

directly related to the originating telephone subscriber's call or transaction;

(2) Prohibit such person from reusing or selling the telephone number or billing information without first

(i) Notifying the originating telephone subscriber and,

(ii) Obtaining the affirmative consent of such subscriber for such reuse or sale; and,

(3) Prohibit such person from disclosing, except as permitted by paragraphs (a) (1) and (2) of this section, any information derived from the automatic number identification or charge number service for any purpose other than

(i) Performing the services or transactions that are the subject of the originating telephone subscriber's call,

(ii) Ensuring network performance security, and the effectiveness of call delivery,

(iii) Compiling, using, and disclosing aggregate information, and

(iv) Complying with applicable law or legal process.

(b) The requirements imposed under paragraph (a) of the section shall not prevent a person to whom automatic number identification or charge number services are provided from using

(1) The telephone number and billing information provided pursuant to such service, and

(2) Any information derived from the automatic number identification or charge number service, or from the analysis of the characteristics of a telecommunications transmission, to offer a product or service that is directly related to the products or services previously acquired by that customer from such person. Use of such information is subject to the requirements of 47 CFR 64.1200 and 64.1504(c).

5. Section 64.1603 is revised to read as follows:

§ 64.1603 Customer notification.

Any common carrier participating in the offering of services providing calling party number, ANI, or charge number on interstate calls must notify its subscribers, individually or in conjunction with other carriers, that their telephone numbers may be identified to a called party. Such notification must be made not later than December 1, 1995, and at such times thereafter as to ensure notice to subscribers. The notification must be effective in informing subscribers how to maintain privacy by dialing *67 (or 1167 for rotary or pulse-dialing phones) on interstate calls. The notice shall inform subscribers whether dialing *82

(or 1182 for rotary or pulse-dialing phones) on interstate calls is necessary to present calling party number to called parties. For ANI or charge number services for which such privacy is not provided, the notification shall inform subscribers of the restrictions on the reuse or sale of subscriber information.

6. Section 64.1604 is revised to read as follows:

§ 64.1604 Effective date

The provisions of §§ 64.1600 and 64.1602 are effective April 12, 1995. The provisions of §§ 64.1601 and 64.1603 are effective December 1, 1995, except §§ 64.1601 and 64.1603 do not apply to public payphones and partylines until January 1, 1997.

[FR Doc. 95-13760 Filed 6-2-95; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 94-146; RM-8557]

Radio Broadcasting Services; Houston, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 242A to Houston, Alaska, as that community's third local FM service, in response to a petition for rule making filed on behalf of Evangelistic Alaska Missionary Fellowship, Inc. See 59 FR 66287, December 23, 1994. Coordinates used for Channel 242A at Houston are 61-38-01 and 149-50-28. With this action, the proceeding is terminated.

DATES: Effective July 17, 1995. The window period for filing applications on Channel 242A at Houston, Alaska, will open on July 17, 1995, and close on August 17, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 242A at Houston, Alaska, should be addressed to the Audio Services Division, FM Branch, (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94-146, adopted May 23, 1995, and released May 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy

contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by adding Channel 242A at Houston.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-13640 Filed 6-2-95; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 203, 206, 207, 209, 215, 217, 219, 225, 226, 228, 231, 232, 235, 237, 242, 244, 245, 247, 249, 251, 252, 253, and Appendix C to Chapter 2

[Defense Acquisition Circular (DAC) 91-7]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 91-7 amends the Defense FAR Supplement (DFARS) to revise, finalize, or add language on competitive prototyping, contractor accounting controls, award to foreign controlled contractors, terrorist countries, debarment and suspension, small purchases in support of contingency operations, greatest value sources, predetermined indirect cost rates, undefinitized contract actions, small disadvantaged business, historically black colleges and universities and minority institutions, Indian tribal or Alaska native corporations, North American Free Trade Agreement, valves and machine tools, restriction on procurement of goods, aircraft fuel cells, lifeboat survival systems, performance outside the United States, offset

administrative costs, preference for local and small businesses, preference for local residents, surety bonds, limitation on allowable individual compensation, restructuring costs under defense contracts, indirect costs of institutions of higher learning, research and development definitions, manufacturing science and technology program, research and development contracting, Federally Funded Research and Development Centers, streamlined research and development contracting procedures test, personal services contracts, services at installations being closed, production surveillance, contractor insurance/pension reviews, best value—stevedoring, returnable cylinders, reflagging or repair work, screening threshold for contractor inventory, notification of proposed program termination of reduction, and Government supply sources.

DATES: Effective date May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Martin, Defense Acquisition Regulations Directorate, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20302-3062, telephone (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This Defense Acquisition Circular (DAC) 91-7 includes 39 rules and miscellaneous editorial amendments. Twelve of the rules in the DAC (Item XXIII, III, VI, VII, XIV, XVIII, XX, XXII, XXVI, XXVIII, XXIX, and XXX) were published previously in the **Federal Register** and thus are not included as part of this rulemaking notice. These 12 rules are being published in the DAC to revise the looseleaf edition of DFARS to conform to the previously published revisions.

C. Regulatory Flexibility Act

DAC 91-7, Items I, XXI, XXV, XXXV

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Public Law 98-577. However, comments from small entities will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DFARS Case 95-610 in correspondence.

DAC 91-7, Items II, IV, V, VII, IX, X, XIII, XV, XVI, XVII, XXIV, XXXII, XXXIV, XXXVI, XXXVII, XXXIX

DoD certifies that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because:

Item II—The rule emphasizes existing requirements for contractors to ensure that cost data is reliable and contract costs are properly allocated.

Item IV—The rule only applies to solicitations and contracts with an estimated or actual value exceeding \$5,000,000.

Item V—The rule only applies to contractors and subcontractors that are debarred, suspended, or proposed for debarment.

Item VII—The rule clarified DoD's existing policy regarding contractor selection of subcontractors based on greatest value.

Item IX—The rule clarifies the existing regulatory language regarding statutory restrictions on the use of undefinitized contract actions.

Item X—The rule updates the definitions of SDB and HBCU, and eliminates the requirement for an offeror that represents itself as an SDB, HBCU, or MI, to maintain its status as such as the time of contract award.

Item XIII—The rule implements statutory restrictions on the acquisition of machine tool accessories of foreign manufacture.

Item XV—The rule implements statutory restrictions on the acquisition of fuel cells of foreign manufacture.

Item XVI—The rule implements statutory restrictions on the acquisition of lifeboat survival systems of foreign manufactures or assembly.

Item XVII—The rule only applies to contracts that exceed \$500,000 and involve performance outside the United States.

Item XXIV—The rule prohibits DoD from placing certain limitations on the reimbursement of indirect costs to institutions of higher learning.

Item XXXII—The rule merely simplifies the method used by the Government to determine when on-site production surveillance will be performed on a contract.

Item XXXIV—The rule is consistent with the policy at FAR 15.605 regarding selection of a source whose proposal offers the greatest value to the Government.

Item XXXVI—The rule implements statutory restrictions on foreign performance of certain reflagging or repair work.

Item XXXVII—The rule merely raises the dollar threshold for Government screening of excess contractor inventory prior to disposal.

Item XXXIX—The rule uses standard commercial terms for payment within 30 days, for contractor purchases from Government supply sources.

DAC 91-7, Items XI, XII, XIX, XXVII, XXXI, XXXIII, XXXVIII

The Regulatory Flexibility Act applies. A final regulatory analysis has been performed and is available by writing the Defense Acquisition Regulations Directorate, ATTN: Ms. Michele Peterson, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301-3062.

D. Paperwork Reduction Act

DAC 91-7, Items I, II, V, VII, IX, X, XI, XV, XVI, XIX, XXI, XXIV, XXV, XXXI, XXXII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

DAC 91-7, Items IV, XII, XIII, XVII, XXVII, XXXIII

The Paperwork Reduction Act applies. OMB has improved the information collection requirements. The following OMB control numbers apply:

Item IV—No. 0704-0372

Item XII—No. 0704-0361

Item XIII—No. 0704-0350

Item XVII—No. 0704-0355

Item XXVII—No. 0704-0188 and 0704-0264

Item XXXIII—No. 0704-0250

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Defense Acquisition Circular (DAC) 91-7 amends the Defense FAR Supplement (DFARS) 1991 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

Item I—Competitive Prototyping

This final rule deletes the language at DFARS 207.105(b)(2)(v), which addressed competitive prototyping for major acquisition programs as required by 10 U.S.C. 2438. Section 3006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) repealed 10 U.S.C. 2438.

Item II—Contractor Accounting Controls

This final rule amends DFARS 209.104-1, 232.503-6, 242.302, and 253.209-1, and adds a new subpart at 242.75, to provide policies and procedures applicable to contractor

accounting systems and related internal controls. 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, must maintain an accounting system and related internal controls which provide reasonable assurance that (1) Applicable laws and regulations are complied with; (2) the accounting system and cost data are reliable; (3) risk of misallocations and mischarges are minimized; and (4) contract allocations and charges are consistent with invoice procedures.

Item III—Award to Foreign Controlled Contractors

This final rule was issued by Departmental Letter 94-013, effective September 29, 1994. The rule revises and finalizes the interim rule published as Item VII of DAC 91-5. The rule implements 10 U.S.C. 2536, which prohibits award of a DoD contract under a national security program to an entity controlled by a foreign government, if access to proscribed information is required to perform the contract. The final rule differs from the interim rule in that it (1) revises the definition of "entity controlled by a foreign government" at DFARS 252.209-7002 as required by Section 842 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160); (2) revises the definition of "effectively owned or controlled" at 252.209-7002 for clarity; (3) revises the definition of "foreign government" at 252.209-7002 for consistency with the regulations at 31 CFR Chapter V, issued by the Treasury Department Office of Foreign Assets Control; and (4) makes minor clarifying revisions at 209.101, 209.104-1(g)(ii), 225.702, and 252.209-7002(b).

Item IV—Terrorist Countries

The interim rule issued by Departmental Letter 94-014 on September 29, 1994, is converted to a final rule without change. The rule implements Section 843 of the Fiscal Year 1994 Defense Authorization Act (Public Law 103-160). Section 843 requires offerors and contractors under DoD solicitations and contracts exceeding \$5,000,000 to report commercial transactions conducted with the government of a terrorist country. The rule adds new language at DFARS 209.104-1(g)(iii), a new provision at 252.209-7003, and a new clause at 252.209-7004. The rule also revises the provision at 252.209-7001 for consistency with the terminology used in the new provision and clause.

Item V—Debarment and Suspension

This final rule adds a new subsection at DFARS 209.405-1 to place restrictions on the issuance of orders under indefinite quantity and Federal Supply Schedule contracts in instances where the contractor has been debarred, suspended, or proposed for debarment. The rule also clarifies that the restriction at FAR 9.405-1(b), against renewal or extension of existing contracts or consent to subcontracts with contractors debarred, suspended, or proposed for debarment, also applies to the exercise of options.

Item VI—Small Purchases in Support of Contingency Operations

This final rule was issued by Departmental Letter 94-015, effective September 29, 1994. The rule amends DFARS 213.000, 213.101, 213.404, and 213.505 to fully implement DoD's authority to use simplified procedures for acquisitions in support of contingency operations. The rule provides for the use of simplified procedures for acquisitions of \$100,000 or less, for contracts to be awarded and performed outside the United States in support of a contingency operation as defined in 10 U.S.C. 101(a)(13).

Item VII—Greatest Value Sources

This final rule (1) adds language at DFARS 215.806-1(a) (1) to clarify DoD policy regarding the selection of subcontractors based on greatest value; (2) adds language at 244.202-2 regarding consideration of greatest value when consent to subcontract is required; and (3) revises Section C-207.5 of Appendix C to establish more definitive criteria for Government personnel to consider when evaluating contractor vendor rating systems during a Contractor Purchasing System Review.

Item VIII—Predetermined Indirect Cost Rates

This final rule was issued by Departmental Letter 94-018, effective October 18, 1994. The rule adds language at DFARS 216.307, 242.705-3, and 252.216-7002 to implement revisions made to OMB Circular A-21, Cost Principles for Educational Institutions, on July 26, 1993. The revised circular provides that indirect cost rates for educational institutions may be predetermined for a period of up to four years when cost experience and other pertinent facts are sufficient to assess the probable level of indirect costs during subsequent accounting periods.

Item IX—Unfinalized Contract Actions

This final rule revises DFARS 217.7404-3(a)(2), 217.7404-4, and 217.7404-5 to clarify the policy and procedures implementing 10 U.S.C. 2326(b) with regard to limitations on the use of unfinalized contract actions.

Item X—Small Disadvantaged Business, Historically Black Colleges and Universities and Minority Institutions

The interim rule published as Item XLVII of DAC 91-6 is converted to a final rule without change. The rule implements Subsections 811 (a), (b), and (c) of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160). Subsections 811 (a) and (b) of Pub. L. 103-160 revise the definitions of historically black colleges and universities (HBCU) and minority institutions (MI). Subsection 811(c) deletes the requirement for an offeror, that represents itself on a DoD solicitation as a small disadvantaged business, HBCU, or MI, to maintain its status as such at the time of award. The implementing DFARS language can be found at 219.301(a), 226.7005(a)(1), 252.219-7003(a), 252.219-7006(a), 252.226-7000 (a) and (b), and 252.226-7001(a).

Item XI—Indian Tribal or Alaska Native Corporation

The interim rule issued by Departmental Letter 94-009 on May 3, 1994, is revised and finalized. The rule implements Section 8051 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8012 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335). Sections 8051 and 8012 provide that, notwithstanding any other provision of law, a qualified Indian Tribal Corporation or Alaska Native Corporation furnishing the product of a responsible small business concern shall not be denied the opportunity to compete for and be awarded a contract under the Small Disadvantaged Business (SDB) preference programs. The final rule differs from the interim rule in that it adds references to Section 8012 of Pub. L. 103-335 at DFARS 219.502-2-70(a)(1)(ii), 252.219-700(f)(2), 252.219-7002(c), and 252.219-7006(d)(2).

Item XII—North American Free Trade Agreement

The interim rule published as Item XVIII of DAC 91-6 is revised and finalized. The rule incorporates Buy American Act and Balance of Payment Program waivers required by the North American Free Trade Agreement

(NAFTA) Implementation Act of 1993 (Pub. L. 103-182). The final rule differs from the interim rule in that it amends the provision at DFARS 252.225-7035, the clause at 252.225-7036, and the clause prescription at 225.408(a)(4)(B), to recognize the \$25,000 threshold for application of NAFTA to Canadian end products.

Item XIII—Valves and Machine Tools

This final rule adds a new provision at DFARS 252.225-7040, Machine Tool List, and corresponding prescriptive language at 225.7004-2(b) and 225.7004-6(c). The provision at DFARS 252.225-7040 requires offerors to identify the country of manufacture and the cost of machine tool accessories to be provided under a contract, if the accessories are not listed in the schedule as separate line items and are not of U.S. or Canadian origin. This information will facilitate evaluation of machine tool accessories by supply class, as required by 10 U.S.C. 2534, to determine if foreign source restrictions apply.

Item XIV—Restriction on Procurement of Goods

This interim rule was issued by Departmental Letter 95-009, effective April 10, 1995. The rule revises DFARS Subpart 225.70 and the clauses at 252.225-7017 and 252.225-7029, to implement 10 U.S.C. 2534 as amended by Section 814 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337) and Section 4102(i) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355). Section 814 revises the existing foreign source restrictions for machine tools and valves, buses, chemical weapons antidote, air circuit breakers, and antifriction bearings, by uniformly permitting acquisition of Canadian items, and by expanding and standardizing the waiver criteria. Section 4102(i) exempts acquisitions below the simplified acquisition threshold from these restrictions.

Item XV—Aircraft Fuel Cells

The interim rule published as Item XLIV of DAC 91-6 is revised and finalized. The rule implements Section 8090 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8075 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335). Sections 8090 and 8075 prohibit the use of fiscal year 1994 or 1995 funds to purchase aircraft fuel cells unless such cells are produced or manufactured in the United States by a domestic-operated entity. The final rule differs from the interim rule in that it amends the language at DFARS

225.7021-1 and 225.7021-3(a) to address fiscal year 1995 requirements.

Item XVI—Lifeboat Survival System

The interim rule published as Item XLVI of DAC 91-6 is revised and finalized. The rule implements Section 8124 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8093 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335). Sections 8124 and 8093 prohibit the purchase of a totally enclosed lifeboat survival system unless 50 percent or more of the system's components are manufactured in the United States, and 50 percent or more of the labor in the final manufacture and assembly of the system is performed in the United States. The final rule differs from the interim rule in that it adds a reference to Pub. L. 103-335 at DFARS 225.7022-1.

Item XVII—Performance Outside the United States

The interim rule published as Item XXIX of DAC 91-5 is revised and finalized. The rule implements 10 U.S.C. 2410g, which requires offerors and contractors to provide the Government with advance notification of contract performance outside the United States and Canada in certain instances. The final rule differs from the interim rule in that (1) Detailed reporting requirements are deleted from the clause at DFARS 252.225-7026; (2) DD Form 2139, which was deleted by DAC 91-5, is reinstated with a new title and revised to include the reporting requirements deleted from the clause at DFARS 252.225-7026; and (3) editorial changes are made at 225.7202 and 252.225-7026(b)(3).

Item XVIII—Offset Administrative Costs

This final rule was issued by Departmental Letter 94-012, effective September 28, 1994. The rule revises DFARS 225.7303-2 to change the criteria for contractor recovery of offset administrative costs under foreign military sale contracts. The change eliminates the requirement for inclusion of specific information regarding offset costs in Letters of Offer and Acceptance for foreign military sales. A corresponding revision has been made to DoD 5105.38-M, Security Assistance Management Manual.

Item XIX—Preference for Local and Small Businesses

The interim rule issued as Item XLV of DAC 91-6 is revised and finalized. The rule implements Section 2912 of the Fiscal Year 1994 Defense

Authorization Act (Pub. L. 103-160). Section 2912 requires DoD, when entering into contracts as part of the closure or realignment of a military installation under a base closure law, to give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small business and small disadvantaged business concerns. The final rule differs from the interim rule in that it (1) Revises the definition of "vicinity" at DFARS 226.7101 to permit modification of the definition by the agency head; and (2) clarifies the procedures at 226.7103 to address criteria for consideration of awards to contractors under the section 8(a) program.

Item XX—Preference for Local Residents

This interim rule was issued by Departmental Letter 95-003, effective January 26, 1995. The rule amends DFARS Subpart 226.71 to implement Section 817 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 817 authorizes the Secretary of Defense to give preference to entities that plan to hire local residents, when entering into contracts for services to be performed at a military installation that is affected by closure or alignment under a base closure law.

Item XXI—Surety Bonds

This final rule amends DFARS 228.102-1 to implement Section 323 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 323 extends the authority to issue surety bonds for certain environmental programs through December 31, 1999.

Item XXII—Limitation on Allowable Individual Compensation

This interim rule was issued by Departmental Letter 94-019, effective December 14, 1994. The rule amends DFARS 231.205, 231.303, 231.603, and 231.703 to implement Section 8117 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335). Section 8117 limits allowable costs for individual compensation to \$250,000 per year. This limitation applies to contracts that are awarded after April 15, 1995, and that are funded with Fiscal Year 1995 appropriations.

Item XXIII—Restructuring Costs Under Defense Contracts

This interim rule was issued by Departmental Letter 94-020, effective December 29, 1994. The rule adds new sections at DFARS 231.205-70, 242.1202, and 242.1204 to implement

Section 818 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 818 restricts DoD from reimbursing restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met.

Item XXIV—Indirect Costs of Institutions of Higher Learning

The interim rule issued by Departmental Letter 94-010 on May 5, 1994, is converted to a final rule without change. The rule adds a new section at DFARS 231.303 to implement Section 841 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160). Section 481 prohibits DoD from placing any limitation on the reimbursement of otherwise allowable indirect costs incurred by an institution of higher learning, unless that same limitation is applied uniformly to all other organizations performing similar work under DoD contracts.

Item XXV—Research and Development Definitions

This final rule amends DFARS 235.001 to incorporate the definitions of the categories of research and development found in DoD 7000.14-R, Financial Management Regulation.

Item XXVI—Manufacturing Science and Technology Program

This interim rule was issued by Departmental Letter 95-002, effective January 17, 1995. The rule adds language at DFARS 235.006 (a) and (b)(iv) to implement Section 256 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 256 requires the use of competitive procedures in awarding contracts under the Manufacturing Science and Technology Program, and use of a cost-sharing arrangement for these contracts unless an alternative arrangement is approved by the Secretary of Defense.

Item XXVII—Research and Development Contracting

This final rule revises DFARS 235.010(b) to provide updated information regarding the Defense Technical Information Center (DTIC). The rule also adds two new clauses at DFARS 252.235-7010, Acknowledgment of Support and Disclaimer, and DFARS 252.235-7011, Final Scientific or Technical Report Requirement. The clause at 252.235-7010 requires contractors to include an acknowledgment of the Government's support in the publication of any material based on or developed under a Government contract. The clause at 252.235-7011 requires contractors to

provide DTIC with two copies of scientific or technical reports delivered under a Government contract.

Item XXVIII—Federally Funded Research and Development Centers (FFRDCs)

This interim rule was issued by Departmental Letter 95-005, effective March 3, 1995. The rule adds a new section at DFARS 235.017-1 to implement Section 217 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 217 allows DoD-sponsored FFRDCs that function primarily as research laboratories to respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology.

Item XXIX—Streamlined Research and Development Contracting Procedures Test

This final rule was issued by Departmental Letter 94-017, effective October 4, 1994, and Departmental Letter 95-008, effective March 21, 1995. The rule adds a new subpart at DFARS 235.70 to establish streamlined research and development contracting procedures for use by selected DoD contracting offices under a test program. The test will be conducted for a 20-month period extending from October 1, 1994, to May 31, 1996.

Item XXX—Personal Service Contracts

This interim rule was issued by Departmental Letter 95-001, effective January 5, 1995. The rule adds language at DFARS 206.102(d) and revises DFARS 237.104(b)(ii) to implement Section 712 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160) and Section 704 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 712 requires the Secretary of Defense to establish procedures for entering into personal service contracts under 10 U.S.C. 1091 to carry out health care responsibilities in medical/dental treatment facilities. Section 704 provides authority for the Secretary of Defense to enter into personal service contracts under 10 U.S.C. 1091 to provide the services of clinical counselors, family advocacy program staff, and victim's services representatives.

Item XXXI—Services at Installations Being Closed

The interim rule issued by Departmental Letter 94-011 on July 8, 1994, is revised and finalized. The rule implements Section 2907 of the Fiscal Year 1994 Defense Authorization Act

(Pub. L. 103-160). Section 2907 permits the Secretary of Defense to contract with local governments for police, fire protection, airfield operation, or other community services at military installations being closed under Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526) and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510). The final rule differs from the interim rule in that it adds a new paragraph at DFARS 237.7401(d) to clarify that Subpart 222.71, Right of First Refusal of Employment, applies to contracts with local governments unless it conflicts with the local government's civil service selection procedures.

Item XXXII—Production Surveillance

This final rule revises DFARS 242.1104 to simplify the criteria for determining the extent of production surveillance to be performed under a contract. Category 1, 2, and 3 surveillance criteria are eliminated and replaced with streamlined surveillance requirements.

Item XXXIII—Contractor Insurance/Pension Reviews

This final rule revises DFARS 242.7302(a) to increase the dollar threshold for performance of Contractor Insurance/Pension Reviews from \$10,000,000 to \$40,000,000. The rule also adds language at 242.7302(d) to clarify the criteria for determining a contractor's eligibility for insurance/pension review.

Item XXXIV—Best Value—Stevedoring

The interim rule issued by Departmental Letter 94-016, effective September 29, 1994, is converted to a final rule without change. The rule revises DFARS 247.270-5 and 247.270-6 to permit contracting officers to consider factors other than cost or price when evaluating offers for stevedoring services.

Item XXXV—Returnable Cylinders

This final rule revises the clause at DFARS 252.247-7021 and the corresponding prescriptive language at 247.305-70 to delete references to use of the clause for acquisitions involving returnable cylinders. The clause at DFARS 252.247-7021 now applies to returnable containers other than cylinders as the clause at FAR 52.247-66 applies to returnable cylinders. References to a 30-day rent-free Government use period are also deleted from the clause to facilitate tailoring of this time period to the circumstances of the acquisition.

Item XXXVI—Reflagging or Repair Work

The interim rule published as Item XLIII of DAC 91-6 is revised and finalized. The rule implements Section 315 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160). Section 315 places restrictions on the performance of reflagging or repair work on vessels used under time charter contracts. The final rule differs from the interim rule in that it revises the language at DFARS 247.571(c) and 252.247-7025 to further clarify the restrictions on the performance of reflagging or repair work.

Item XXXVII—Screening Threshold

This final rule amends DFARS 245.608-70 to raise the dollar threshold for screening serviceable and unusable contractor inventory, with no national stock number, through the Contractor Inventory Redistribution System. The threshold is raised from \$500 to \$1,000 (except for furniture) to coincide with the threshold at FAR 45.608-2.

Item XXXVIII—Notification of Proposed Program Termination or Reduction

The interim rule published as Item XXXVIII of DAC 91-6 is revised and finalized. The rule implements Section 1372 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160) as amended by Section 1142 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 1372 requires the Secretary of Defense to provide certain notices regarding the proposed termination or substantial reduction of major defense programs. The final rule differs from the interim rule in that it makes clarifying revisions at DFARS 249.7003(b)(1) and 252.249-7002(c)(1), and changes the notification periods at 249.7003(b)(2) and (3) from 90 days to 60 days, as required by Section 1142 of Pub. L. 103-337.

Item XXXIX—Government Supply Sources

This final rule amends DFARS 251.102, adds a new section at 251.105, and amends the clause at 252.251-7000 to clarify that, when a contractor is authorized to use Government supply sources (1) Payments to the Government for such supplies are due within 30 days of the Government's invoice; (2) contractors must pay interest on late payments to the Government; and (3) a contractor's failure to pay may result in loss of authorization to use Government supply sources.

Item XL—Editorials

(Note: The asterisked items are revisions being made only in the looseleaf edition of DFARS.)

(a) The definition of "contracting activity" at DFARS Section 202.101 is amended to update the contracting activity names that appear under the NAVY heading.

(b) The definition of "contracting activity" at DFARS Section 202.101 is amended by adding under the heading United States Special Operations Command and after the word "Headquarters," the words "United States Special Operations Command" that were inadvertently removed in DAC 91-6.

(c) DFARS 203.502-2 is amended by revising paragraph (h)(ii) to read "Naval Criminal Investigative Service."

* (d) DFARS 204.7202-2(b)(2)(iii)(B) is amended to revise "Nay" to read "Navy."

(e) DFARS 206.302-5(c)(i)(B) is amended to revise the parenthetical reference "(Acquisition)" to read "(Acquisition & Technology)."

* (f) DFARS 215.804-3(b)(1)(B)(3) is amended to revise "submisson" to read "submission."

(g) DFARS 225.603(b)(i)(D) and (b)(ii) are amended to revise the address for DCMAO, New York.

* (h) DFARS 225.872-5(a) is amended to revise "bee" to read "been."

(i) DFARS 225.872-5(a) is amended to reflect the correct title of the Deputy Director of Defense Procurement (Foreign Contracting).

(j) DFARS 225.872-6(b) is amended to reflect the correct title of the Deputy Director of Defense Procurement (Foreign Contracting).

* (k) DFARS 225.7001(c) is amended to revise "speciality" to read "specialty."

* (l) DFARS Table of Contents for section 226.71 is amended to revise the title to read: "Preference for Local and Small Businesses."

* (m) DFARS Table of Contents for section 232 is amended to reflect the proper sequence of Subparts 232.7 and 232.8.

(n) DFARS 232.108(1)(i) is revised to update the Army finance office designation.

(o) DFARS 235.006(b)(i)(C)(I)(iii) is revised to clarify the references to applicable statutes.

(p) DFARS 235.015-70(d)(3)(ii) is amended by revising the word "which" to read "who."

(q) DFARS 237.7302 is amended to revise the reference "10 U.S.C. 2304(a)(i)" to read "10 U.S.C. 2304(a)(1)."

* (r) DFARS 252 Table of Contents is amended to revise the title for clause number 252.225-7018.

(s) DFARS 252.225-7009(f)(2)(iv) is amended to revise the address for DCMAO, New York.

(t) DFARS 252.225-7010(e) is amended to revise the address for DCMAO, New York.

(u) DFARS 252.225-7037(f)(2)(iv) is amended to revise the address for DCMAO, New York.

* (v) DFARS 253 is amended to update DD Form 879, DD Form 1155 and DD Form 1155C-1.

* (w) DFARS 253 is amended to delete the following obsolete forms: DD Form 1114, DD Form 1568, DD Form 1592, and DD Form 2025. DD Form 1568 has been replaced by Standard form 1146. The other forms have no replacement.

Interim Rules Adopted as Final Without Changes**PARTS 209 AND 252—[AMENDED]**

The interim rule that was published at 59 FR 51130 on October 7, 1994, is adopted as final without change.

PARTS 219, 226, AND 252—[AMENDED]

The interim rule that was published as Item XLVII of DAC 91-6 at 59 FR 27662 on May 27, 1994, is adopted as final without change.

PART 231—[AMENDED]

The interim rule that was published at 59 FR 26143 on May 19, 1994, is adopted as final without change.

PART 247—[AMENDED]

The interim rule that was published at 59 FR 50851 on October 6, 1994, is adopted as final without change.

Interim Rules Adopted as Final With Changes**PARTS 206, 222, 226, 237, AND 252—[AMENDED]**

The interim rule that was published at 59 FR 36088 on July 15, 1994 is adopted as final with minor editorial amendments at sections 226.7200(a), 237.7400, 237.7401, 237.7402, and with the addition of 237.7401(d).

PARTS 219 AND 226—[AMENDED]

The interim rule that was published at 59 FR 12191 on March 16, 1994, as corrected at 59 FR 15501 on April 1, 1994, is adopted as final with amendments at sections 226.7101 and 226.7103.

PARTS 219 AND 252—[AMENDED]

The interim rule that was published at 59 FR 24958 on May 13, 1994, is adopted as final with revisions at 219.502-2-70, 252.219-7001, 252.219-7002, and 252.219-7006.

PARTS 225 AND 252—[AMENDED]

The interim rule that was published at 59 FR 1288 on January 10, 1994, as corrected at 59 FR 8041 on February 17, 1994 and at 59 FR 39974 on August 5, 1994, is adopted as final with amendments at sections 225.408, 252.225-7035, and 252.225-7036.

PARTS 225 AND 252—[AMENDED]

The interim rule that was published as Item XLIV of DAC 91-6 at 59 FR 11729 on March 14, 1994, as corrected at 59 FR 38931 on August 1, 1994, is adopted as final with amendments at sections 225.7021-1 and 225.7021-3.

PARTS 225 AND 252—[AMENDED]

The interim rule that was published as Item XLVI of DAC 91-6 at 59 FR 19146 on April 22, 1994, is adopted as final with amendments at section 225.7022-1.

PARTS 225, 252, AND 253—[AMENDED]

The interim rule that was published as Item XXIX of DAC 91-5 at 58 FR 28458 on May 13, 1993, is adopted as final with amendments at 225.7202 and 252.225-7026. In addition, DD Form 2139 is reinstated with a new title and revised.

PARTS 247 AND 252—[AMENDED]

The interim rule was published as Item XLIV of DAC 91-6 at 59 FR 27662 on May 27, 1994, is adopted as final with amendments at 247.571, 247.573, and 252.247-7025.

PARTS 249 AND 252—[AMENDED]

The interim rule that was published as Item XXXVIII of DAC 91-6 at 59 FR 27662 on May 27, 1994, is adopted as final with amendments at 249.7003 and 252.249-7002.

List of Subjects in 48 CFR Parts 202, 203, 206, 207, 209, 215, 217, 219, 225, 226, 228, 231, 232, 235, 237, 242, 244, 245, 247, 249, 251, 252, 253, and Appendix C to Chapter 2

Government procurement.

Amendments to 48 CFR Chapter 2 (Defense FAR Supplement)

48 CFR Chapter 2 (the Defense FAR Supplement) is amended as set forth below.

1. The authority for 48 CFR parts 202, 203, 206, 207, 209, 215, 217, 291, 225, 226, 228, 231, 232, 235, 237, 242, 244, 245, 247, 249, 251, 252, 253, and Appendix C to Chapter 2 is revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS**202.101 [Amended]**

2. Section 202.101 is amended by revising in the definition entitled *Contracting activity* under the heading Navy, the entry "Deputate, Acquisition Policy, Integrity and Accountability, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)" to read "Deputy, Acquisition Policy, Integrity and Accountability, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)".

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**203.502-2 [Amended]**

3. Section 203.502-2 is amended by revising in paragraph (h)(ii) the phrase "Naval Investigative Service" to read "Naval Criminal Investigative Service."

PART 206—COMPETITION REQUIREMENTS**206.302-5 [Amended]**

4. Section 206.302-5 is amended by revising in paragraph (c)(i)(B) the phrase "Office of the Under Secretary of Defense for Acquisition" to read "Office of the Under Secretary of Defense (Acquisition & Technology)."

5. Section 206.304 is amended by revising paragraphs (a)(4)(A)(2) and (a)(4)(B) to read as follows:

206.304 Approval of the justification.

(a)(4)(A) * * *

(1) * * *

(2) In the case of the Under Secretary of Defense (Acquisition & Technology) (USD(A&T)), to—

* * * * *

(B) For proposed contracts over \$50 million, this authority is not delegable, except in the case of the USD(A&T) who may delegate as specified in paragraph (a)(4)(A)(2) of this section.

PART 207—ACQUISITION PLANNING**207.105 [Amended]**

6. Section 207.105 is amended by removing paragraph (b)(2)(v).

PART 209—CONTRACTOR QUALIFICATIONS**209.103 [Amended]**

7. Section 209.103(a)(i)(c) is amended by revising the reference "Under Secretary of Defense (Acquisition)" to read "Under Secretary of Defense (Acquisition & Technology)."

8. Section 209.104-1 is amended by revising paragraph (e) to read as follows:

209.104-1 General standards.

(e) For cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, the prospective contractor's accounting system and related internal controls must provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

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

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

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

* * * * *

9. Section 209.405-1 is added to read as follows:

209.405-1 Continuation of current contracts.

(a) Unless the agency head makes a written determination that a compelling reason exists to do so, ordering activities shall not—

(i) Place orders exceeding the guaranteed minimum under indefinite quantity contracts; or

(ii) When the agency is an optional user, place orders against Federal Supply Schedule contracts.

(b) This includes exercise of options.

PART 215—CONTRACTING BY NEGOTIATION

10. Section 215.806-1 is amended by revising paragraph (a)(1) to read as follows:

215.806-1 General.

* * * * *

(a)(1) Contractor and subcontractor proposals may reflect the selection of sources whose proposals offer the greatest value to the Government in terms of performance and other factors. If the selection is based on greatest value rather than lowest price, the analysis supporting subcontractor

selection should include a discussion of the factors considered in the selection (see also FAR 15.605(c) and 215.605(c)). If the contractor's analysis is not adequate, return it for correction of deficiencies.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

11. Section 217.7404-3 is amended by revising paragraph (a)(2) to read as follows:

217.7404-3 Definitization schedule.

- (a) * * *
- (1) * * *

(2) The date on which the amount of funds obligated under the contract action is equal to more than 50 percent of the not-to-exceed price.

* * * * *

12. Section 217.7404-4 is revised to read as follows:

217.7404-4 Limitations on obligations.

The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments).

13. Section 217.7404-5 is revised to read as follows:

217.7404-5 Exceptions.

(a) The limitations in 217.7404-2, 217.7404-3, and 217.7404-4 do not apply to UCAs for the purchase of initial spares.

(b) The head of an agency may waive the limitations in 217.7404-2, 217.7404-3, and 217.7404-4 for UCAs if the head of the agency determines that the waiver is necessary to support a contingency operation.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

14. Section 219.502-2-70 is amended by revising paragraph (a)(1)(ii) to read as follows:

219.502-2-70 Total set-asides for small disadvantaged business concerns.

- (a) * * *
- (1) * * *
- (i) * * *

(ii) In the case of an SDB regular dealer owned by an Indian tribe, including an Alaska Native Corporation,

will provide the supplies of a small business for contracts awarded during fiscal years 1994 and 1995, as provided in Section 8051 of Pub. L. 103-139 and Section 8012 of Pub. L. 103-335; or,

* * * * *

PART 225—BUY AMERICAN ACT—CONSTRUCTION MATERIALS

15. Section 225.408 is amended by revising paragraph (a)(4)(B) to read as follows:

225.408 Solicitation provision and contract clause.

- (a)(1) * * *

* * * * *

- (4)(A) * * *

(B)(i) Use the clause in all solicitations and contracts for the items listed at 225.403-70, when the estimated value is \$50,000 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(ii) Use the clause with its Alternate I when the estimated value is between \$25,000 and \$50,000.

* * * * *

225.603 [Amended]

16. Section 225.603 is amended in paragraph (b)(i)(D) by revising the phrase "Commander, DCMAO New York, ATTN: Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014—" to read "Commander, DCMAO New York, ATTN Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, NY 10305-5013—".

225.603 [Amended]

17. Section 225.603 is amended in paragraph (b)(ii) by revising the phrase "Chief, Customs Division, International Logistics Office, DCMAO New York" to read "Customs Team, DCMDN-GNIC, DCMAO New York".

225.872-5 [Amended]

18. Section 225.872-5(a) is amended by revising "Foreign Contracting Directorate, Office of the Director of Defense Procurement" to read "Deputy Director of Defense Procurement (Foreign Contracting)."

225.872-6 [Amended]

19. Section 225.872-6(b) is amended by revising "Foreign Contracting Directorate, Office of the Director of Defense Procurement" to read "Deputy Director of Defense Procurement (Foreign Contracting)."

20. Section 225.7004-2 is amended by revising paragraph (b) to read as follows:

225.7004-2 Applicability.

* * * * *

(b) Machine tool accessories classified under FSC 3460 or 3461 are not components under 225.7004-5. Where a solicitation for machine tools includes machine tool accessories, list known machine tool accessories which are not separate line items in the provision at 252.225-7040, Machine Tool List. Identify accessories which are separate line items in the schedule. The contracting activity must exercise judgment in determining whether an item is an accessory or a component. This determination should be based on the use of the item in the machine tool being purchased.

* * * * *

21. Section 225.7004-6 is amended by adding paragraph (c) to read as follows:

225.7004-6 Contract clauses.

* * * * *

(c) Use the provision at 252.225-7040, Machine Tool List, in all solicitations for machine tools which contain the clause at 252.225-7017 except where—

(1) All machine tool accessories are listed as separate line items; and

(2) The solicitation does not allow offerors to provide accessories which are not specifically required by the specifications.

22. Section 225.7021-1 is revised to read as follows:

225.7021-1 Restriction.

In accordance with Section 8090 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8075 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335), do not purchase aircraft fuel cells unless they are produced or manufactured in the United States by a domestic-operated entity.

23. Section 225.7021-3 is revised to read as follows:

225.7021-3 Contract clause.

Unless a waiver has been granted in accordance with 225.7021-2, use the clause at 252.225-7038, Restriction on Acquisition of Aircraft Fuel Cells, in all solicitations and contracts which—

(a) Use fiscal year 1994 or 1995 funds; and

(b) Require delivery of aircraft fuel cells.

24. Section 225.7022-1 is revised to read as follows:

225.7022-1 Restriction.

In accordance with Section 8124 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8093 of the Fiscal Year 1995 Defense Appropriations Act (Pub.

L. 103-335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless 50 percent or more of the components are manufactured in the United States, and 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

25. Section 225.7202 is amended by revising "OUSD(A)DP(FC)" to read "OUSD(A&T)DP(FC)."

PART 226—OTHER SOCIOECONOMIC PROGRAMS

26-28. Section 226.7101 is revised to read as follows:

226.7101 Definition.

Vicinity, as used in this subpart, means the county or counties in which the military installation to be closed or realigned is located and all adjacent counties, unless otherwise defined by the agency head.

29. Section 226.7103 is revised to read as follows:

226.7103 Procedure.

In considering acquisitions for award through the section 8(a) program (subpart 219.8 and FAR subpart 19.8) or in making set-aside decisions under subpart 219.5 and FAR subpart 19.5 for acquisitions in support of a base closure or realignment, the contracting officer shall—

(a) Determine whether there is a reasonable expectation that offers will be received from responsible business concerns located in the vicinity of the military installation that is being closed or realigned.

(b) If offers can not be expected from business concerns in the vicinity, proceed with section 8(a) or set-aside consideration as otherwise indicated in part 219 and FAR part 19.

(c) If offers can be expected from business concerns in the vicinity—

(1) Consider section 8(a) only if the 8(a) contractor is located in the vicinity.

(2) Set aside the acquisition for small disadvantaged business only if one of the expected offers is from a small disadvantaged business located in the vicinity.

(3) Set aside the acquisition for small business only if one of the expected offers is from a small business located in the vicinity.

226.7200 [Amended]

30 and 31. Section 226.7200 is amended by revising in paragraph (a) the word "established" to read "establishes."

PART 228—BONDS AND INSURANCE

32. Section 228.102-1 is amended by revising the introductory paragraph to read as follows:

228.102-1 General.

For Defense Environmental Restoration Program construction contracts entered into pursuant to 10 U.S.C. 2701 and executed between December 5, 1991, and December 31, 1999—

* * * * *

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205-70 [Amended]

33. Section 231.205-70(b)(4) is amended to revise in the second sentence the word "repositioning" to read "repositionings."

231.703 [Amended]

34. Section 231.703 is amended to revise in paragraph (1) the reference "231.603(a)" to read "231.603(1)."

PART 232—CONTRACT FINANCING

232.108 [Amended]

35. Section 232.108 is amended by revising in paragraph (1)(i) the phrase "Army—Chief of Contract Financing, Office of the Comptroller" to read "Army—Office, Assistant Secretary of the Army (Financial Management)".

36. Section 232.503-6 is amended by adding a new paragraph (b) to read as follows:

232.503-6 Suspension or reduction of payments.

(b) *Contractor noncompliance.*

See also 242.7503.

* * * * *

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

37. Section 235.001 is revised to read as follows:

235.001 Definitions.

The following terms are defined in DoD 7000.14-R, Financial Management Regulation. As used in this part—

Advanced development means all effort directed toward projects which have moved into the development of hardware for test. The prime proof of this type of effort is proof of design concept rather than the development of hardware. Projects in this category have a potential military application.

Basic research means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental,

and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for—

(1) Subsequent exploratory and advanced developments in defense related technologies; and

(2) New or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

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

Engineering and manufacturing development means those projects in full-scale engineering development but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects where program control is exercised by review of individual projects.

Exploratory development means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming, and planning efforts. It would thus include studies, investigations, and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

Management and support means all effort directed toward support of installations and operations required for general research and development use. This includes military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contracted, would be assigned to projects or as a line item in the research, exploratory development, or advanced development

program areas, as appropriate. Management and support is not "research and development" except in exceptional cases. For example, construction of recreational facilities at an installation is not "research and development" work, even if the installation is used only for research and development work.

Operational system development means those projects still in full-scale engineering development, but which have received approval for production through Defense Acquisition Board or other action, or production funds have been included in the DoD budget submission for the budget or subsequent year. All items in this area are major line item projects which appear as RDT&E costs of weapons systems elements in other programs. Program control is exercised by review of the individual projects.

Research and development ordinarily covers only the following categories—

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

38. Section 235.006 is amended by revising paragraph (b)(i)(C)(1)(iii) to read as follows:

235.006 Contracting methods and contract type.

- * * * * *
- (b)(i) * * *
- (C) * * *
- (1) * * *

(iii) The development of a major system (as defined in FAR 34.001) or subsystem thereof, if the contract is over \$25 million, or is over \$10 million and is funded with FY90 funds (Pub. L. 101-165, Section 9048), FY91 funds (Pub. L. 101-511, Section 8038), FY92 funds (Pub. L. 102-172, Section 8037), or FY93 funds (Pub. L. 102-396, Section 9037).

* * * * *

39. Section 235.010 is revised to read as follows:

235.010 Scientific and technical reports.

(b) The Defense Technical Information Center (DTIC) is responsible for collecting all scientific or technological observations, findings, recommendations, and results derived from DoD endeavors, including both in-house and contracted efforts. The DTIC has eligibility and registration requirements for use of its services. Requests for eligibility and registration information should be addressed to DTIC-BCS, Cameron Station, Alexandria, VA 22304-6145.

235.015-70 [Amended]

40. Section 235.015-70(d)(3)(ii) is amended by revising the second occurrence of the word "which" to read "who."

41. Section 235.071 is amended by adding paragraphs (c) and (d) to read as follows:

235.071 Additional contract clauses.

- (a) * * *
- (b) * * *
- (c) Use the clause at 252.235-7010, Acknowledgement of Support and Disclaimer, in solicitations and contracts for research and development.
- (d) Use the clause at 252.235-7011, Final Scientific or Technical Report, in solicitations and contracts for research and development.

42. Section 235.017-1 is added to read as follows:

235.017-1 Sponsoring agreements.

(c)(4) DoD-sponsored FFRDCs that function primarily as research laboratories may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Pub. L. 103-337).

PART 237—SERVICE CONTRACTING

237.7302 [Amended]

43. Section 237.7302 is amended by revising in the last sentence the reference "10 U.S.C. 2304(a)(i)" to read "10 U.S.C. 2304(a)(1)."

237.7400 [Amended]

44. Section 237.7400 is amended by revising the reference "(Pub. L. 100-536)" to read "(Pub. L. 100-526)."

45. Section 237.7401 is amended in paragraph (c) by revising "government" to read "government;" by revising the word "is" to read "are"; and by adding a new paragraph (d) to read as follows:

237.7401 Policy.

* * * * *

(d) Includes the requirement of subpart 222.71, Right of First Refusal of Employment, unless it conflicts with the local government's civil service selection procedures.

237.7402 [Amended]

46. Section 237.7402 is amended by revising the word "subject" to read "subpart."

PART 242—CONTRACT ADMINISTRATION

47. Section 242.302 is amended by adding a new paragraph (a)(7) to read as follows:

242.302 Contract administration functions.
(a)(4) * * *

(7) See 242.7503 for ACO responsibilities with regard to receipt of an audit report identifying significant accounting system or related internal control deficiencies.

* * * * *

48. Section 242.1104 is revised to read as follows:

242.1104 Surveillance requirements.

- (a)(i) As a minimum, contracts will receive pre-delivery telephonic surveillance.
- (ii) Contracts in the following categories will receive pre-delivery on-site production surveillance:
 - (A) Contracts assigned criticality designator A (see FAR 42.1105).
 - (B) Contracts specifically identified for special surveillance by the contracting officer.
 - (C) Any contract where telephonic surveillance reveals actual or anticipated delinquency unless the contract administration office, in coordination with the contracting officer, decides that on-site surveillance is not warranted.

49. Section 242.7302 is amended by revising paragraph (a) and by adding paragraph (d) to read as follows:

242.7302 Requirements.

- (a) A CIPR shall be conducted for each contractor whose qualifying sales to the Government exceeded \$40 million during the contractor's preceding fiscal year. Qualifying sales are sales for which certified cost or pricing data were required under 10 U.S.C. 2306, as implemented in FAR 15.804 (unless exempt in accordance with FAR 15.804-3), or which are cost-reimbursement type contracts. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

* * * * *

(d) Reviews of selected insurance and pension elements may be conducted for contractors not meeting the criteria in paragraph (a) of this section if significant problems have been identified.

50. A new subpart 242.75 is added to read as follows:

- Sec.
- 242.7500 Scope of subpart.
- 242.7501 Definition.
- 242.7502 Policy.
- 242.7503 Procedures.

Subpart 242.75—Contractor Accounting Systems and Related Controls

242.7500 Scope of subpart.

This subpart provides policies and procedures applicable to contractor

accounting systems and related internal controls.

242.7501 Definition.

Internal controls means those policies and procedures established by contractor management to provide reasonable assurance that applicable laws and regulations are complied with and that actual and estimated costs are equitably allocated within the accounting system.

242.7502 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.

242.7503 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)).

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

51. Subpart 244.2 is added to read as follows:

244.2 Consent to subcontracts.

Sec.

244.202 Contracting officer's evaluation.

244.202-2 Considerations.

242.2 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?

PART 245—GOVERNMENT PROPERTY

52. Section 245.608-70 is amended by revising paragraph (a)(3) to read as follows:

245.608-70 Contractor inventory redistribution system (CIRS).

(a) * * *

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

* * * * *

PART 247—TRANSPORTATION

53. Section 247.305-70 is revised to read as follows:

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.

54. Section 247.571 is amended by revising paragraph (c); by removing paragraph (d); and by redesignating paragraph (e) as paragraph (d) to read as follows:

247.571 Policy.

* * * * *

(c)(1) Any vessel used under a time charter contract for the transportation of supplies shall have any reflagging or repair work, as defined in the clause at 252.247-7205, Reflagging or Repair Work, performed in the United States or its territories, 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 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.

* * * * *

55. Section 247.573 is amended by revising paragraph (d) to read as follows:

247.573 Solicitation provision and contract clauses.

* * * * *

(d) Use the clause at 252.247-7025, Reflagging 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 247.571(c).

PART 249—TERMINATION OF CONTRACTS

249.7003 [Amended]

56. Section 249.7003 is amended by inserting in paragraph (b)(1) the word "major" between the words "which" and "defense;" by revising in paragraph (d)(2) introductory text the number "90" to read "60;" by revising in paragraph (b)(3) introductory text the number "90" to read "60;" and by removing in paragraph (b)(3) introductory text the word "provided."

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

57. Section 251.102 is amended to revise paragraph (e) introductory text and to add a new paragraph (f) to read as follows:

251.102 Authorization to use Government supply sources.

(e) Use the format in Table 51-1, Authorization to Purchase from Government Supply Sources. Specify the terms of the purchase, including contractor acceptance of any Government materiel, payment terms, and the addresses required by paragraph (f) of the clause at 252.251-7000, Ordering from Government Supply Sources.

* * * * *

(f) The authorizing agency shall also be responsible for promptly considering requests of the DoD supply source for authority to refuse to honor requisitions from a contractor which is indebted to the DoD and has failed to pay proper invoices in a timely manner.

* * * * *

58. Section 251.105 is added to read as follows:

251.105 Payment for shipments.

Contractor payments for purchases from DoD supply sources are due within 30 days of the date of a proper invoice (see FAR 32.902 for definition of "due

date” and “payment date;” also see FAR 32.905(e)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.209-7004 [Amended]

59. and 60. Section 252.209-7004 is amended by revising in paragraph (b)(5) the symbol “PDUSD(A&T)(DPFC)” to read “OUSD(A&T)DP(FC).”

61. Section 252.219-7001 is amended by revising the clause date “(May 1994)” “(May 1995)”; and by revising paragraph (f)(2) to read as follows:

252.219-7001 Notice of partial small business set-aside with preferential consideration for small disadvantaged business concerns.

* * * * *

(f) * * *

(2) A manufacturer or regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103-139 and Section 8012 of Pub. L. 103-335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

* * * * *

62. Section 252.219-7002 is amended by revising the clause date “(MAY 1994)” to read “(MAY 1995)”; and by revising paragraph (c) to read as follows:

252.219-7002 Notice of small disadvantaged business set-aside.

* * * * *

(c) *Agreement.*

A small disadvantaged business manufacturer or regular dealer, submitting an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103-139 and Section 8012 of Pub. L. 103-335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

* * * * *

63. Section 252.219-7006 is amended by revising the clause date “(MAY 1994)” to read “(MAY 1995)”; and by revising paragraph (d)(2) to read as follows:

252.219-7006 Notice of evaluation preference for small disadvantaged business concerns.

* * * * *

(d) * * *

(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns, historically black colleges or universities, or minority institutions in the United States, except, as provided in Section 8051 of Pub. L. 103-139 and Section 8012 of Pub. L. 103-335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

* * * * *

252.225-7009 [Amended]

64. Section 252.225-7009 is amended to revise in paragraph (f)(2)(iv) the phrase “Customs Division, International Logistics Office, 201 Varick Street, New York, New York 10014” to read “Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, New York, 10305-5013.”

252.225-7010 [Amended]

65. Section 252.225-7010 is amended to revise in paragraph (e) introductory text the phrase “Chief, Customs Division, International Logistics Office, 201 Varick Street, New York, New York 10014” to read “Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, New York, 10305-5013.”

66. Section 252.225-7026 is amended by revising the clause date “(APR 1993)” to read “(MAY 1995)”; by revising paragraph (b)(3); by adding a new paragraph (b)(4); and by revising paragraph (d) to read as follows:

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

* * * * *

(b) * * *

(1) * * *

(2) * * *

(3) The Contractor shall submit reports required by paragraph (a)(3) of this clause within 10 days of the end of each Government quarter to—Deputy Director of Defense Procurement (Foreign Contracting) OUSD(A&T)DP(FC) Washington, DC 20301-3060

(4) The Offeror/Contractor shall submit reports on DD Form 2139, Report of Contract Performance Outside the United States. Computer-generated reports are acceptable, provided the report contains all information required by DD Form 2139. Copies of DD Form 2139 may be obtained from the Contracting Officer.

(c) * * *

(d) *Information required.*

Information to be reported on the part of this contract performed outside the United States (or outside the United States and Canada for reports required by paragraphs (a)(1) and (a)(2) of this clause) includes that for—

- (i) Subcontracts;
- (ii) Purchases; and
- (iii) Intracompany transfers when transfers originate in a foreign location.

67. Section 252.225-7035 is amended by revising the clause date “(JAN 1994)” to read “(MAY 1995)”; and by revising paragraph (c)(2)(ii) to read as follows:

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

* * * * *

(c) * * *

(2) * * *

(i) * * *

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

* * * * *

68. Section 252.225-7036 is amended by adding a new Alternate I (MAY 1995) to read as follows:

252.225-7036 North American Free Trade Agreement Implementation Act.

* * * * *

ALTERNATE I (MAY 1995)

As prescribed in 225.408(a)(4)(B)(ii), add the following paragraph (a)(7) to the basic clause, and substitute the following paragraph (c) in place of paragraph (c) of the basic clause:

(a)(7) “Canadian end product,” means an article that—

- (i) Is wholly the growth, product, or manufacturer of Canada; or
- (ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

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

252.225-7037 [Amended]

69. Section 252.225-7037 is amended to revise in paragraph (f)(2)(iv) the phrase "Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014" to read "Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, New York 10305-5013."

70. Section 252.225-7040 is added to read as follows:

252.225-7040 Machine tool list.

As prescribed in 225.7004-5(c), use the following provision:

Machine Tool List (May 1995)

The Government has identified those items listed as machine tool accessories which are not listed in the schedule as separate line items. The Offeror must also list any accessories to be provided which are not specifically required by the specifications. Where the machine tool accessory is not of U.S. or Canadian origin, as defined in the Preference for United States and Canadian Valves and Machine Tools clause of this solicitation, indicate the country in which the accessory was manufactured and the cost of the accessory.

Line Item No.	Accessory	Country of manufacture	Cost

(End of provision)

71. Section 252.235-7010 is added to read as follows:

252.235-7010 Acknowledgment of support and disclaimer.

As prescribed in 235.071(c), use the following clause:

Acknowledgment of Support and Disclaimer (May 1995)

(a) The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the (name of contracting agency(ies)) under Contract No. (Contracting agency(ies) contract number(s)).

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer: Any opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the (name of contracting agency(ies)).

(End of clause)

72. Section 252.235-7011 is added to read as follows:

252.235-7011 Final scientific or technical report.

As prescribed in 235.071(d), use the following clause:

Final Scientific or Technical Report (May 1995)

The Contractor shall submit two copies of the approved scientific or technical report delivered under this contract to the Defense Technical Information Center (DTIC), Attn: DTIC-OC, Cameron Station, Alexandria, VA 22304-6145. The Contractor shall include a completed Standard Form 298, Report Documentation Page, with each copy of the report. For submission of reports in other than paper copy, contact the Defense Technical Information Center, Attn: DTIC-OC, Cameron Station, Alexandria, VA 22304-6145.

(End of clause)

252.237-7022 [Amended]

73. Section 252.237-7022 is amended by revising the clause date "(JUL 1994)" to read "(MAY 1995)" and by revising at their second occurrence the words "the local" to read "such."

74. Section 252.247-7021 is revised to read as follows:

252.247-7021 Returnable containers other than cylinders.

As prescribed in 247.305-70, use the following clause:

Returnable Containers Other Than Cylinders (May 1995)

(a) *Returnable container*, as used in this clause, includes reels, spools, drums, carboys, liquid petroleum gas containers, and other returnable containers when the Contractor retains title to the container.

(b) Returnable containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of _____ (insert number of days) calendar days after delivery to the f.o.b. point specified in the contract. Beginning with the first day after the loan period expires, to and including the day the containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or are made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of \$_____ (insert dollar amount for rental) per container per day, computed separately for containers for each type, size, and capacity, and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of the replacement value per container specified in paragraph (c) of this clause.

(c) For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid for that container:

(Insert the container types, sizes, capacities, and associated replacement values.)

These containers shall become Government property.

(d) If any lost container is located within _____ (insert number of days) calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the container was delivered to the Contractor.

(End of clause)

75. Section 252.247-7025 is revised to read as follows:

252.247-7025 Reflagging or repair work.

As prescribed in 247.573(d), use the following clause:

Reflagging or Repair Work (May 1995)

(a) *Definition.*
Reflagging or repair work, as used in this clause, means work performed on a vessel—

- (1) To enable the vessel to meet applicable standards to become a vessel of the United States; or
- (2) To convert the vessel to a more useful military configuration.

(b) *Requirement.* Unless the Secretary of Defense waives this requirement, reflagging or repair work shall be performed in the United States or its territories, if the reflagging or repair work is performed—

- (1) On a vessel for which the Contractor submitted an offer in response to the solicitation for this contract; and
- (2) Prior to acceptance of the vessel by the Government.

(End of clause)

76. Section 252.249-7002 is amended by revising the clause date "(MAY 1994)" to read "(MAY 1995)" and by revising paragraph (c)(1) to read as follows:

252.249-7002 Notification of proposed program termination or reduction.

* * * * *

(c) * * *

(1) Each employee representative of the Contractor's employees whose work is related to the program and who may be impacted in the event of a termination or substantial reduction; or

* * * * *

77. Section 252.251-7000 is amended by revising the clause date "(DEC 1991)" to read "(MAY 1995)"; by revising paragraph (d)(4); and by adding a new paragraph (f) to read as follows:

252.251-7000 Ordering from Government supply sources.

* * * * *

(d) * * *

(1) * * *

(2) * * *

(3) * * *

(4) Pay invoices from Government supply sources promptly. For purchases made from DoD supply sources, this means within 30 days of the date of a proper invoice (see also Defense Federal Acquisition Regulation Supplement (DFARS) 251.105). For purposes of computing interest for late Contractor payments, the Government's invoice is deemed to be a demand for payment in accordance with the Interest clause of this contract. The Contractor's failure to pay may also result in the DoD supply source refusing to honor the requisition (see DFARS 251.102(f)) or in the Contracting Officer terminating the Contractor's authorization to use DoD supply sources. In the event the Contracting Officer decides to terminate the authorization due to the Contractor's failure to pay in a timely manner, the Contracting Officer shall provide the Contractor with prompt written notice of the intent to terminate the authorization and the basis for such action. The Contractor shall have 10 days after receipt of the Government's notice in which to provide additional information as to why the authorization should not be terminated. Such termination shall not provide the Contractor with an excusable delay for failure to perform or complete the contract in accordance with the terms of the contract, and the Contractor shall be solely responsible for any increased costs.

(e) * * *

(f) Government invoices shall be submitted to the Contractor's billing address, and Contractor payments shall be sent to the Government remittance address specified below:

Contractor's Billing Address (include point of contact and telephone number):

Government Remittance Address (include point of contact and telephone number):

(End of clause)

PART 253—FORMS

78. Section 253.209-1 is amended by revising paragraph (a)(i)(E) to read as follows:

253.209-1 Responsible prospective contractors.

(a) * * *

(i) * * *

(E) *Accounting system and related internal controls.* An assessment by the auditor of the adequacy of the prospective contractor's accounting system and related internal controls as defined in 242.7501, Definition. Normally, a contracting officer will request an accounting system review when soliciting and awarding cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion.

* * * * *

253.215-70 [Amended]

79. At the end of section 253.215-70, Form 253.303-2139, Report of Contract Performance Outside the United States, is added in numerical order to the DFARS Form List.

Appendix C to Chapter 2

80. Appendix C to Chapter 2, Section C-207.5 is amended by revising paragraph (b) to read as follows:

C-207.5 Subcontractor responsibility and vendor performance rating system (IIG5).

(a) * * *

(b) *Vendor performance rating systems.* Contractor vendor performance rating systems may be a valuable element in the contractor's selection of subcontractors that offer the greatest value to the Government. State in the report whether the contractor has a vendor rating system. If the contractor has a system in place, evaluate its effectiveness in selecting sources. Consider whether the system—

- (1) Allows consistency of comparisons among competing subcontractors;
- (2) Protects rating information;
- (3) Provides appropriate documentation for each element rated;
- (4) Allows adequate opportunities for new subcontractors to compete;
- (5) Provides for evaluations by appropriate functional areas; and
- (6) Is kept current and accurate.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1831 and 1852

RIN 2700-AB82

Revision to NASA FAR Supplement Coverage on Precontract Costs

AGENCY: Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends the regulations pertaining to precontract costs to specify the content of letters to contractors which authorize the incurrence of precontract costs, make clear the circumstances when precontract costs would be appropriate, and clarify that precontract costs are not allowable unless the clause "Precontract Costs" is included in the contract. In addition, the rule revises the prescription for the clause to allow its use in other than cost-reimbursement contracts. Also, the rule changes the title of that clauses from "Date of Incurrence of Costs" to "Precontract Costs" to more accurately reflect its purpose.

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, (202) 358-0444.

SUPPLEMENTARY INFORMATION:

Background

NASA proposed to amend its regulation on precontract costs, 59 FR 33254, 6/28/94. The rule is intended to provide standardization in the contents of the Agency's precontract cost letters to contractors, make clear the circumstances when precontract costs would be appropriate, clarify that the precontract cost clause is required in the contract in order for such costs to be allowable, and changes the title of the precontract cost clause to more accurately reflect its purpose.

The only public comments submitted were from an industry association. The association considers the FAR coverage to be adequate and "strongly opposes the proposed revision as an unwarranted and unnecessary restriction of the FAR provisions governing precontract costs." NASA's coverage differs from the FAR cost principle by making precontract costs unallowable unless the NASA precontract costs clause is included in the contract.

The public comments were reviewed and considered. The proposed rule was determined to be compliant with the FAR as it utilizes advance agreements whose terms are incorporated in the affected contracts. In addition, the rule prevents the types of litigation identified by the commenter. Furthermore, NASA believes the need to incur precontract costs should be disclosed and only incurred when authorized.

Although no change was made to the proposed rule based on the public comments, the rule has been revised as a result of our review due to the public comments. The final rule eliminates the need for the Precontract Costs clause in firm-fixed-price contracts and fixed-price contracts with an economic price adjustment. The background for the proposed rule stated that the clause was appropriate for the firm-fixed price contracts as the FAR Part 31 cost principles would apply in the case of a termination. While that is true, FAR 49.113, Cost principles, also states that the Part 31 cost principles are subject to the general principles of 49.201. That section states that the primary objective of a termination settlement is to compensate the contractor fairly for the work done and the parties may agree on a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising that amount. Therefore, the cost principles are viewed as a guide and not required for reaching an agreement by cost element, eliminating