c) *Condition.* Ensure the inventory condition matches that shown on the inventory schedules.

245.7202 Establishing a plant clearance case.

(a) Upon receipt of an acceptable inventory schedule or a DD Form 1342, DoD Property Record, the plant clearance officer shall establish a plant clearance case file. The case folder will—

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(1) Identify the case number (see 245.7203);

(2) Indicate the contractor's name and contract number;

(3) Note the word "Termination" if applicable; and

(4) Consolidate all inventory schedules applicable to one contract at the same location, if possible.

(b) As a minimum, include in the plant clearance case file—

(1) Inventory schedules or DD Form 1342, DoD Property Record, annotated to show all disposal actions;

(2) Copies of documents forwarding inventory schedules to the appropriate screening activity;

(3) Shipping or other instructions and correspondence directing disposition of contractor inventory;

(4) Shipping documents transferring inventory;

(5) Inventory verification survey or other documents showing completion of allocability review;

(6) Forms authorizing donation or sale;

(7) Document showing disposition of proceeds from plant clearance actions; and

(8) Any other documents pertinent to disposal actions, including review board cases, antitrust clearances, and inventory disposal reports.

245.7203 Assigning plant clearance case numbers.

(a) Use a three-part, 11-character number constructed as follows:

(1) Part 1: DoD Activity Address Number (6-character alphanumeric code) assigned to the contract administering activity.

(2) Part 2: Locally assigned 4-character consecutive alphanumeric code, beginning each calendar year with 001 continuing as necessary through ZZZ. The fourth digit is the last number of the calendar year.

(3) Part 3: The 11th character is a single letter identifying the department/agency:

C—Army

Q—Navy

E—Air Force

L—Marine Corps

U—Defense Logistics Agency

N—Defense Nuclear Agency

M—National Imagery and Mapping Agency

S—NASA

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D—Other DoD Activities
O—Non-DoD Activities

(b) Record the plant clearance number on DD Form 1635, Plant Clearance Case Register, or mechanized equivalent.

[56 FR 36448, July 31, 1991, as amended at 64 FR 51077, Sept. 21, 1999]

245.7204 Preparing inventory disposal report.

(a) Prepare Standard Form 1424, Inventory Disposal Report, for each completed plant clearance case. For terminated contracts, prepare a consolidated Inventory Disposal Report for each termination docket.

(b) Distribute the report to the contracting officer and to any other activities having an interest in the inventory disposal.

(c) Items on the form are self-explanatory except:

(1) Item 12—Insert net change due to shortages, overages, errors, pricing, or withdrawals, etc. Explain in item 16, Remarks.

(2) Item 14—Insert amount contractor is retaining or purchasing at full acquisition cost (see FAR 45.605-1).

(3) Item 15—Insert acquisition cost and net credit (full credit less approved handling, transportation, and restocking charges for items returned to supplier).

(4) Item 16—Insert the acquisition cost for all transfers accomplished. For lines 16A and 16B, insert subtotals as indicated.

(5) Item 18—Insert acquisition cost and gross proceeds. When approved sale costs are reimbursed from proceeds, show net proceeds in Item 26, Remarks.

(6) Items 20 and 21—Use to identify and report transactions not otherwise identified, such as assets shipped to a Government precious metals reclamation activity, etc. Further explanation may be provided in Item 26, Remarks, if necessary.

(7) Item 25—Totals dispositions must equal amounts on line 13 and must reflect all disposal actions within the case.

(8) Item 26—Show the specific disposition of proceeds reported in Items 14, 15, and 18. Also indicate amounts deleted for specific contractor claims,

or applied as a credit to the claim. Explain any entry requiring explanation.

245.7205 Reporting excess and surplus contractor inventory.

(a) Contract administration offices with plant clearance responsibilities will—

(1) Use DD Form 1638, Report of Excess and Surplus Contractor Inventory, or mechanized equivalent, to report the disposition of contractor inventory. Do not include disposition actions transferred to other offices. Unless headquarters of the administering activity directs otherwise, complete only the column total for each line of this report.

(2) Prepare quarterly reports for periods ending March 31, June 30, September 30, and December 31. Activities preparing manual reports will submit duplicate reports to the headquarters of the administering activity within ten working days after the close of the report period. (Report Control Symbol DD(I&L)(Q)1430).

(b) Items on the report are self-explanatory except:

(1) Line 1—Insert totals from line 7 of the preceding report.

(2) Line 2—Insert net changes due to shortages, overages, errors, or withdrawals (other than purchases or retention at cost).

(3) Line 3—Insert total excess inventory reported by contractors during the report period.

(4) Line 5—Insert total plant clearance cases completed during the report period. Do not report cases as completed until all property is disposed. Acquisition cost must equal line 19.

(5) Line 8—Insert amount retained or withdrawn at full cost.

(6) Line 9—Insert acquisition cost in the "Acquisition Cost" column and insert acquisition cost less handling, transportation, or restocking charges, in the "Proceeds" column.

(7) Line 10—Insert acquisition cost of all transfers completed during the report period. On lines 10A through 10H, insert subtotals representing transfers to the agency indicated. Exclude amounts on lines 10A through 10H when computing line 19 totals.

(8) Line 12—Insert the acquisition cost and gross proceeds. When sale

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costs are reimbursed from proceeds, show net proceeds in remarks.

(9) Lines 14 and 15—Used to identify and report other transactions.

(10) Line 18—Insert Section II totals. Line 18 acquisition cost must equal acquisition cost on line 5.

245.7206 Transmitting DD Form 1342, DoD Property Record.

As a minimum, the plant clearance officer will provide the following information in a letter forwarding DD Forms 1342 to DSCR—

(a) Number of DD Forms 1342 included;

(b) Automatic release date;

(c) Screening complete date;

(d) Contractor's name and address;

(e) Contract number;

(f) Contracting activity that awarded the contract under which the contractor acquired the equipment;

(g) Location of the industrial plant equipment;

(h) Total acquisition cost;

(i) A statement advising that the automatic release date will not be extended;

(j) A note stating that—

(1) Request for transfer or shipment must include appropriate fund citations for packing, crating, and handling charges; and

(2) Government bills of lading (GBLs) should be furnished or, if shipment will be accomplished by other than GBL, DSCR must cite transportation funds; and

(k) The plant clearance officer's signature block.

[56 FR 36448, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

Subpart 245.73—Sale of Surplus Contractor Inventory

245.7301 Policy.

(a) Screening must be completed before any surplus contractor inventory sale.

(b) Except as provided in 245.7307, sales of surplus contractor inventory shall be competitive.

(c) The commander of the contract administration office must approve the

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use of auctions, spot bids, or retail sales.

[56 FR 36448, July 31, 1991, as amended at 63 FR 31938, June 11, 1998]

245.7302 Competitive sales.

245.7302-1 Property descriptions.

(a) Describe the property as “used” or “unused.” Indicate if unused property is still in the manufacturer's original containers. Qualifying statements such as “well-preserved” or “repairs required” are authorized. Do not use condition codes or the terms “new” or “salvage.”

(b) Property descriptions must be accurate and adequate for identification by prospective bidders. Use commercial terminology and original manufacturer and brand name, if applicable.

245.7302-2 Lotting.

(a) Consider combining property into lots when the quantities, value, or nature of the property makes it uneconomical to sell separately.

(b) When lotting is appropriate and economically practical—

(1) Size the lots to encourage bidding by small businesses or individuals;

(2) Lot unused items by make or manufacturer, except when quantities or dollar values are small;

(3) Lot commercially similar items when practicable;

(4) Lot used and unused items separately unless quantities, value, or nature of property makes it uneconomical to sell separately;

(5) Size lots large enough to ensure the selling costs are not disproportionate to the anticipated proceeds.

245.7302-3 Alternate bids.

Offerors may be solicited to bid for groups or for the entire offering by use of the following:

Item _____ (Alternate Bid)

This item consists of all property listed and described in Items _____ to _____, inclusive. Award under this item will be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items _____ to _____, inclusive.

245.7302-4 Basis for sale.

(a) *Unit price basis*—requires the offeror to state the bid price in terms of the quantity or weight generally applied in commercial sales of similar items.

(b) *Lot price basis*—requires the offeror to submit a bid for the entire lot. Use the lot price basis of sale only when property cannot be sold by unit measure or the potential sales return is small.

245.7302-5 Mailing lists.

(a) The plant clearance officer will ensure the contractor solicits a sufficient number of bidders to obtain adequate competition.

(b) When large quantities of property, special commodities, or unusual geographic locations are involved, the plant clearance officer is encouraged to obtain additional listings from: Defense Reutilization and Marketing Service, Attn: DRMS-OCR, 74 North Washington Avenue, Battle Creek, MI 49017-3092.

245.7303 Formal bid procedures.

(a) The contractor will use formal invitations for bid unless the plant clearance officer approves use of informal bid procedures.

(b) The contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect property and prepare bids.

(c) For large sales, the contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(d) In addition to mailing or delivering notice of the proposed sale to prospective bidders, the contractor may, when the results are expected to justify the additional expense—

(1) Display a notice of the proposed sale in appropriate public places.

(2) Publish a sales notice in appropriate trade journals or magazines and local newspapers.

(e) When the acquisition cost of the property to be sold at one time, in one place, is \$250,000 or more, the contractor shall send a notice of the proposed sale to: U.S. Department of Commerce, Commerce Business Daily, Sales Section, P.O. Box 5999, Chicago, IL 60680.

(1) The contractor shall send the CBD notice at least 20 days before bid opening, or date of sale.

(2) CBD notices shall be—

(i) Double spaced and in synopsis form suitable for printing;

(ii) Transmitted by fastest mail available; and

(iii) Contain the following information in the order listed:

(A) Name and address of contractor issuing the invitation for bids;

(B) Name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained;

(C) Description of the property to be sold including, when desired, the total estimated acquisition cost;

(D) The number of the invitation or sale;

(E) The date of the sale or bid opening;

(F) The type of sale, i.e., sealed bid, spot bid, auction; and

(G) The location of the property.

(f) The plant clearance officer or representative will witness the bid opening. Within two working days after bid opening, the contractor will submit to the plant clearance officer two copies of an abstract of all bids, signed by the witnessing Government representative.

245.7304 Informal bid procedures.

(a) Upon approval of the plant clearance officer, the contractor may issue informal invitations to bid (orally, telephonically, or by other informal media), provided—

(1) Maximum practical competition is maintained;

(2) Sources solicited are recorded; and

(3) Informal bids are confirmed in writing.

(b) Bids by the contractor or its employees shall be submitted to the plant clearance officer prior to soliciting bids from other prospective bidders.

245.7305 Sale approval and award.

The plant clearance officer will—

(1) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration—

(i) Knowledge or tests of the market;

(ii) Current published prices for the property;

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(iii) The nature, condition, quantity, and location of the property; and

(iv) Information from the Defense Reutilization and Marketing Service.

(2) Approve award to the responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who is not eligible to enter into a contract with the DoD due to inclusion on the list of Parties Excluded from Procurement Programs. If a compelling reason exists to award to a bidder on the excluded list, the plant clearance officer shall request approval from the headquarters of the administering activity.

(3) Notify the contractor within five working days of the bidder to whom an award shall be made. The contractor shall make the award, collect the proceeds of the sale, and release the property to the purchaser. The contractor shall provide the plant clearance officer with evidence of delivery reflecting actual quantities released to the purchaser.

245.7306 Sales services.

When sale services are needed, the plant clearance officer will document the reasons in the case file and make arrangements directly with the Defense Reutilization and Marketing Service (DRMS) or General Services Administration (GSA). The arrangements will include a requirement to return all proceeds to the plant clearance officer for crediting in compliance with FAR 45.610-3.

245.7307 Non-competitive sales.

245.7307-1 General.

(a) Non-competitive sales include purchases or retention at less than cost by the contractor.

(b) Non-competitive sales may be made when—

(1) The contracting department/agency or the plant clearance officer determines that this method is essential to expeditious plant clearance;

(2) The sale is otherwise justified on the basis of circumstances listed in 245.7307-2;

(3) The Government's interests are adequately protected; and

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(4) FAR subpart 1.7 requirements are met.

(c) Non-competitive sales shall be at fair and reasonable prices not less than those reasonably expected under competitive sale.

245.7307-2 Justification.

(a) Conditions justifying non-competitive sales are—

(1) Scientific equipment allocated to terminated research and development contracts with educational institutions;

(2) No acceptable bids received under an advertised competitive sale;

(3) Property value so small that anticipated proceeds would not warrant formal competitive sale;

(4) Sale to States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(5) Specialized nature of the property would not create bidder interest;

(6) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(7) Such action is essential to the Government's interests.

(b) The contracting department/agency will provide the contract administration office the sales justification and any special sales provisions when the department/agency decides to sell production equipment to the contractor by non-competitive sale.

245.7308 Antitrust notification.

(a) When contractor inventory with an estimated fair market value of \$3 million or more or any patents, processes, techniques, or inventions, regardless of cost, are sold or otherwise disposed of to private interests notify the Attorney General and the General Services Administration (GSA) of the proposed terms and conditions of disposal. Submit the following information to the Department of Justice and the GSA through the contract administration agency channels. Report Control Symbol DD-ACQ(AR) 1492 applies.

(1) Location and description of property (specify tonnage if scrap);

(2) Proposed sale price (explain if the proposed purchaser was not highest bidder);

(3) Acquisition cost of property;

(4) Manner of sale, indicating whether by—

(i) Sealed bid (specify number of bidders solicited and bids received);

(ii) Auction or spot bid (state how sale was advertised); or

(iii) Negotiation (explain why property was not sold competitively);

(5) Proposed purchaser's name, address, and trade name (if any) under which proposed purchaser is doing business;

(6) If a corporation, provide state and date of incorporation, and name and address of—

(i) Each holder of 25 percent or more of the corporate stock;

(ii) Each subsidiary; and

(iii) Each company under common control with proposed purchaser;

(7) If a partnership, provide—

(i) Name and address of each partner; and

(ii) Other business connections of each partner;

(8) Nature of proposed purchaser's business (indicate whether its scope is local, statewide, regional, or national);

(9) Estimated dollar volume of sales of proposed purchaser (as of latest calendar or fiscal year);

(10) Estimated net worth of proposed purchaser; and

(11) Intended use of property.

(b) Do not dispose of property until the Attorney General determines whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws.

(c) If the Attorney General advises that the proposed disposition is inconsistent with the antitrust laws, do not continue with the proposed disposition.

(d) Under non-competitive sales, the prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General.

(e) Under competitive or non-competitive sales, the purchaser is required

to provide the information required in paragraph (a) of this subsection.

[56 FR 36448, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992; 57 FR 53601, Nov. 12, 1992]

245.7309 Mandatory terms and conditions—formal invitations.

Sale by formal invitation shall include, as a minimum, the terms and conditions in this section.

245.7309-1 Inspection.

The Bidder is invited to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. Failure to inspect property does not constitute grounds for the withdrawal of a bid after opening.

245.7309-2 Condition and location of property.

(a) Unless otherwise specifically provided in the Invitation, all property is offered for sale "as is" and "where is." If the Invitation provides that the Contractor will load, then "where is" means f.o.b. conveyance at the point specified in the Invitation.

(b) The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of the property or its fitness for any use or purpose.

(c) Except as provided in Conditions 245.7306-8, Variations in Quantity or Weight, and 245.7306-10, Risk of Loss, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

245.7309-3 Consideration of bids.

(a) Bidder agrees that this bid is firm and irrevocable within the acceptance period specified in the Invitation (or, if not specified, not less than ten or more than 60 days).

(b) The right is reserved to reject any or all bids, to waive any technical defects in bids, and, unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the invitation provides otherwise, bids—

(1) May be on any or all items;

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(2) Must be submitted on the unit basis specified for that item;

(3) Must cover the total number of units designated for that item; and

(4) Unit prices govern.

245.7309-4 Payment.

(a) Purchaser agrees to pay the full purchase price for awarded property at the prices quoted in the bid. Unless an adjustment is required pursuant to Condition 245.7306-8, Variations in Quantity or Weight, payment must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made, payment must be made immediately after such adjustment.

(b) The full purchase price, or balance if a bid deposit was required, shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor is not required to extend credit to any purchaser.

(c) The Contractor reserves the right to apply any bid deposits made under this Invitation by a bidder against any amounts due under a contract awarded by the Contractor under this Invitation. If the total sum due to the contractor is less than the amount deposited with the bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

245.7309-5 Title.

(a) Unless otherwise specified in the Invitation, title to property sold under this Invitation shall vest in the Purchaser when full payment is made. If the Invitation provides for loading by the Contractor, title shall not vest until payment and loading are completed.

(b) A Standard Form 97, Certificate of Release of a Motor Vehicle, (or a State certificate of title) shall be furnished for motor vehicles and motor-propelled or motor-drawn equipment requiring licensing.

245.7309-6 Delivery and removal of property.

(a) Unless otherwise specified in the Invitation, the Purchaser shall be enti-

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tled to obtain the property upon vesting of title in the Purchaser. Delivery shall be made at the designated location, and removal will be at the Purchaser's expense within the time frame specified in the Invitation or any additional time allowed by the Contractor.

(b) The Purchaser shall reimburse the Contractor for any damage to the Contractor's property caused by Purchaser's removal operations. If additional time is required to remove the property, the Contractor, without limiting any other rights, may require the Purchaser to pay reasonable storage charges.

245.7309-7 Default.

If the successful Bidder fails to make full payment, remove property by the specified date, or comply with any other terms and conditions of sale, the Contractor reserves the right to sell or otherwise dispose of any or all such property and to charge losses and incidental expenses to the defaulting Bidder. Bid deposits received (if required in the Invitation) shall be applied against such losses and expenses.

245.7309-8 Variations in quantity or weight.

When property is sold on a "unit price" basis, the Contractor reserves the right to vary by up to 15 percent the quantity or weight listed in the Invitation and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted in accordance with the unit price and on the basis of the quantity or weight delivered.

245.7309-9 Weighing.

(a) When weighing is necessary to determine the exact purchase price, the Purchaser shall arrange for and pay all weighing expenses. When removal is by truck, weighing shall be subject to supervision and accomplished on—

(1) Contractor scales;

(2) Certified scales; or

(3) Other scales acceptable to both parties.

(b) When removal is by rail, weighing shall be on railroad scales or by other means acceptable to the railroad for

freight purposes. The Purchaser shall pay switching charges.

245.7309-10 Risk of loss.

The Contractor is responsible for reasonable care and protection of the property until the date specified for removal. All risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser after passage of title.

245.7309-11 Liability.

Contractor and Government liability, when liability has been established, shall not exceed the refund of any portion of the purchase price already received by the Contractor.

245.7309-12 Oral statements.

Any oral statement by the Contractor changing or supplementing the contract or any condition thereof is unauthorized.

245.7309-13 Eligibility of bidders.

The Bidder shall certify that the Bidder is not—

(a) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(b) A member of the United States Armed Forces, including the Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(c) An agent, employee or immediate member of the household of personnel in paragraphs (a) and (b).

245.7309-14 Claims liability.

The Purchaser or Bidder agrees to save the Contractor and Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of, and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Purchaser or Bidder, their agents, servants or employees, while in, upon, or about the sale site on which the property sold or offered for sale is located, or while going

to or departing from such areas; and to save the Contractor and Government harmless from and on account of damages of any kind which the Contractor may suffer as the result of the acts of any of the Purchaser's agents, servants, or employees while in or about the said sites.

245.7310 Special term and conditions.

When necessary, include the special conditions of this section in formal invitations.

245.7310-1 Demilitarization.

When demilitarization of property is required, whether on or off contractor or Government premises, the invitation must include the following clause:

(a) Demilitarization.

Item(s) _____ require demilitarization by the Purchaser in the manner and to the degree set forth below:

(1) For property located in the United States insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 2 of Defense Demilitarization Manual;

(2) For property located outside the United States, insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 3 of DoD 4160.21-M-1, Defense Demilitarization Manual.

(b) Demilitarization on Government Premises. Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been completed and approved by an authorized Contractor and Government representative. Demilitarization will be accomplished as specified in the contract. Component parts vital to the military or lethal purpose of the property shall be rendered unusable. The Purchaser agrees to assume all cost incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.

(c) Demilitarization on Non-Government Premises. Property requiring demilitarization shall be demilitarized by the Purchaser under supervision of qualified Department of Defense personnel. Title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by an authorized Contractor and Government representative. Demilitarization will be accomplished as specified in the contract. Component parts vital to the military or lethal purpose of the property shall be rendered unusable. The Purchaser agrees to assume all costs incident to the demilitarization.

245.7310-2

(d) *Failure to Demilitarize.* If the Purchaser fails to demilitarize the property as specified in the contract, the Contractor may, upon giving ten days written notice from date of mailing to the Purchaser—

(1) Repossess, demilitarize, and return the property to the Purchaser. The Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(2) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser will all excess costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(3) Repossess and resell the property under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all excess costs incurred by the Contractor. The Contractor shall deduct these excess costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

245.7310-2 Performance bond.

Performance bonds are required when work, other than loading, is to be performed by the purchaser and a bond is considered necessary to ensure performance. Generally, performance bonds shall be 100 percent of the estimated cost of the work to be performed. If a 100 percent performance bond would be disadvantageous to the Contractor or to the Government, the amount may be reduced to not less than 50 percent of the estimated cost of the work. Include the following condition when performance bonds are required:

PERFORMANCE BOND

Within ten days after notice of award, the Purchaser shall furnish a performance bond in the sum of \$ _____ to cover the Purchaser's obligations. Such bond shall remain in full force and effect during the term of the contract and any extensions as may be agreed upon. The Purchaser shall not be permitted to begin performance until the bond has been received.

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245.7310-3 Liability and insurance.

When the work to be performed by the purchaser warrants, use the following:

LIABILITY AND INSURANCE

The Purchaser shall at the Purchaser's own expense purchase and maintain during the term of the contract insurance as follows:

(a) Standard workers' compensation and employer's liability insurance required under State and Federal statutes. However, the Contractor may waive this requirement upon receipt of satisfactory evidence that the Purchaser is qualified as a self-insurer under applicable provisions of law.

(b) Bodily injury liability insurance in an amount not less than \$300,000 for any one occurrence; and

(c) Property damage liability insurance.

245.7310-4 Dangerous property.

The following warning shall be included when it cannot be certified that the property is completely harmless:

DANGEROUS PROPERTY

Purchasers are warned that the property purchased may contain items of an explosive, toxic, or inflammable nature, notwithstanding reasonable care exercised by the Contractor to render the property harmless. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person, arising from or incident to the purchase of the property, or its use or disposition by the Purchaser. The Purchaser shall save the Contractor and the Government harmless from any and all such claims.

245.7310-5 Controlled substances.

The sale of controlled substances, e.g., narcotics, stimulants, depressants, or hallucinogenic drugs, shall be subject to the following special conditions:

(a) *Controlled Substances.* Bids will be rejected unless the Bidder submits the following certification with its bid:

The undersigned represents and warrants that it is registered under The Comprehensive Drug Abuse Prevention and Control Act of 1970, and is authorized under the law and by the Attorney General, U.S. Department of Justice (Bureau of Narcotics and Dangerous Drugs) to buy controlled substances as a medical practitioner, dealer or manufacturer of controlled substances.

(b) *Narcotic Drugs and Chemicals*. Bids will be rejected unless the Bidder submits the following certification with its bid:

The undersigned represents and warrants that it is registered under Federal narcotics laws and is authorized by law and by the Bureau of Narcotics, United States Treasury Department, as a manufacturer of narcotics.

245.7310-6 Radioactive material.

The following shall be used whenever the property offered for sale is capable of emitting ionized radiation:

RADIOACTIVE MATERIAL

Purchasers are warned that the property may be capable of emitting ionized radiation. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person arising from or incident to the purchase of the property or its use or disposition by the Purchaser. The Purchaser shall hold the Contractor and the Government harmless from all such claims. The Purchase should warn possessors or users of the property that it may be capable of emitting ionized radiation.

245.7310-7 Scrap warranty.

The following condition shall be used whenever property, other than production scrap, is offered for sale as scrap:

SCRAP WARRANTY

The Purchaser represents and warrants that the property will be used only as scrap, and will not be resold until—

- (a) Scrapping has been accomplished; or
- (b) The Purchaser obtains an identical warranty from any subsequent purchaser.

245.7310-8 Antitrust clearance.

When property with an acquisition cost of \$3 million or more is to be sold, include the following in the invitation:

ANTITRUST

When the property offered for sale has an acquisition cost of \$3 million or more, or consists of patents, processes, techniques, or inventions, irrespective of cost, the successful Bidder shall be required to furnish additional information and shall allow up to 60 days for acceptance of its bid. Award shall be made only upon advice from the Department of Justice that the proposed sale would not create or maintain a situation inconsistent with the antitrust laws.

245.7311 Optional conditions.

The following special conditions of sale may be added at the option of the contractor:

245.7311-1 Sales and use tax liability.

For purchases of property subject to a state sales or use tax, a special condition of sale may stipulate that the Purchaser shall pay and the Contractor shall collect the amount of the tax, which shall be itemized separately on the billing document.

245.7311-2 Safety, security, and fire regulations.

245.7311-3 Bid deposits.

245.7311-4 Other special conditions.

Other special conditions considered necessary by the Contractor are subject to the prior approval of the plant clearance officer. Approval will normally be granted provided the prescribed conditions of sale are not altered or affected and the interest of the Government is not adversely affected.

PART 246—QUALITY ASSURANCE

Subpart 246.1—General

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- 246.102 Policy.
- 246.103 Contracting office responsibilities.

Subpart 246.2—Contract Quality Requirements

- 246.202 Types of contract quality requirements.
- 246.202-4 Higher-level contract quality requirements.

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- 246.370 Material inspection and receiving report.
- 246.371 Notification of potential safety issues.

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- 246.402 Government contract quality assurance at source.
- 246.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.
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- 246.408 Single-agency assignments of Government contract quality assurance.
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- 246.470 Government contract quality assurance actions.
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Subpart 246.6—Material Inspection and Receiving Reports

- 246.601 General.

Subpart 246.7—Warranties

- 246.701 Definitions.
- 246.704 Authority for use of warranties.
- 246.705 Limitations.
- 246.706 Warranty terms and conditions.
- 246.708 Warranties of data.
- 246.710 Contract clauses.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36460, July 31, 1991, unless otherwise noted.

Subpart 246.1—General

246.102 Policy.

Departments and agencies shall also—

(1) Develop and manage a systematic, cost-effective Government contract quality assurance program to ensure that contract performance conforms to specified requirements. Apply Government quality assurance to all contracts for services and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors.

(2) Conduct quality audits to ensure the quality of products and services meet contractual requirements.

(3) Base the type and extent of Government contract quality assurance actions on the particular acquisition.

(4) Provide contractors the maximum flexibility in establishing efficient and effective quality programs to meet contractual requirements. Contractor quality programs may be modeled on

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military, commercial, national, or international quality standards.

[56 FR 36460, July 31, 1991, as amended at 60 FR 33145, June 27, 1995; 71 FR 27646, May 12, 2006]

246.103 Contracting office responsibilities.

(1) The contracting office must coordinate with the quality assurance activity before changing any quality requirement.

(2) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for acquisitions that are complex, have critical applications, or have unusual requirements. Follow the procedures at PGI 246.103(2) for preparation of instructions.

[71 FR 27647, May 12, 2006]

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202-4 Higher-level contract quality requirements.

(1) Higher-level contract quality requirements are used in addition to a standard inspection requirement.

(2) Higher-level contract quality requirements, including nongovernment quality system standards adopted to meet DoD needs, are listed in the DoD Index of Specifications and Standards.

[60 FR 33145, June 27, 1995. Redesignated and amended at 60 FR 61599, Nov. 30, 1995]

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

(a) Use the clause at 252.246-7000, Material Inspection and Receiving Report, in solicitations and contracts when there will be separate and distinct deliverables, even if the deliverables are not separately priced.

(b) When contract administration is retained by the contracting office, the clause at 252.246-7000, Material Inspection and Receiving Report, is not required for—

- (1) Contracts awarded using simplified acquisition procedures;
- (2) Negotiated subsistence contracts;
- (3) Contracts for fresh milk and related fresh dairy products;
- (4) Contracts for which the deliverable is a scientific or technical report;
- (5) Research and development contracts not requiring the delivery of separately priced end items;
- (6) Base, post, camp, or station contracts;
- (7) Contracts in overseas areas when the preparation and distribution of the DD Form 250, Material Inspection and Receiving Report, by the contractor would not be practicable. In these cases, arrange for the contractor to provide the information necessary for the contracting office to prepare the DD Form 250;
- (8) Contracts for services when hardware is not acquired as an item in the contract; and
- (9) Indefinite delivery type contracts placed by central contracting offices which authorize only base, post, camp, or station activities to issue orders.

[56 FR 36460, July 31, 1991, as amended at 64 FR 2598, Jan. 15, 1999]

246.371 Notification of potential safety issues.

(a) Use the clause at 252.246-7003, Notification of Potential Safety Issues, in solicitations and contracts for the acquisition of—

- (1) Repairable or consumable parts identified as critical safety items;
- (2) Systems and subsystems, assemblies, and subassemblies integral to a system; or
- (3) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.

(b) Follow the procedures at PGI 246.371 for the handling of notifications received under the clause at 252.246-7003.

[72 FR 2636, Jan. 22, 2007]

Subpart 246.4—Government Contract Quality Assurance

246.402 Government contract quality assurance at source.

Do not require Government contract quality assurance at source for contracts or delivery orders valued below \$250,000, unless—

- (1) Mandated by DoD regulation;
- (2) Required by a memorandum of agreement between the acquiring department or agency and the contract administration agency; or
- (3) The contracting officer determines that—

(i) Contract technical requirements are significant (*e.g.*, the technical requirements include drawings, test procedures, or performance requirements);

(ii) The product being acquired—

- (A) Has critical characteristics;
- (B) Has specific features identified that make Government contract quality assurance at source necessary; or
- (C) Has specific acquisition concerns identified that make Government contract quality assurance at source necessary; and

(iii) The contract is being awarded to—

- (A) A manufacturer or producer; or
- (B) A non-manufacturer or non-producer and specific Government verifications have been identified as necessary and feasible to perform.

[70 FR 8543, Feb. 22, 2005]

246.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.

Do not require Government contract quality assurance at source for contracts or delivery orders valued at or below the simplified acquisition threshold unless the criteria at 246.402 have been met.

[70 FR 8543, Feb. 22, 2005]

246.406 Foreign governments.

(1) *Quality assurance among North Atlantic Treaty Organization (NATO) countries.* (i) NATO Standardization Agreement (STANAG) 4107, Mutual Acceptance of Government Quality Assurance and Usage of the Allied Quality Assurance Publications—

246.407

(A) Contains the processes, procedures, terms, and conditions under which one NATO member nation will perform quality assurance for another NATO member nation or NATO organization;

(B) Standardizes the development, updating, and application of the Allied Quality Assurance Publications; and

(C) Has been ratified by the United States and other nations in NATO with certain reservations identified in STANAG 4107.

(ii) Departments and agencies shall follow STANAG 4107 when—

(A) Asking a NATO member nation to perform quality assurance; or

(B) Performing quality assurance when requested by a NATO member nation or NATO organization.

(2) *International military sales (non-NATO)*. Departments and agencies shall—

(i) Perform quality assurance services on international military sales contracts or in accordance with existing agreements;

(ii) Inform host or U.S. Government personnel and contractors on the use of quality assurance publications; and

(iii) Delegate quality assurance to the host government when satisfactory services are available.

(3) *Reciprocal quality assurance agreements*. A Memorandum of Understanding (MOU) with a foreign country may contain an annex that provides for the reciprocal performance of quality assurance services. MOUs should be checked to determine whether such an annex exists for the country where a defense contract will be performed. (See subpart 225.8 for more information about MOUs.)

[56 FR 36460, July 31, 1991, as amended at 63 FR 43890, Aug. 17, 1998; 63 FR 47439, Sept. 8, 1998; 71 FR 27647, May 12, 2006]

246.407 Nonconforming supplies or services.

(f) If nonconforming material or services are discovered after acceptance, the defect appears to be the fault of the contractor, any warranty has expired, and there are no other contractual remedies, the contracting officer—

(i) Shall notify the contractor in writing of the nonconforming material or service;

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(ii) Shall request that the contractor repair or replace the material, or perform the service, at no cost to the Government; and

(iii) May accept consideration if offered. For guidance on solicitation of a refund, see subpart 242.71.

(S-70) The head of the design control activity is the approval authority for acceptance of any nonconforming aviation or ship critical safety items or nonconforming modification, repair, or overhaul of such items (see 209.270). Authority for acceptance of minor nonconformances in aviation or ship critical safety items may be delegated as determined appropriate by the design control activity. See additional information at PGI 246.407.

[56 FR 36460, July 31, 1991, as amended at 67 FR 4208, Jan. 29, 2002; 69 FR 55989, Sept. 17, 2004; 70 FR 57190, Sept. 30, 2005; 73 FR 1828, Jan. 10, 2008]

246.408 Single-agency assignments of Government contract quality assurance.

246.408-70 Subsistence.

(a) The Surgeons General of the military departments are responsible for—

(1) Acceptance criteria;

(2) Technical requirements; and

(3) Inspection procedures needed to assure wholesomeness of foods.

(b) The contracting office may designate any Federal activity, capable of assuring wholesomeness and quality in food, to perform quality assurance for subsistence contract items. The designation may—

(1) Include medical service personnel of the military departments; and

(2) Be on a reimbursable basis.

246.408-71 Aircraft.

(a) The Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with some commercial aircraft and of aircraft equipment and accessories (Pub. L. 85-726 (72 Stat 776, 49 U.S.C. 1423)). This includes the issuance of various certificates applicable to design, manufacture, and airworthiness.

(b) FAA evaluations are not a substitute for normal DoD evaluations of the contractor's quality assurance

measures. Actual records of FAA evaluations may be of use to the contract administration office (CAO) and should be used to their maximum advantage.

(c) The CAO shall ensure that the contractor possesses any required FAA certificates prior to acceptance.

[56 FR 36460, July 31, 1991, as amended at 71 FR 27647, May 12, 2006]

246.470 Government contract quality assurance actions.

246.470-1 Assessment of additional costs.

(a) Under the clause at FAR 52.246-2, Inspection of Supplies—Fixed-Price, after considering the factors in paragraph (c) of this subsection, the quality assurance representative (QAR) may believe that the assessment of additional costs is warranted. If so, the representative shall recommend that the contracting officer take the necessary action and provide a recommendation as to the amount of additional costs. Costs are based on the applicable Federal agency, foreign military sale, or public rate in effect at the time of the delay, reinspection, or retest.

(b) If the contracting officer agrees with the QAR, the contracting officer shall—

(1) Notify the contractor, in writing, of the determination to exercise the Government's right under the clause at FAR 52.246-2, Inspection of Supplies—Fixed-Price; and

(2) Demand payment of the costs in accordance with the collection procedures contained in FAR Subpart 32.6.

(c) In making a determination to assess additional costs, the contracting officer shall consider—

(1) The frequency of delays, reinspection, or retest under both current and prior contracts;

(2) The cause of such delay, reinspection, or retest; and

(3) The expense of recovering the additional costs.

[71 FR 27647, May 12, 2006]

246.470-2 Quality evaluation data.

The contract administration office shall establish a system for the collection, evaluation, and use of the types

of quality evaluation data specified in PGI 246.470-2.

[71 FR 27647, May 12, 2006]

246.471 Authorizing shipment of supplies.

(a) *General.* (1) Ordinarily, a representative of the contract administration office signs or stamps the shipping papers that accompany Government source-inspected supplies to release them for shipment. This is done for both prime and subcontracts.

(2) An alternative procedure (see paragraph (b) of this section) permits the contractor to assume the responsibility for releasing the supplies for shipment.

(3) The alternative procedure may include prime contractor release of supplies inspected at a subcontractor's facility.

(4) The use of the alternative procedure releases DoD manpower to perform technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

(b) *Alternative Procedures—Contract Release for Shipment.* (1) The contract administration office may authorize, in writing, the contractor to release supplies for shipment when—

(i) The stamping or signing of the shipping papers by a representative of the contract administration office interferes with the operation of the Government contract quality assurance program or takes too much of the Government representative's time;

(ii) There is sufficient continuity of production to permit the Government to establish a systematic and continuing evaluation of the contractor's control of quality; and

(iii) The contractor has a record of satisfactory quality, including that pertaining to preparation for shipment.

(2) The contract administration office shall withdraw, in writing, the authorization when there is an indication that the conditions in paragraph (b)(1) of this subsection no longer exist.

(3) When the alternative procedure is used, require the contractor to—

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s), or on an attachment—

246.472

The supplies in this shipment—

1. Have been subjected to and have passed all examinations and tests required by the contract;
2. Were shipped in accordance with authorized shipping instructions;
3. Conform to the quality, identity, and condition called for by the contract; and
4. Are of the quantity shown on this document.

This shipment was—

1. Released in accordance with section 246.471 of the Defense FAR Supplement; and
2. Authorized by (name and title of the authorized representative of the contract administration office) in a letter dated (date of authorizing letter). (Signature and title of contractor's designated official.)

(ii) Release and process, in accordance with established instructions, the DD Form 250, Material Inspection and Receiving Report, or other authorized receiving report.

246.472 Inspection stamping.

(a) DoD quality inspection approval marking designs (stamps) may be used for both prime contracts and subcontracts. Follow the procedures at PGI 246.472(a) for use of DoD inspection stamps.

(b) Policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) quality status stamps are contained in NASA publications. When requested by NASA centers, the DoD inspector shall use NASA quality status stamps in accordance with current NASA requirements.

[71 FR 27647, May 12, 2006]

Subpart 246.5—Acceptance

246.504 Certificate of conformance.

Before authorizing a certificate of conformance for aviation or ship critical safety items, obtain the concurrence of the head of the design control activity (see 209.270).

[73 FR 1828, Jan. 10, 2008]

Subpart 246.6—Material Inspection and Receiving Reports

246.601 General.

See Appendix F, Material Inspection and Receiving Report, for procedures and instructions for the use, preparation, and distribution of—

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(1) The Material Inspection and Receiving Report (DD Form 250 series); and

(2) Supplier's commercial shipping/packing lists used to evidence Government contract quality assurance.

[71 FR 27647, May 12, 2006]

Subpart 246.7—Warranties

246.701 Definitions.

Acceptance, as defined in FAR 46.701 and as used in this subpart and in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246–20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

Defect, as used in this subpart, means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

246.704 Authority for use of warranties.

(1) The chief of the contracting office must approve use of a warranty, except in acquisitions for—

(i) Commercial items (see FAR 46.709);

(ii) Technical data, unless the warranty provides for extended liability (see 246.708);

(iii) Supplies and services in fixed-price type contracts containing quality assurance provisions that reference higher-level contract quality requirements (see 246.202–4); or

(iv) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

(2) The chief of the contracting office shall approve the use of a warranty only when the benefits are expected to outweigh the cost.

[71 FR 27647, May 12, 2006]

246.705 Limitations.

(a) In addition to the exceptions provided in FAR 46.705(a), warranties in the clause at 252.246-7001, Warranty of Data, may be used in cost-reimbursement contracts.

[71 FR 27647, May 12, 2006]

246.706 Warranty terms and conditions.

(b)(5) *Markings.* For non-commercial items, use MIL-STD-129, Marking for Shipments and Storage, and MIL-STD-130, Identification Marking of U.S. Military Property, when marking warranty items.

[71 FR 27647, May 12, 2006]

246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability provisions—

(1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and

(2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

(1) Use a clause substantially the same as the clause at 252.246-7001, Warranty of Data, in solicitations and contracts that include the clause at 252.227-7013, Rights in Technical Data and Computer Software, when there is a need for greater protection or period of liability than provided by the inspection and warranty clauses prescribed in FAR Part 46.

(2) Use the clause at 252.246-7001, Warranty of Data, with its Alternate I when extended liability is desired and a fixed price incentive contract is contemplated.

(3) Use the clause at 252.246-7001, Warranty of Data, with its Alternate II when extended liability is desired and a firm fixed price contract is contemplated.

(4) Use the clause at 252.246-7002, Warranty of Construction (Germany), in-

stead of the clause at FAR 52.246-21, Warranty of Construction, in solicitations and contracts for construction when a fixed-price contract will be awarded and contract performance will be in Germany.

[56 FR 36460, July 31, 1991, as amended at 62 FR 34128, June 24, 1997; 64 FR 51077, Sept. 21, 1999; 71 FR 27647, May 12, 2006]

PART 247—TRANSPORTATION

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36466, July 31, 1991, unless otherwise noted.

247.001 Definitions.

For definitions of “Civil Reserve Air Fleet” and “Voluntary Intermodal Sealift Agreement,” see Joint Pub. 1-02, DoD Dictionary of Military and Associated Terms.

[65 FR 50144, Aug. 17, 2000]

Subpart 247.1—General

247.104 Government rate tenders under section 10721 of the Interstate Commerce Act.

247.104-5 Citation of Government rate tenders.

(a) See DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 206, for instructions on converting commercial bills of lading to Government bills of lading within CONUS.

[65 FR 50144, Aug. 17, 2000]

247.105 Transportation assistance.

(b)(i) Transportation assistance includes all transportation factors, such as—

- (A) Rates and prices (for evaluation of bids or routing purposes);
- (B) Other transportation costs;
- (C) Transit agreements;
- (D) Time in transit;
- (E) Port handling charges; and
- (F) Port capabilities.

(ii) Within CONUS, the Military Traffic Management Command (MTMC) is responsible for the performance of traf-

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fic management functions. These functions include the direction, control, and supervision of all functions incident to the acquisition and use of commercial freight and passenger transportation services.

(iii) For assistance with international shipments—

(A) Originating in CONUS, request assistance from the appropriate military activity; i.e., the Air Mobility Command (AMC), Military Sealift Command (MSC), MTMC, or the military service sponsoring the cargo;

(B) For all modes of transportation originating overseas, request assistance from the overseas Theater Commander assigned responsibility for common-user, military-operated land transportation;

(C) Of bulk petroleum via ocean tanker, request assistance, rates, or other costs from the MSC;

(D) Of supplies between points outside CONUS, including Alaska and Hawaii, request assistance, rates, or other costs from the military service sponsoring the cargo. Direct the requests to:

Army: Deputy Chief of Staff for Logistics, ATTN: DALO-TSP, Washington, DC 20310-0500

Navy: Naval Supply Systems Command, Code 4D, 5450 Carlisle Pike, PO Box 2050, Mechanicsburg, PA 17055-0791

Air Force: Applicable Overseas Air Force Command:

HQ PACAF/LGT, 25 East Street, Suite I-305, Hickam AFB, HI 96853-5427

HQ USAFE/LGT, Unit 305, Box 105, APO AE 09094-0105

HQ AFSPACECOM/LGT, 150 Vandenberg Street, Suite 1105, Peterson AFB, CO 80914-4540

Marine Corps: HQ, U.S. Marine Corps, Traffic Management Branch (LFT1), 2 Navy Annex, Washington, DC 20380-1775

(E) When requesting rates and related costs for the evaluation of bids or proposals, include the bid opening or proposal due date and the expected date of initial shipment, if established.

[56 FR 36466, July 31, 1991, as amended at 59 FR 27674, May 27, 1994; 65 FR 50144, Aug. 17, 2000]

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.200 Scope of subpart.

This subpart does not apply to the operation of vessels owned by, or bareboat chartered by, the Government.

[65 FR 50144, Aug. 17, 2000]

247.206 Preparation of solicitations and contracts.

(1) Consistent with FAR 15.304 and 215.304, consider using the following as evaluation factors or subfactors:

- (i) Record of claims involving loss or damage;
- (ii) Provider availability; and
- (iii) Commitment of transportation assets to readiness support (e.g., Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement).

(2) To the maximum extent practicable, structure contracts and agreements to allow for their use by DoD contractors.

[65 FR 50144, Aug. 17, 2000]

247.207 Solicitation provisions, contract clauses, and special requirements.

Use the clause at 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, in solicitations and contracts for carriage in which a motor carrier, broker, or freight forwarder will provide or arrange truck transportation services that provide for a fuel-related adjustment. This clause implements Section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

[74 FR 37652, July 29, 2009]

247.270 Stevedoring contracts.

247.270-1 Scope of section.

This section contains procedures unique to stevedoring. Other portions of the FAR and DFARS dealing with service contracting also apply to stevedoring contracts.

[56 FR 36466, July 31, 1991, as amended at 65 FR 50144, Aug. 17, 2000]

247.270-2 Definitions.

Commodity rate is—

(1) The price quoted for handling a ton (weight or measurement) of a specified commodity; and

(2) Computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity that can be handled in 1 hour.

Gang cost is—

(1) The total hourly wages paid to the workers in the gang, in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port; and

(2) Payments for workmen's compensation, social security taxes, unemployment insurance, taxes, liability and property damage insurance, general and administrative expenses, and profit.

Stevedoring is the—

(1) Loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel; or

(2) Breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.

[56 FR 36466, July 31, 1991, as amended at 65 FR 50144, Aug. 17, 2000]

247.270-3 Technical provisions.

(a) Because conditions vary at different ports, and sometimes within the same port, it is not practical to develop standard technical provisions covering all phases of stevedoring operations.

(b) When including rail car, truck, or intermodal equipment loading and unloading, or other dock and terminal work under a stevedoring contract, include these requirements as separate items of work.

[65 FR 50144, Aug. 17, 2000]

247.270-4 Evaluation of bids and proposals.

As a minimum, require that offers include—

(a) Tonnage or commodity rates that apply to the bulk of the cargo worked under normal conditions;

(b) Labor-hour rates that apply to services not covered by commodity rates, or to work performed under hardship conditions; and

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(c) Rates for equipment rental.

[65 FR 50144, Aug. 17, 2000]

247.270-5 Award of contract.

Make the award to the offeror submitting the offer most advantageous to the Government, considering cost or price and other factors specified in the solicitation. Evaluation will include, but is not limited to—

(a) Total estimated cost of tonnage to be moved at commodity rates;

(b) Estimated cost at labor-hour rates; and

(c) Cost of equipment rental.

[65 FR 50144, Aug. 17, 2000]

247.270-6 Contract clauses.

Use the following clauses in solicitations and contracts for stevedoring services as indicated:

(a) 252.247-7000, Hardship Conditions, in all solicitations and contracts.

(b) 252.247-7001, Price Adjustment, when using sealed bidding.

(c) 252.247-7002, Revision of Prices, when using negotiation.

(d) 252.247-7004, Indefinite Quantities—Fixed Charges, when the contract is an indefinite-quantity type and will provide for the payment of fixed charges.

(e) 252.247-7005, Indefinite Quantities—No Fixed Charges, when the contract is an indefinite-quantity type and will not provide for the payment of fixed charges.

(f) 252.247-7006, Removal of Contractor's Employees, in all solicitations and contracts.

(g) 252.247-7007, Liability and Insurance, in all solicitations and contracts.

[65 FR 50144, Aug. 17, 2000]

247.271 Contracts for the preparation of personal property for shipment or storage.

247.271-1 Scope of section.

This section contains procedures unique to the preparation of personal property for shipment or storage, and for the performance of intra-area or intra-city movement. Other portions of the FAR and DFARS dealing with serv-

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ice contracting also apply to these services.

[56 FR 36466, July 31, 1991, as amended at 65 FR 50145, Aug. 17, 2000]

247.271-2 Policy.

(a) *Annual contracts.* Normally—

(1) Use requirements contracts to acquire services for the—

(i) Preparation of personal property for shipment or storage; and

(ii) Performance of intra-area movement.

(2) Award contracts on a calendar year basis.

(3) Provide for option years.

(4) Award contracts, or exercise option years, before November 1 of each year, if possible.

(b) *Areas of performance.* Define clearly in the solicitation each area of performance.

(1) Establish one or more areas; however, hold the number to a minimum consistent with local conditions.

(2) Each schedule may provide for the same or different areas of performance. Determine the areas as follows—

(i) Use political boundaries, streets, or any other features as lines of demarcation. Consider such matters as—

(A) Total volume;

(B) Size of overall area; and

(C) The need to service isolated areas of high population density.

(ii) Specifically identify frequently used terminals, and consider them as being included in each area of performance described in the solicitation.

(c) *Maximum requirements-minimum capability.* The contracting officer must—

(1) Establish realistic quantities on the Estimated Quantities Report in DoD 4500.9-R, Defense Transportation Regulation, Part IV;

(2) Ensure that the Government's minimum acceptable daily capability—

(i) Will at least equal the maximum authorized individual weight allowance as prescribed by the Joint Federal Travel Regulations; and

(ii) Will encourage maximum participation of small business concerns as offerors.

[56 FR 36466, July 31, 1991, as amended at 65 FR 50145, Aug. 17, 2000]

247.271-3 Procedures.

(a) *CONUS military activities assigned multi-service personal property areas of responsibility.* (1) When two or more military installations or activities have personal property responsibilities in a given area, one activity must contract for the estimated requirements of all activities in the area. The installation commanders concerned must designate the activity by mutual agreement.

(2) The Commander, Military Traffic Management Command (MTMC), must designate the contracting activity when local commanders are unable to reach agreement.

(b) *Additional services and excess requirements.* (1) Excess requirements are those services that exceed contractor capabilities available under contracts. Use simplified acquisition procedures to satisfy excess requirements.

(2) Additional services are those not specified in the bid items.

(i) Additional services may include—

- (A) Hoisting or lowering of articles;
- (B) Waiting time;
- (C) Special packaging; and
- (D) Stuffing or unstuffing of sea van containers.

(ii) Consider contracting for local moves that do not require drayage by using hourly rate or constructive weight methods. The rate will include those services necessary for completion of the movement, including—

- (A) Packing and unpacking;
- (B) Movement;
- (C) Inventorying; and
- (D) Removal of debris.

(iii) Each personal property shipping activity must determine if local requirements exist for any additional services.

(iv) The contracting officer may obtain additional services by—

(A) Including them as items within the contract; provided, they are not used in the evaluation of bids (see 252.247-7008, Evaluation of Bids); or

(B) Using simplified acquisition procedures.

(v) Either predetermine prices for additional services with the contractor, or negotiate them on a case-by-case basis.

(vi) The contracting officer must authorize the contractor to perform any

additional services, other than attempted pick up or delivery, regardless of the contracting method.

(vii) To the maximum extent possible, identify additional services required that are incidental to an order before placing the order; or, when applicable, during the premove survey.

(c) *Contract distribution.* In addition to the distribution requirements of FAR subpart 4.2, furnish one copy of each contract as follows:

(1) CONUS personal property shipping activities must send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-CI, Room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050.

(2) In the European and Pacific areas, personal property shipping activities must send the copy to either the Property Directorate, MTMC Europe, or the MTMC Field Office-Pacific.

(3) Other overseas personal property shipping activities must send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-Q, 5611 Columbia Pike, Falls Church, VA 22041-5050.

[56 FR 36466, July 31, 1991, as amended at 64 FR 2598, Jan. 15, 1999; 65 FR 50145, Aug. 17, 2000]

247.271-4 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands, except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) The provision at 252.247-7008, Evaluation of Bids. When adding “additional services” items to any schedule, use the basic clause with Alternate I.

(b) The provision at 252.247-7009, Award.

(c) In solicitations and resulting contracts, the schedules contained in DoD

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4500.9-R, Defense Transportation Regulation, Part IV, as provided by the installation personal property shipping office.

(1) When there is no requirement for an item or subitem in a schedule, indicate that item or subitem number, in its proper numerical sequence, and add the statement “No Requirement.”

(2) Within Schedules I (Outbound) and II (Inbound), item numbers are reserved to permit inclusion of additional items as required by local conditions.

(3) Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices, laws, and regulations.

(4) All generic terminology, schedule, and item numbers in proper sequence must follow those contained in the basic format.

(5) When it is in the Government's best interest to have both outbound and inbound services within a given area of performance furnished by the same contractor, modify the schedule format to combine both services in a single schedule. However, items must follow the same sequential order as in the basic format.

(6) Process any modification of schedule format, other than those authorized in paragraphs (c)(1) through (5) of this subsection, as a request for deviation to the Commander, MTMC.

(d) The clause at 252.247-7010, Scope of Contract.

(e) The clause at 252.247-7011, Period of Contract. When the period of performance is less than a calendar year, modify the clause to indicate the beginning and ending dates. However, the contract period must not end later than December 31 of the year in which the contract is awarded.

(f) In addition to designating each ordering activity, as required by the clause at FAR 52.216-18, Ordering, identify by name or position title the individuals authorized to place orders for each activity. When provisions are made for placing oral orders in accordance with FAR 16.505(a)(4), document the oral orders in accordance with department or agency instructions.

(g) The clause at 252.247-7012, Ordering Limitation.

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(h) The clause at 252.247-7013, Contract Areas of Performance.

(i) The clause at 252.247-7014, Demurrage.

(j) When using the clause at FAR 52.216-21, Requirements, see 216.506(d), which prescribes an alternate to the clause.

(k) The clause at 252.247-7016, Contractor Liability for Loss and Damage.

(l) The clause at 252.247-7017, Erroneous Shipments.

(m) The clause at 252.247-7018, Subcontracting.

(n) The clause at 252.247-7019, Drayage.

(o) The clause at 252.247-7020, Additional Services.

(p) The clauses at FAR 52.247-8, Estimated Weight or Quantities Not Guaranteed, and FAR 52.247-13, Accessorial Services—Moving Contracts.

[56 FR 36466, July 31, 1991, as amended at 65 FR 50145, Aug. 17, 2000]

Subpart 247.3—Transportation in Supply Contracts

247.301 General.

247.301-70 Definition.

“Integrated logistics managers” or “third-party logistics providers” means providers of multiple logistics services. Some examples of logistics services are the management of transportation, demand forecasting, information management, inventory maintenance, warehousing, and distribution.

[65 FR 50145, Aug. 17, 2000]

247.301-71 Evaluation factor or subfactor.

For contracts that will include a significant requirement for transportation of items outside CONUS, include an evaluation factor or subfactor that favors suppliers, third-party logistics providers, and integrated logistics managers that commit to using carriers that participate in one of the readiness programs (e.g., Civil Reserve Air Force Fleet and Voluntary Intermodal Sealift Agreement).

[65 FR 50145, Aug. 17, 2000]

247.305 Solicitation provisions, contract clauses, and transportation factors.

247.305-10 Packing, marking, and consignment instructions.

(b) Consignment instructions must include, as a minimum—

(i) The clear text and coded MILSTRIP data as follows:

(A) Consignee code and clear text identification of consignee and destination as published in—

(1) DoD 4000.25-6-M, Department of Defense Activity Address Directory (DODAAD);

(2) DoD 4000.25-8-M, Military Assistance Program Address Directory (MAPAD) System; or

(3) Transportation Control and Movement Document. Reporting procedures and instructions must comply with DoD 4500.9-R, Defense Transportation Regulation.

(B) Project code, when applicable.

(C) Transportation priority.

(D) Required delivery date.

(ii) Non-MILSTRIP shipments must include data similar to that described in paragraphs (b)(i)(A) through (D) of this subsection.

(iii) In amended shipping instructions include, in addition to the data requirements of paragraphs (b)(i)(A) through (D) of this subsection, the following, when appropriate:

(A) Name of the activity originally designated, from which the stated quantities are to be deducted.

(B) Any other features of the amended instructions not contained in the basic contract.

(iv) When assigning contract administration responsibility in accordance with FAR 42.202, include in instructions the—

(A) Modification serial number; and

(B) If a new line item is created by the issuance of shipping instructions—

(1) New line item number; and

(2) Existing line item number, if affected.

(v) For petroleum, oil, and lubricant products, instructions for diversions need not include the modification serial number and new line item number, when the instructions are—

(A) For diversions overseas to new destinations;

(B) Issued by an office other than that issuing the contract or delivery order; and

(C) Issued by telephone or electronic media.

[65 FR 50145, Aug. 17, 2000, as amended at 67 FR 61517, Oct. 1, 2002]

247.305-70 Returnable containers other than cylinders.

Use the clause at 252.247-7021, Returnable Containers Other Than Cylinders, in solicitations and contracts for supplies involving contractor-furnished returnable reels, spools, drums, carboys, liquid petroleum gas containers, or other returnable containers if the contractor is to retain title to the containers.

[60 FR 29501, June 5, 1995]

247.370 Use of Standard Form 30 for consignment instructions.

When complete consignment instructions are not known initially, use the Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract, to issue or amend consignment instructions, and when necessary, to confirm consignment instructions issued by telephone or electronic media.

(a) When using the SF 30 to confirm delivery instructions—

(1) Stamp or mark “CONFIRMATION” in block letters on the form, and specify in detail those instructions being confirmed.

(2) Do not change the instructions being confirmed.

(b) Process the confirming SF 30 as follows—

(1) For contracts assigned for any contract administration function listed in FAR subpart 42.3 to any office listed in the Federal Directory of Contract Administration Services Components, within five working days;

(2) For diversions of petroleum, oil, and lubricant products overseas to new destinations, within 30 days of instructions being confirmed; and

(3) For other contracts—

(i) Telephone—within 5 working days; and

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(ii) Electronic media—consolidate on a monthly basis.

[56 FR 36466, July 31, 1991, as amended at 64 FR 61030, Nov. 9, 1999; 65 FR 50146, Aug. 17, 2000]

247.371 DD Form 1384, Transportation Control and Movement Document.

Reporting procedures and instructions for this form will be in compliance with DoD 4500.9-R, Defense Transportation Regulation.

[56 FR 36466, July 31, 1991, as amended at 67 FR 61517, Oct. 1, 2002]

247.372 DD Form 1653, Transportation Data for Solicitations.

(a) The transportation specialist prepares the DD Form 1653 at the request of the contracting officer. The completed form will contain recommendations concerning f.o.b. terms best suited for a particular acquisition, and other suggested transportation provisions for inclusion in the solicitation.

(b) When appropriate, the DD Form 1653 will also include information on combined port handling and transportation charges for inclusion in the solicitation in connection with export shipments.

247.373 DD Form 1654, Evaluation of Transportation Cost Factors.

Contracting personnel may use the DD Form 1654 to furnish information to the transportation office for development of cost factors for use by the contracting officer in the evaluation of f.o.b. origin offers.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.570 Scope.

This subpart—

(a) Implements—(1) The Cargo Preference Act of 1904 (“the 1904 Act”), 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, DoD; and

(2) Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), which requires consideration, in solicitations requiring a covered vessel, of the extent to which offerors have had overhaul, repair, and maintenance work performed

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in shipyards located in the United States or Guam;

(b) Does not specifically implement the Cargo Preference Act of 1954 (“the 1954 Act”), 46 U.S.C. 1241(b). The 1954 Act is applicable to DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in DoD exceeding the 1954 Act’s requirements; and

(c) Does not apply to ocean transportation of the following products, in which case FAR subpart 47.5 applies:

(1) Products obtained for contributions to foreign assistance programs.

(2) Products owned by agencies other than DoD, unless the products are clearly identifiable for eventual use by DoD.

[65 FR 50146, Aug. 17, 2000, as amended at 72 FR 49205, Aug. 28, 2007; 73 FR 70911, Nov. 24, 2008]

247.571 Definitions.

Covered vessel, foreign shipyard, overhaul, repair, and maintenance work, and shipyard, as used in this subpart, have the meaning given in the provision at 252.247-7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Non-contiguous Trade.

[73 FR 70911, Nov. 24, 2008]

247.572 Policy.

(a) DoD contractors must transport supplies, as defined in the clause at 252.247-7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available, and the procedures at 247.573-1(c)(1) or 247.573-2(d)(1) are followed;

(2) The proposed charges to the Government are higher than charges to private persons for the transportation of like goods, and the procedures at 247.573-1(c)(2) or 247.573-2(d)(2) are followed; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges are excessive or unreasonable in accordance with 247.573-1(c)(3) or 247.573-2(d)(3).

(b) Contracts must provide for the use of Government-owned vessels when security classifications prohibit the

use of other than Government-owned vessels.

(c)(1) Any vessel used under a time charter contract for the transportation of supplies under this section shall have any reflagging or repair work, as defined in the clause at 252.247-7025, Reflagging or Repair Work, performed in the United States or its outlying areas, if the reflagging or repair work is performed—

(i) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(ii) Prior to the acceptance of the vessel by the Government.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States.

(d) In accordance with Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364)—

(1) When obtaining carriage requiring a covered vessel, the contracting officer must consider the extent to which offerors have had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam; and

(2) DoD must submit an annual report to the congressional defense committees, addressing the information provided by offerors with regard to overhaul, repair, and maintenance for covered vessels performed in the United States or Guam.

[65 FR 50146, Aug. 17, 2000, as amended at 70 FR 35545, June 21, 2005. Redesignated and amended at 72 FR 49206, Aug. 28, 2007; 73 FR 70911, Nov. 24, 2008]

247.573 Procedures.

[72 FR 49206, Aug. 28, 2007]

247.573-1 Ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies when ocean transportation is not the principal purpose of the contract, and the cargo to be transported is owned by DoD or is clearly identifiable for eventual use by DoD.

(b) The contracting officer must obtain assistance from the cognizant

transportation activity (see 247.105) in developing—

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government; and

(2) Shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation of supplies by sea.

(c) If the contractor notifies the contracting officer that the contractor or a subcontractor considers that—

(1) No U.S.-flag vessels are available, the contracting officer must request confirmation of the nonavailability from—

(i) The Commander, Military Sealift Command (MSC), through the Contracts and Business Management Directorate, MSC; or

(ii) The Commander, Military Traffic Management Command (MTMC), through the Principal Assistant Responsible for Contracting, MTMC.

(2) The proposed freight charges to the Government, the contractor, or any subcontractor are higher than charges for transportation of like goods to private persons, the contracting officer may approve a request for an exception to the requirement to ship on U.S.-flag vessels for a particular shipment.

(i) Prior to granting an exception, the contracting officer must request advice, oral or written, from the Commander, MSC, or the Commander, MTMC.

(ii) In advising the contracting officer whether to grant the exception, the Commander, MSC, or the Commander, MTMC, must consider, as appropriate, evidence from—

(A) Published tariffs;
 (B) Industry publications;
 (C) The Maritime Administration;
 and

(D) Any other available sources.
 (3) The freight charges proposed by U.S.-flag carriers are excessive or otherwise unreasonable—

(i) The contracting officer must prepare a report in determination and finding format, and must—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may

be available from foreign-flag carriers. Therefore, a lower price for use of a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a price differential may indicate a need for further review;

(B) Consider, accordingly, not only excessive profits to the carrier (to include vessel owner or operator), if ascertainable, but also excessive costs to the Government (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances; and

(C) Include an analysis of whether the cost is excessive, taking into account factors such as—

(1) The differential between the freight charges proposed by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(2) A comparison of U.S.-flag rates charged on comparable routes;

(3) Efficiency of operation regardless of rate differential (e.g., suitability of the vessel for the required transportation in terms of cargo requirements or vessel capacity, and the commercial reasonableness of vessel positioning required); and

(4) Any other relevant economic and financial considerations.

(ii) The contracting officer must forward the report to—

(A) The Commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, MTMC, through the Principal Assistant Responsible for Contracting, MTMC.

(iii) If in agreement with the contracting officer, the Commander, MSC, or the Commander, MTMC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

[65 FR 50146, Aug. 17, 2000, as amended at 67 FR 38021, May 31, 2002. Redesignated at 72 FR 49206, Aug. 28, 2007]

247.573-2 Direct purchase of ocean transportation services.

(a) This subsection applies when ocean transportation is the principal purpose of the contract, including—

(1) Time charters;

(2) Voyage charters;

(3) Contracts for charter vessel services;

(4) Dedicated contractor contracts for charter vessel services;

(5) Ocean bills of lading; and

(6) Subcontracts under Government contracts or agreements for ocean transportation services.

(b) Coordinate these acquisitions, as appropriate, with the U.S. Transportation Command, the DoD single manager for commercial transportation and related services, other than Service-unique or theater-assigned transportation assets, in accordance with DoD 5158.4, United States Transportation Command.

(c) All solicitations within the scope of this subsection must provide—(1) A preference for U.S.-flag vessels in accordance with the 1904 Act;

(2) An evaluation criterion for offeror participation in the Voluntary Intermodal Sealift Agreement; and

(3) An evaluation criterion considering the extent to which offerors have had overhaul, repair, and maintenance work for all covered vessels in an offeror's fleet performed in shipyards located in the United States or Guam. Work performed in foreign shipyards shall not be evaluated under this criterion if—

(i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or

(ii) Such work was paid for or reimbursed by the U.S. Government.

(d) Do not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—

(1) The Commander, MSC, or the Commander, MTMC, determines that no U.S.-flag vessels are available.

(i) The Commander, MSC, and the Commander, MTMC, are authorized to make any determinations as to the

availability of U.S.-flag vessels to ensure the proper use of Government and private U.S. vessels.

(ii) The contracting officer must request such determinations—

(A) For voyage and time charters, through the Contracts and Business Management Directorate, MSC; and

(B) For ocean and intermodal transportation of DoD and DoD-sponsored cargoes, as applicable under contracts awarded by MTMC, including contracts for shipment of military household goods, through the Chiefs of the MTMC Ocean Cargo Clearance Authority.

(iii) In the absence of regularly scheduled U.S.-flag service to fulfill stated DoD requirements under MTMC solicitations or rate requests, the Commander, MTMC, may grant, on a case-by-case basis, an on-going nonavailability determination for foreign-flag service approval with pre-determined review date(s);

(2) The contracting officer determines that the U.S.-flag carrier has proposed to the Government freight charges that are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander, MSC, or the Commander, MTMC; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(i) After considering the factors in 247.573-1(c)(3)(i)(A) and (B), if the contracting officer concludes that the freight charges proposed by U.S.-flag carriers may be excessive or otherwise unreasonable, the contracting officer must prepare a report in determination and finding format that includes, as appropriate—

(A) An analysis of the carrier's costs in accordance with FAR Subpart 15.4, or profit in accordance with 215.404-4. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(B) A description of efforts taken pursuant to FAR 15.405, to negotiate a reasonable price. For the purpose of FAR 15.405(d), this report is the referral to a level above the contracting officer; and

(C) An analysis of whether the costs are excessive (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration factors such as those listed at 247.573-1(c)(3)(i)(C).

(ii) The contracting officer must forward the report to—

(A) The commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, MTMC, through the Principal Assistant Responsible for Contracting, MTMC.

(iii) If an agreement with the contracting officer, the Commander, MSC, or the Commander, MTMC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

[65 FR 50147, Aug. 17, 2000. Redesignated and amended at 72 FR 49206, Aug. 28, 2007; 73 FR 70911, Nov. 24, 2008]

247.573-3 Annual reporting requirement.

(a) No later than February 15th of each year, departments and agencies shall—

(1) Prepare a report containing all information received from all offerors in response to the provision at 252.247-7026 during the previous calendar year; and

(2) Submit the report to: Directorate of Acquisition, U.S. Transportation Command, ATTN: TCAQ, 508 Scott Drive, Scott AFB, IL 62225-5357.

(b) The Director of Acquisition, U.S. Transportation Command, will submit a consolidated annual report to the congressional defense committees, by June 1st of each year, in accordance with Section 1017 of Public Law 109-364.

[72 FR 49206, Aug. 28, 2007, as amended at 73 FR 70911, Nov. 24, 2008]

247.574 Solicitation provisions and contract clauses.

(a) Use the provision at 252.247-7022, Representation of Extent of Transportation by Sea, in all solicitations except—

(1) Those for direct purchase of ocean transportation services; or

(2) Those with an anticipated value at or below the simplified acquisition threshold.

(b)(1) Use the clause at 252.247–7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, except those for direct purchase of ocean transportation services.

(2) Use the clause with its Alternate I in other than construction contracts, if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations.

(3) Use the clause with its Alternate II in other than construction contracts, if any of the supplies to be transported are commercial items that are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(4) Use the clause with its Alternate III in solicitations and contracts with an anticipated value at or below the simplified acquisition threshold.

(c) Use the clause at 252.247–7024, Notification of Transportation of Supplies by Sea, in all contracts for which the offeror made a negative response to the inquiry in the provision at 252.247–7022, Representation of Extent of Transportation by Sea.

(d) Use the clause at 252.247–7025, Re-flagging or Repair Work, in all time charter solicitations and contracts for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.572(c).

(e) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, in solicitations that require a covered vessel for carriage of cargo for DoD. See 247.573–3 for reporting of the information received from offerors in response to the provision.

See 247.573–2(c)(3) for the required evaluation criterion.

[56 FR 36466, July 31, 1991, as amended at 59 FR 10580, Mar. 7, 1994; 60 FR 29501, June 5, 1995; 64 FR 2598, Jan. 15, 1999; 65 FR 14401, Mar. 16, 2000; 67 FR 38021, May 31, 2002. Redesignated and amended at 72 FR 49206, Aug. 28, 2007; 73 FR 70911, Nov. 24, 2008]

PART 249—TERMINATION OF CONTRACTS

Subpart 249.1—General Principles

Sec.

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105–1 Termination status reports.

249.105–2 Release of excess funds.

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249.7001 Congressional notification on significant contract terminations.

249.7002 [Reserved]

249.7003 Notification of anticipated contract terminations or reductions.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36471, July 31, 1991, unless otherwise noted.

Subpart 249.1—General Principles

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105–1 Termination status reports.

Follow the procedures at PGI 249.105–1 for reporting status of termination actions.

[71 FR 27645, May 12, 2006]

249.105-2 Release of excess funds.

See PGI 249.105-2 for guidance on recommending the release of excess funds.

[71 FR 27645, May 12, 2006]

249.109 Settlement agreements.

249.109-7 Settlement by determination.

Follow the procedures at PGI 249.109-7 for settlement of a convenience termination by determination.

[71 FR 27645, May 12, 2006]

249.110 Settlement negotiation memorandum.

Follow the procedures at PGI 249.110 for preparation of a settlement negotiation memorandum.

[71 FR 27645, May 12, 2006]

Subpart 249.5—Contract Termination Clauses

249.501 General.

249.501-70 Special termination costs.

(a) The clause at 252.249-7000, Special Termination Costs, may be used in an incrementally funded contract when its use is approved by the agency head.

(b) The clause is authorized when—

(1) The contract term is 2 years or more;

(2) The contract is estimated to require—

(i) Total RDT&E financing in excess of \$25 million; or

(ii) Total production investment in excess of \$100 million; and

(3) Adequate funds are available to cover the contingent reserve liability for special termination costs.

(c) The contractor and the contracting officer must agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Insert this amount in paragraph (c) of the clause.

(d)(1) Consider substituting an alternate paragraph (c) for paragraph (c) of the basic clause when—

(i) The contract covers an unusually long performance period; or

(ii) The contractor's cost risk associated with contingent special termination costs is expected to fluctuate extensively over the period of the contract.

nation costs is expected to fluctuate extensively over the period of the contract.

(2) The alternate paragraph (c) should provide for periodic negotiation and adjustment of the amount reserved for special termination costs. Occasions for periodic adjustment may include—

(i) The Government's incremental assignment of funds to the contract;

(ii) The time when certain performance milestones are accomplished by the contractor; or

(iii) Other specific time periods agreed upon by the contracting officer and the contractor.

Subpart 249.70—Special Termination Requirements

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) Terminate contracts with the Canadian Commercial Corporation in accordance with—

(1) The Letter of Agreement (LOA) between the Department of Defence Production (Canada) and the U.S. DoD, "Canadian Agreement" (for a copy of the LOA or for questions on its currency, contact the Office of the Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), (703) 697-9351, DSN 227-9351);

(2) Policies in the Canadian Agreement and part 249; and

(3) The Canadian Supply Manual, Chapter 11, Section 11.146, available at <http://www.pwgsc.gc.ca/acquisitions/text/sm/sm-e.html>.

(b) Contracting officers shall ensure that the Canadian Commercial Corporation submits termination settlement proposals in the format prescribed in FAR 49.602 and that they contain the amount of settlements with subcontractors. The termination contracting officer (TCO) shall prepare an appropriate settlement agreement. (See FAR 49.603.) The letter transmitting a settlement proposal must certify—

(1) That disposition of inventory has been completed; and

(2) That the Contract Claims Resolution Board of the Public Works and

249.7001

Government Services Canada has approved settlements with Canadian subcontractors when the Procedures Manual on Termination of Contracts requires such approval.

(c)(1) The Canadian Commercial Corporation will—

(i) Settle all Canadian subcontractor termination claims under the Canadian Agreement; and

(ii) Submit schedules listing serviceable and usable contractor inventory for screening to the TCO (see FAR 45.6).

(2) After screening, the TCO must provide guidance to the Canadian Commercial Corporation for disposition of the contractor inventory.

(3) Settlement of Canadian subcontractor claims are not subject to the approval and ratification of the TCO. However, when the proposed negotiated settlement exceeds the total contract price of the prime contract, the TCO shall obtain from the U.S. contracting officer prior to final settlement—

(i) Ratification of the proposed settlement; and

(ii) A contract modification increasing the contract price and obligating the additional funds.

(d) The Canadian Commercial Corporation should send all termination settlement proposals submitted by U.S. subcontractors and suppliers to the TCO of the cognizant contract administration office of the Defense Contract Management Agency for settlement. The TCO will inform the Canadian Commercial Corporation of the amount of the net settlement of U.S. subcontractors and suppliers so that this amount can be included in the Canadian Commercial Corporation termination proposal. The Canadian Commercial Corporation is responsible for execution of the settlement agreement with these subcontractors.

(e) The Canadian Commercial Corporation will continue administering contracts that the U.S. contracting officer terminates.

(f) The Canadian Commercial Corporation will settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

(g) The U.S. agency administering the contract with the Canadian Com-

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mercial Corporation shall provide any services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontracts placed in the United States. Settlement of such U.S. subcontracts will be in accordance with this regulation.

[56 FR 36471, July 31, 1991, as amended at 65 FR 39706, June 27, 2000; 68 FR 7440, Feb. 14, 2003; 71 FR 27645, May 12, 2006; 72 FR 30278, May 31, 2007]

249.7001 Congressional notification on significant contract terminations.

Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through department/agency liaison offices before release of the termination notice, or any information on the proposed termination, to the contractor. Follow the procedures at PGI 249.7001 for congressional notification and release of information.

[71 FR 27645, May 12, 2006]

249.7002 [Reserved]

249.7003 Notification of anticipated contract terminations or reductions.

(a) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160) and Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by termination or substantial reductions in major defense programs.

(b) Departments and agencies are responsible for establishing procedures to:

(1) Identify which contracts (if any) under major defense programs will be terminated or substantially reduced as a result of the funding levels provided in an appropriations act.

(2) Within 60 days of the enactment of such an act, provide notice of the anticipated termination of or substantial reduction in the funding of affected contracts—

(i) Directly to the Secretary of Labor; and

(ii) Through the contracting officer to each prime contractor.

(c) Use the clause at 252.249-7002, Notification of Anticipated Contract Termination or Reduction, in all contracts under a major defense program.

[61 FR 64637, Dec. 6, 1996; 61 FR 66077, Dec. 16, 1996; 62 FR 49304, Sept. 19, 1997]

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subpart 250.1—Extraordinary Contractual Actions

- Sec.
- 250.100 Definitions.
- 250.101 General.
- 250.101-2 Policy.
- 250.101-2-70 Limitations on payment.
- 250.101-3 Records.
- 250.102 Delegation of and limitations on exercise of authority.
- 250.102-1 Delegation of authority.
- 250.102-1-70 Delegations.
- 250.102-2 Contract adjustment boards.
- 250.103 Contract adjustments.
- 250.103-3 Contract adjustment.
- 250.103-5 Processing cases.
- 250.103-6 Disposition.
- 250.104 Residual powers.
- 250.104-3 Special procedures for unusually hazardous or nuclear risks.
- 250.104-3-70 Indemnification under contracts involving both research and development and other work.

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 73 FR 46815, Aug. 12, 2008, unless otherwise noted.

Subpart 250.1—Extraordinary Contractual Actions

250.100 Definitions.

Secretarial level, as used in this subpart, means—

(1) An official at or above the level of an Assistant Secretary (or Deputy) of Defense or of the Army, Navy, or Air Force; and

(2) A contract adjustment board established by the Secretary concerned.

250.101 General.

250.101-2 Policy.

250.101-2-70 Limitations on payment.

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

250.101-3 Records.

Follow the procedures at PGI 250.101-3 for preparation of records.

250.102 Delegation of and limitations on exercise of authority.

250.102-1 Delegation of authority.

(b) Authority under FAR 50.104 to approve actions obligating \$55,000 or less may not be delegated below the level of the head of the contracting activity.

(d) In accordance with the acquisition authority of the Under Secretary of Defense (Acquisition, Technology, and Logistics (USD (AT&L))) under 10 U.S.C. 133, in addition to the Secretary of Defense and the Secretaries of the military departments, the USD (AT&L) may exercise authority to indemnify against unusually hazardous or nuclear risks.

250.102-1-70 Delegations.

(a) *Military departments.* The Departments of the Army, Navy, and Air Force will specify delegations and levels of authority for actions under the Act and the Executive Order in departmental supplements or agency acquisition guidance.

(b) *Defense agencies.* Subject to the restrictions on delegations of authority in 250.102-1(b) and FAR 50.102-1, the directors of the defense agencies may exercise and redelegate the authority contained in the Act and the Executive Order. The agency supplements or agency acquisition guidance shall specify the delegations and levels of authority.

(1) Requests to obligate the Government in excess of \$55,000 must be submitted to the USD (AT&L) for approval.

(2) Requests for indemnification against unusually hazardous or nuclear risks must be submitted to the

250.102-2

USD(AT&L) for approval before using the indemnification clause at FAR 52.250-1, Indemnification Under Public Law 85-804.

(c) *Approvals.* The Secretary of the military department or the agency director must approve any delegations in writing.

250.102-2 Contract adjustment boards.

The Departments of the Army, Navy, and Air Force each have a contract adjustment board. The board consists of a Chair and not less than two nor more than six other members, one of whom may be designated the Vice-Chair. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total board membership constitutes an action of the board. Alternates may be appointed to act in the absence of any member.

250.103 Contract adjustments.

250.103-3 Contract adjustment.

(a) Contractor requests should be filed with the procuring contracting officer (PCO). However, if filing with the PCO is impractical, requests may be filed with an authorized representative, an administrative contracting officer, or the Office of General Counsel of the applicable department or agency, for forwarding to the cognizant PCO.

250.103-5 Processing cases.

(1) At the time the request is filed, the activity shall prepare the record described at PGI 250.101-3(1)(i) and forward it to the appropriate official within 30 days after the close of the month in which the record is prepared.

(2) The officer or official responsible for the case shall forward to the contract adjustment board, through departmental channels, the documentation described at PGI 250.103-5.

(3) Contract adjustment boards will render decisions as expeditiously as practicable. The Chair shall sign a memorandum of decision disposing of the case. The decision shall be dated and shall contain the information required by FAR 50.103-6. The memorandum of decision shall not contain any information classified "Confidential" or higher. The board's decision

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will be sent to the appropriate official for implementation.

250.103-6 Disposition.

For requests denied or approved below the Secretarial level, follow the disposition procedures at PGI 250.103-6.

250.104 Residual powers.

250.104-3 Special procedures for unusually hazardous or nuclear risks.

250.104-3-70 Indemnification under contracts involving both research and development and other work.

When indemnification is to be provided on contracts requiring both research and development work and other work, the contracting officer shall insert an appropriate clause using the authority of both 10 U.S.C. 2354 and Public Law 85-804.

(a) The use of Public Law 85-804 is limited to work which cannot be indemnified under 10 U.S.C. 2354 and is subject to compliance with FAR 50.104.

(b) Indemnification under 10 U.S.C. 2354 is covered by 235.070.

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 251.1—Contractor Use of Government Supply Sources

Sec.

251.102 Authorization to use Government supply sources.

251.107 Contract clause.

Subpart 251.2—Contractor Use of Inter-agency Fleet Management System (IFMS) Vehicles

251.202 Authorization.

251.205 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36479, July 31, 1991, unless otherwise noted.

Subpart 251.1—Contractor Use of Government Supply Sources

251.102 Authorization to use Government supply sources.

(e) When authorizing contractor use of Government supply sources, follow the procedures at PGI 251.102.

(3)(ii) The contracting officer may also authorize the contractor to use the DD Form 1155 when requisitioning from the Department of Veterans Affairs.

(f) The authorizing agency is also responsible for promptly considering requests of the DoD supply source for authority to refuse to honor requisitions from a contractor that is indebted to DoD and has failed to pay proper invoices in a timely manner.

[69 FR 67858, Nov. 22, 2004]

251.107 Contract clause.

Use the clause at 252.251-7000, Ordering From Government Supply Sources, in solicitations and contracts which include the clause at FAR 52.251-1, Government Supply Sources.

Subpart 251.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

251.202 Authorization.

(a)(2)(A) See FAR 28.307-2(c) for policy on contractor insurance.

(B) See FAR 28.308 for policy on self-insurance.

(C) See FAR 31.205-19 for allowability of insurance costs.

(5) Paragraph (d) of the clause at 252.251-7001 satisfies the requirement of FAR 51.202(a)(5) for a written statement.

251.205 Contract clause.

Use the clause at 252.251-7001, Use of Interagency Fleet Management System (IFMS) Vehicles and Related Services, in solicitations and contracts which include the clause at FAR 52.251-2, Interagency Fleet Management System (IFMS) Vehicles and Related Services.