

NAVSEA CONTRACTS HANDBOOK - 1998 Edition (3/16/00)

FOREWORD

The Naval Sea Systems Command Contracts Handbook (NCH) provides general guidance to our headquarters and field contracting officers in the execution of their delegated authority. Commanding officers must refer to the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement (DFARS), and the Navy Acquisition Procedures Supplement (NAPS) for regulatory guidance.

The NCH is not a stand-alone document but must be read together with the FAR, DFAR and NAPS. This initial publication used [FAC 97-03](#) and [DAC 91-12](#) as the base line.

This edition is effective upon receipt and supersedes the July 1993 Contracting Manual (CM). All prior correspondence which relates to NAVSEA contract policy is superseded by this edition of the NCH.

The NCH will be made available via the NAVSEA 02 intranet. Any changes or recommendations for revisions to the NCH should be forwarded via e-mail to [Sharon L. Ellis](#), SEA 02C, (202) 781-2852.

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- APPENDIX C** -- Economy Act Delegation Memo and Guidance

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PART 1 FEDERAL ACQUISITION REGULATIONS SYSTEM

1.1-PURPOSE, AUTHORITY, ISSUANCE

1.101 Purpose.

The Naval Sea Systems Command Contracts Handbook (NCH) is the NAVSEA supplement to the FAR, DFARS, NAPS and other acquisition policy and procedures for contracts, other transactions, cooperative agreements and grants.

1.103 Authority.

The NCH is authorized by NAPS 5201.301(a)(2).

1.104 Applicability.

The NCH applies to NAVSEA Headquarters, Program Executive Officers (PEO), and NAVSEA field organizations for which COMNAVSEA is the Head of the Contracting Activity (HCA). It supports the Program Executive Officers (PEOs) who receive HCA authority from NAVSEA pursuant to memoranda of agreement.

In the event of a conflict between this Handbook and the FAR, DFARS, or NAPS, the FAR, DFARS, or NAPS shall take precedence over the NCH. Additionally, the NCH takes precedence over the SUPSHIP Operations Manual (SOM) on contractual matters.

1.192 Arrangement of the NCH.

The NCH uses the FAR system to identify its material. NAVSEA has been assigned "92" as its identifier under the NAPS. If supplementary information is provided for an area that is not contained in the FAR, DFARS, or the NAPS, it is identified by '92' in the number (e.g., 6.192 Navy Homeport Policy). If the NCH introduces a subject not covered under the FAR system, it will be put in "Part 92".

1.2-ADMINISTRATION

The Contract Policy Office (NAVSEA 02C) maintains the NCH and will issue changes as required.

Deviations to the NCH must be approved, via NAVSEA 02C, by the Deputy Commander for Contracts (NAVSEA 02) or the Executive Director for Contracts (NAVSEA 02B).

1.3-AGENCY ACQUISITION REGULATIONS

1.301 Policy

Activities subject to the NCH may issue local contract supplementary guidance or implementing procedures, but it is recommended that this be kept to a minimum.

1.304 Agency control and compliance procedures.

NAVSEA Component Clauses:

The NAVSEA Contract Directorate Book of Standard Component Contract Clauses, Provisions and Text (Clause Book) provides the complete text of all NAVSEA clauses, provisions, and text prescribed for use in solicitations and contracts. The Clause Book is maintained by the NAVSEA 02 Clause Committee.

All component clauses, provisions, and text, except those specifically identified as applicable to craft and/or shipbuilding procurements only, shall be used without deviation unless a deviation is approved in writing by the cognizant Division Director or Deputy Division Director. Changes of an editorial or wordsmithing nature are prohibited.

Deviations to component clauses, provisions, and text specifically identified as applicable to craft and/or shipbuilding procurements must be approved, via NAVSEA 022, by NAVSEA 02 or NAVSEA 02B.

Field activities are not authorized to approve deviations to the Clause Book. Field activity requests for deviations must be signed by the Chief of the Contracting Office and submitted, via NAVSEA 028, to the approving official.

Requests for deviations should include a rationale for the change, a copy of the language as it exists, and a copy of the proposed change with changed language indicated.

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A copy of the memorandum approving any deviation and the revised clause, provision, or text shall be furnished to and retained by the Division's Clause Committee representative. Any clause or provision so modified shall be annotated "(MODIFIED) (DEVIATION DATE)".

DFARS 201.304 and NAPS 5201.304 provide additional guidance for control of component clause use.

1.4-DEVIATIONS FROM THE FAR

1.402 Policy

Deviations from the FAR, DFARS, NAPS, and Higher Level Instructions and Directives:

NAVSEA 02 Directorate requests for deviations must be signed by the cognizant Division Director or deputy and submitted, via NAVSEA 02/02B, to the approving official.

Field activity requests for deviations must be signed by the Chief of the Contracting Office (CCO) and submitted, via NAVSEA 028, to the approving official.

1.6-CONTRACTING AUTHORITY

1.601 General.

Certain HCA authorities have been delegated to selected offices, primarily NAVSEA 02, NAVSEA 02B, and the CCOs of the Field Procurement Offices (FPOs). FPOs are field procurement offices that receive procurement authority from COMNAVSEASYS-COMHQ as the HCA. These authorities may be redelegated unless otherwise restricted.

Contracting authority for SUPSHIPS, SUPSHIPDETS, and NAVSHIPYD Portsmouth is delegated in writing through NAVSEA 04.

Contracting authority for the NAVSEA Warfare Centers shall be as previously delegated by COMNAVSUP when they were part of the Navy Field contracting system unless changed in writing by NAVSEA 02/02B or 028.

On occasion, NAVSEA field offices are requested to contract for supplies or services that are outside their authority. The field office then has a responsibility to identify to the requirements office a contracting office that can handle the requirement. As an alternative, the field office can request the requisite authority from NAVSEA 02, via NAVSEA 028.

Grants, other transactions, and cooperative agreements that obligate funds must be signed by a contracting officer. However, contracting officers, both Headquarters and field, must have this authority separately delegated by NAVSEA 02 since it is not an inherent warrant authorization.

1.602-2 Responsibilities.

Contracting Officer's Representative (COR):

NAVSEAINST 4200.17, subj: Contracting Officer's Representative (COR), provides guidance on COR duties, responsibilities, limitations, and relationship to the contracting officer.

NAVSEA 02C for Headquarters and the CCO for each Field Procurement Office (FPO) will maintain a list of all active CORs assigned to their respective activity's contracts. At Headquarters, the PCO, in coordination with NAVSEA 02C, will annually review the files and performance of approximately one-third of active CORs. Results of reviews are to be provided to COR supervisors and program management offices for action. FPOs shall implement a similar quality review program that will review and evaluate each active COR at least once every three years.

1.602-3 Ratification of Unauthorized Commitments.

NAVSEA 02 has redelegated ratification authority for unauthorized commitments to CCOs with assigned legal counsel, without power of redelegation, subject to the following thresholds:

- \$25,000 procurement authority may ratify up to \$10,000;
- \$100,000 procurement authority may ratify up to \$25,000; and
- \$500,000 or greater procurement authority may ratify up to \$50,000.

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1.603 Selection, appointment, and termination of appointment.

Headquarters: NAVSEA 02/02B have been appointed as the HCA designee to select, appoint, and terminate appointment of NAVSEASYSKOM Headquarters contracting officers

NAVSHIPYD Portsmouth, SUPSHIPS, and SUPSHIPSDETS: Authority for appointment of contracting officers has been delegated by NAVSEA 04 to the cognizant commanding officers.

Warfare Centers: Authority for appointment of contracting officers at the NAVSEA Warfare Centers is delegated to the commanding officer of each warfare center division site that has delegated contracting authority. Commanding officers are authorized to delegate this authority without power of redelegation to the senior contracting office manager within his or her command.

NAVSEAINST 4205.3, subj: Delegation of Contracting Officer Authority, establishes procedures for qualifying and appointing contracting officers.

Inquiries concerning these procedures shall be forwarded to NAVSEA 028.

1.690 Requirements to be met before entering into contracts.

Procedures for the review and approval of business clearances are at NCH Subpart 15.406.

1.7-DETERMINATIONS AND FINDINGS

1.703 Class D&Fs.

Economy Act: Class D&Fs for continuing programs using Economy Act procedures (see Subpart 17.5) should be limited to 5 years to encourage periodic reassessment of this acquisition method.

Availabilities: A class D&F limited to 12 months duration may be prepared when it is known in advance that availabilities on certain classes of ships must be performed at Government facilities because local contractors lack the required facilities.

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PART 2 DEFINITIONS OF WORDS AND TERMS

2.1-DEFINITIONS

2.192 Acronyms.

ABR	Agreement for Boat Repair
ABM	Acquisition and Business Management
ACO	Administrative Contracting Officer (denotes the SUPSHIP Contracting Officer, whether PCO or ACO functions are being performed)
AIS	Automated Information System
ASBCA	Armed Services Board of Contract Appeals
CACO	Corporate Administrative Contracting Officer
CAO	Contract Administration Office
CARS	Contract Action Reporting System
CCB	Configuration Control Board
CCO	Chief of the Contracting Office
CMI	Contract Management Information
COFD	Contracting Officer's Final Decision
CTM	Claims Team Manager
DRPM	Direct Reporting Program Manager
FMR	Field Modification Request
FPO	Field Procurement Office
HMR	Headquarters Modification Request
MSRA	Master Ship Repair Agreement
NCH	NAVSEA Contracts Handbook
NFCS	Navy Field Contracting System
NSPE	Navy Senior Procurement Executive
OFCCP	Office of Federal Contract Compliance Program
PDD	Purchase Division Director
PEO	Program Executive Officer
PM	Program Manager
PMA	Phased Maintenance Availability
REA	Request for Equitable Adjustment
SOM	SUPSHIP Operations Manual
SUPSHIP	Supervisor of Shipbuilding, Conversion & Repair, USN
SUPSHIPDET	Supervisor of Shipbuilding Detachment, Conversion & Repair, USN
T for C	Termination for Convenience
TAR	Technical Analysis Report
TYCOM	Type Commander
UCA	Undefinitized Contract Action

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PART 3 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.1-SAFEGUARDS

3.104 Procurement integrity.

For guidance on handling sensitive contractor data, see NAVSEAINST 4200.19, subj: Service Contract Restrictions and Safeguards, NAVSEAINST 4295.1C, subj: Control of Contractor Cost Data, and NAVSEAINST 4295.2B, subj: Conflict of Interest, Non-Disclosure of Information Certification.

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PART 4 ADMINISTRATIVE MATTERS

4.1 CONTRACT EXECUTION

4.101 Contracting officer's signature.

The contracting officer shall date all contracts, modifications, and delivery orders on the day of signature. The contracting officer shall ensure that all contracts, modifications, and delivery orders are date stamped in NAVSEA 0293 within two days of contracting officer signature.

4.2-CONTRACT DISTRIBUTION

4.201 Procedures.

Headquarters:

The PCO/negotiator shall handcarry the original signed contract, modification or delivery order to NAVSEA 0293 on the day of signature, or no later than the following day, and date stamp it for Daily Report of Obligations (DRO) processing. The negotiator shall forward the completed Negotiator's File (commonly called the Rough Draft (RD) file) to NAVSEA 0293 within two weeks of contract award.

Upon receipt of the signed contract, modification or delivery order, NAVSEA 029K shall post the contract, modification or delivery order to the NAVSEA Electronic Document Access (EDA) and NAVSEA 01 DRO web page. Once the document is posted, NAVSEA 01 shall obligate the funds within four days.

4.4-SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

Navy nuclear propulsion information and technical data concerning submarine matters will not be released without NAVSEA 08's approval. Refer to NCH Part 24 and NAVSEAINST 5720.5, subj: Freedom of Information Act (FOIA) Program, for all other requests.

4.6-CONTRACT REPORTING

4.600 Contracting office responsibilities (DD Form 350). (DFARS 204.670-2 and 253.204-70 apply.)

Contracting officers and their management are responsible for ensuring that qualifying actions they sign are properly entered into the PMRS. If local electronic entry to the PMRS is not available, an electronic copy or a hard copy marked "DD 350 REPORTING COPY" is to be provided to NAVSEA 0293 three working days after execution.

4.670-2 Contracting office responsibilities (DD Form 1057). (DFARS 204.670-2 and 253.204-71 apply.)

For new construction, NAVSEA 0293 will prepare DD Form 1057s for reportable change orders, supplemental agreements, and orders placed against BOAs executed by SUPSHIPs of \$25,000 or less. Send copies of change orders, supplemental agreements, and orders placed against BOAs marked, "DD 1057 REPORTING COPY," to NAVSEA 0293 within five working days after the end of the reporting period.

For overhaul or repair, prepare DD Form 1057s for job orders or modifications against MSRAs or ABRs.

Submit a negative report if no reportable actions occurred.

4.692-1 Contract Audit Followup Report.

DoD Directive 7640.2, Policy for Followup on Contract Audit Reports, requires resolution and disposition of contract audit reports. Unresolved audit reports over 6 months old and overage audit reports require a detailed milestone plan to accompany each quarterly report (see format at NCH 53.4-1).

Verify the report data against the previous report, and submit to NAVSEA 02C no later than the 5th of January, April, July, and October.

4.692-2 Reporting results of ship overhaul and repair solicitation opening/closing.

Within 24 hours of bid opening or proposal closing, fax data to NAVSEA 028 at (703) 602-5478. This applies to all availabilities over \$1,000,000. Include requirements for USCG, MSC, FMS, or any other DoD component (see format at NCH 53.4-2).

Within 24 hours of award, fax award data to NAVSEA 028 at (703) 602-5478.

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4.692-3 Ship PMA option exercise reporting.

Within 24 hours of exercising a Phased Maintenance Availability (PMA) option for production, fax data to NAVSEA 028 at (703) 602-5478.

4.692-4 Agency Protest Report.

Submit Agency Protest Reports to NAVSEA 02C within three business days after both receipt and disposition. Update and forward a summary report quarterly and provide copies of closure reports no later than the 10th of January, April, August, and October (see format at NCH 53.4-3).

4.692-5 REA and Claim Status Report.

Report all claims received from contractors, regardless of dollar amount, and all REAs over \$250,000, to NAVSEA 02C no later than one week after receiving the claim or REA. Update and forward a summary report quarterly to include all open REA and claim actions and all actions closed during the quarter, no later than five business days after the end of the fiscal quarter (see format at NCH 53.4-4).

4.692-6 Undefined Contractual Actions (UCAs) Report.

Submit individual action report forms to NAVSEA 02C no later than 10 working days after the end of the quarter for new procurement UCAs over \$25,000, including undefinitized letter contracts, undefinitized contract modifications for additional supplies/services and undefinitized long leadtime actions, as well as UCAs anticipated for issuance during the next quarter (see format at NCH 53.4-5).

4.8-CONTRACT FILES

4.802 Contract files.

Headquarters:

SEA02INST 5211.1G, subj: Establishment, Maintenance and Disposal of Official Contract Files, provides detailed policy and procedures for establishing and maintaining NAVSEA official contract files.

4.803 Contents of contract files.

Maintain a separate file for each contract. If electronic files are used, the system must permit search and retrieval at least by contract number or by cross-index to alternate document tracking codes or indices.

Shipbuilding files shall also contain, if applicable:

- The formula for determining the liquidated damages rate;
- A record of assessment of foreseeable costs;
- CHINFO announcement copy;
- PCO determination of bid area per 10 U.S.C. 7299(a) (Homeport Policy);
- PCO determination of job order performance by MSRA or ABR holders; and
- Environmental Manager endorsement that contract hazardous waste requirements have been met.

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PART 5 PUBLICIZING CONTRACT ACTIONS

5.1- DISSEMINATION OF INFORMATION

5.102 Availability of solicitations.

Headquarters: The PCO/negotiator shall provide electronic copies of all competitive solicitations and subsequent amendments to NAVSEA 0292 for posting on the NAVSEA 02 Internet. One hardcopy shall also be provided to NAVSEA 0292 for posting on the bid board located in Room 5E40 of National Center #3.

5.2- SYNOPSES OF PROPOSED CONTRACT ACTIONS

5.207 Preparation and transmittal of synopses.

Headquarters:

The negotiator is responsible for preparing the contract synopses and submitting them to the PCO for approval. After receiving approval, the PCO/negotiator is responsible for ensuring that the contract synopsis is sent to the Commerce Business Daily (CBD) via the Internet. The PCO/negotiator will provide a copy of the synopses to NAVSEA 029 by electronic mail.

NAVSEA 029S is responsible for maintaining a master file of all synopses submitted to the CBD for publication. NAVSEA 029S will verify, on a daily basis, which synopses appear in the CBD and will annotate on the file copy the publication date. A copy of the announcement will be provided to the PCO/negotiator to forward to the Distribution Files Section (NAVSEA 02933) for inclusion in the contract file.

5.3-SYNOPSES OF CONTRACT AWARDS

5.301 General.

Headquarters: When the PCO/negotiator has determined that an award shall not be synopsisized, the following shall be indicated on the route sheet forwarding the contract file to NAVSEA 02933:

“DO NOT SYNOPSISIZE CONTRACT AWARD”

Exception _____ Applies IAW FAR 5.301

(to be filled out by PCO/Negotiator)

5.302 Preparation and transmittal of synopses of awards.

Headquarters: NAVSEA 02933 is responsible for preparing the synopsis of awards based on the contract award document. NAVSEA 02933 will provide two copies of the award synopsis to NAVSEA 029 on a weekly basis for transmission and publication in the CBD. NAVSEA 029 will return one copy to NAVSEA 02933 annotated with the time and date of transmission. Upon verification of publication, a copy of the award announcement will be provided to the PCO/negotiator for information and one copy to NAVSEA 02933 for inclusion in the contract file.

5.4-RELEASE OF INFORMATION

5.404-1 Release procedures.

The CCOs may release long-range acquisition estimates. This authority may not be redelegated.

5.5-PAID ADVERTISEMENTS

5.502 Authority.

The CCOs are authorized to approve the publication of paid advertisements in newspapers but may not redelegate this authority.

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PART 6 COMPETITION REQUIREMENTS

6.001 Applicability.

MSRAs and/or ABRs:

If the PCO sends solicitations to all MSRA or ABR holders for repair or alteration work within the determined bid/proposal area, and does not exclude any company which has requested a solicitation, then the requirements for full and open competition have been met.

6.1-FULL AND OPEN COMPETITION

6.101 Policy.

6.192 Navy Homeport Policy.

The Navy Homeport Policy (codified at 10 U.S.C. 7299a) applies only to manned vessels and requires the award of short-term vessel overhaul and repair contracts to contractors able to perform the work at the homeport of the vessel. This is a place of performance restriction.

The place of performance may be designated as a Government facility or as an area permitting use of private facilities. In either event, the performing contractor must still possess the requisite agreement (MSRA and/or ABR).

Note that there is no basis to exclude any MSRA and/or ABR holder with the requisite agreement based solely on the location of their private facility when the place of performance is designated as a Government facility. Their ability to perform outside their facility is an issue of responsibility rather than eligibility.

Unmanned vessels, including small boats, are to be solicited unrestricted on a coastwide basis. The solicitation should be constructed to provide that the contractor's offer include transportation/delivery costs to the contractor's plant and return.

6.2- FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

6.202 Establishing or maintaining alternative sources.

D&Fs for a proposed contract not exceeding \$50,000,000 may be approved by NAVSEA 02/02B. or SES purchase division directors.

6.3-OTHER THAN FULL AND OPEN COMPETITION

6.301 Policy.

If a CBD synopsis is required, the J&A will generally be prepared after the Commerce Business Daily synopsis publication in order to examine the result of contractor inquiries and reach a logical conclusion concerning competition.

6.302 Circumstances permitting other than full and open competition.

6.302-2 Unusual and compelling urgency.

MSRAs and ABRs:

Execute a J&A if any contractor within the solicitation area possessing an MSRA and/or ABR (as applicable) is excluded from the competition. When emergency work/voyage repairs are necessary and fully justified by the Type Commander (TYCOM), the DFARS 206.302-2(b)(ii)(A) exception for "unusual and compelling urgency" applies. Requiring activities must provide rationale justifying urgent awards. Include pertinent information such as the estimated cost and the ship's operational or deployment message, or other rationale detailing the extent of harm to the Government. The justification must document that the repairs to be contracted for are required for the performance of the ship's subsequent mission. When preparation and approval of a written J&A prior to award would delay the urgent acquisition unreasonably, verbal approval may be obtained prior to award and be confirmed by a written J&A and its approval occurring after award. For contract actions over \$1,000,000 to be awarded under the urgency exception, obtain verbal authorization to proceed from the HCA through NAVSEA 028. When approval is obtained, either verbally or by electronic mail, provide a written J&A draft to NAVSEA 028 within one working day.

6.302-4 International agreement.

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Competition advocates have been delegated the authority to prepare and approve documents describing the terms of an international agreement or treaty, or written directions, such as a Letter of Offer and Acceptance, which have the effect of requiring the use of other than competitive procedures for an acquisition.

Except for J&As, competition advocates may redelegate authority to prepare such documents but are not permitted to redelegate approval authority for the documents. J&As shall be processed and approved in accordance with Part 6.304 of this Handbook.

6.303 Justifications.

6.303-1 Requirements.

The contract specialist or contracting officer is responsible for writing the J&A and routing it through the approval cycle. The technical personnel involved in the program must provide information to support the J&A and certify that all factual information is correct.

Class J&As may be written for basic ordering agreements (BOAs) to cover all orders to be issued under the existing or new BOA. For orders issued under a BOA using an exception other than that used for the BOA J&A, or otherwise outside the scope of the original J&A, a separate J&A is required. Class J&As for BOAs may provide for a three-year ordering period.

When exercising "out year" option line items on Phased Maintenance Availability (PMA) contracts, no separate J&A is required if the basic solicitation and award were competitive or were authorized by the original J&A.

For SUPSHIPS, the Code 600 (Repair Officer), or the organizational equivalent requirements person, shall perform the J&A review and provide the approval required of the technical and requirements personnel before submitting a recommendation for other than full and open competition to the contracting officer.

6.303-2 Content.

J&As must be stand-alone documents for approving contract actions that are specifically defined. Sufficient information must exist to make a determination that the contract requirements cannot be competed or that less than full and open competition is the appropriate strategy. Contract actions must be sufficiently defined to provide clear limits to the J&A authority and to permit a clear relationship to be established between the action and the circumstances cited as requiring other than full and open competition.

J&As shall be in letter format on contracting office letterhead. The NAVSEA Headquarters standard J&A format is at NCH 53.6-1. FPOs shall establish appropriate internal J&A formats, consistent with current regulatory and policy guidance, for J&As that are within the activity's assigned threshold for local approval.

When a clearance and a J&A are required, the J&A will have the basic number, and the clearance will have the same number with a decimal digit, except in the case of a class J&A. The next unused consecutive decimal digit number will be used to identify an amendment to the J&A.

J&As may be written to present reasonable variations in quantities or prices. The J&A description for requirements should be broad enough to allow for quantity increases, should contract unit prices be lower than originally budgeted. The requirements should be addressed as estimated quantities and further conditioned with an appropriate phrase, such as "or such quantities as may be authorized or appropriated by Congress".

Additional units of hardware than planned may be acquired if the J&A permits and no provision in law or Congressional reports states to the contrary.

The J&A shall reference any applicable Acquisition Plan (AP). If the cost information contained in the AP is not current and complete, an updated cost information sheet must be provided with the J&A. Approval of an AP proposing a noncompetitive acquisition does not eliminate the requirements for approval of a separate J&A.

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6.304 Approval of the justification.

Headquarters J&As are subject to the following signature and approval thresholds:

<u>\$ LEVEL</u>	<u>APPROVES</u>
\$500,000 and below	Contracting Officer
Over \$500,000 - but not exceeding \$10 Million	NAVSEA 02/02B as Competition Advocate or Flag/SES as designee of HCA) Competition Advocate or Flag/SES as designee of HCA)
Over \$10 Million - but not exceeding \$50 Million	Flag/SES as designee of HCA
Over \$50 Million	Navy Senior Procurement Executive

FPO (except SUPSHIP) J&A approval thresholds are as follows:

<u>\$ LEVEL</u>	<u>APPROVES</u>
\$500,000 and below	Contracting Officer *
Over \$500,000 - but not exceeding \$10 Million	Competition Advocate for Contracting Activity
Over \$10 Million - but not exceeding \$50 Million	NAVSEA 02/02B (unless delegated in writing to Flag/General Officer/SES)
Over \$50 Million	Navy Senior Procurement Executive

(* Unless a higher approval level has been assigned.)

SUPSHIP J&A approval thresholds are as follows:

<u>\$ LEVEL</u>	<u>APPROVES</u>
\$500,000 and below	Contracting Officer *
Over \$500,000 - but not exceeding \$1 Million	Competition Advocate for Contracting Activity
Over \$1 Million - but not exceeding \$50 Million	NAVSEA 02/02B (unless delegated in writing to Flag/General Officer/SES)
Over \$50 Million	Navy Senior Procurement Executive

(* Unless a higher approval level has been assigned.)

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For actions that require a J&A, the pre-negotiation business clearance will not be approved until the J&A has been approved. A draft solicitation may be issued before or after approval of the J&A. Class justifications shall be approved in the same manner as individual justifications with the same thresholds.

J&As submitted to NAVSEA 02/02B for approval or for forwarding to Navy Senior Procurement Executive (NSPE) for approval must be accompanied by a copy of the J&A (or D&F) for the most recent acquisition of the same item or service or a brief explanation why there is none (for example, "This is a first-time acquisition.").

Each justification requiring NSPE approval shall be forwarded as an enclosure to a brief transmittal letter to be submitted to the ASN (RD&A) Secretariat within three working days of the last NAVSEA signature. The transmittal letter shall be prepared on letterhead (with an original and five copies submitted) and signed by NAVSEA 02/02B. Signature on the transmittal letter will constitute approval within NAVSEA 02 and will begin the three-day forwarding period. The justification must be accompanied by an approved AP, unless the requirement to submit an AP along with the justification is waived by the cognizant approval authority. All such waivers must be attached to the justification. Where contract award is necessary prior to AP approval, submission of any J&A is to be delayed until an AP approval is obtained.

Headquarters:

Release of a formal solicitation prior to approval of the J&A requires 02/02B approval.

Field Activities:

Field J&As that exceed the activity's threshold shall be submitted to NAVSEA 028 for review and forwarding, except Warfare Center J&As shall be submitted to the appropriate NSWC or NUWC Commander/Technical Director.

6.5-COMPETITION ADVOCATES

6.501 Requirement.

NAVSEA 02 has been designated as the Procuring Activity Competition Advocate. NAVSEA 02B is authorized to act as the Procuring Activity Competition Advocate in NAVSEA 02's absence.

NAVSEA 02/02B is the Competition Advocate for NAVSEA corporate and affiliated PEOs, and this authority is not redelegable.

Unless the Commanding Officer of a field activity designates otherwise, the field activity CCO/Deputy shall be the Competition Advocate of the activity. This designation is not redelegable and, if other than the CCO/Deputy, must be an equivalent or higher organizational level.

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PART 7 ACQUISITION PLANNING

7.1-ACQUISITION PLANS

7.103 Agency head responsibilities.

The CCOs, without power of redelegation, are authorized to approve acquisition plans (APs).

7.104 General procedures.

The Acquisition Program Manager has overall responsibility for acquisition planning and for implementing the AP. For FPO acquisitions that do not have a Program Manager assigned, the cognizant project manager will assume overall responsibility for acquisition planning.

The PCO is to work closely with the program office to establish a sound acquisition strategy, with particular attention paid to the following areas:

- Prior History - ensuring succinct accurate presentation of relevant data such as total quantities, unit prices, period of performance, and level of effort on a standardized basis;
- Budget and Funding - ensuring consistency of budget and funds types with projected actions and their milestones;
- Competition and source selection methodology;
- Contract type; and
- Milestones.

The PCO shall coordinate the draft and final AP through:

- Other PCOs who will have substantial responsibilities in executing the program covered by the AP;
- The Small and Disadvantaged Business Utilization Office (NAVSEA OOK) or the FPO Deputy Director for Small Business, as applicable; and
- The cognizant PDD, as required.

NAVSEA OOK or the Deputy Director for Small Business, as applicable, will advise on small business considerations which may impact on contracting strategy and will coordinate any reviews with representatives of the Small Business Administration (SBA).

NAVSEA OOK or the Deputy Director for Small Business, as applicable, shall provide comments, concurrence and coordination with the SBA Procurement Center Representative and Breakout Procurement Center Representative within eight working days.

The PCO's signature on the AP indicates concurrence that the stated milestones are realistic and the PCO agrees to endeavor to meet those milestones with the necessary cooperation of the program office.

Headquarters: The final AP shall be signed by the Program Manager, the PCO, and NAVSEA 02/02B, indicating concurrence, prior to signature by the approving official.

FPOs: The final AP shall be signed by the Program Manager (when one is designated), the field activity project manager (when no Program Manager is designated), and PCO, prior to final approval by the CCO.

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PART 9 CONTRACTOR QUALIFICATIONS

9.1-RESPONSIBLE PROSPECTIVE CONTRACTORS

9.104 Standards.

The PCO must determine prior to award if a particular contractor is financially and otherwise able to perform the work, in the time specified, and without delays.

SUPSHIP ACOs, in conjunction with DCAA, must:

- Ensure periodic reviews of financial capability for contractors under their cognizance are conducted;
- Participate in the formulation of DCAA annual audit plans (The services of the local DCAA should be used to conduct financial reviews and evaluate the financial information provided by the contractor. DCAA should provide recommendations to the ACO about a contractor's financial capabilities.); and,
- Request NAVSEA 028's concurrence prior to award if one of the following exists:
 - The job order being considered is disproportionate to the firm's total assets,
 - The bid is so low that award at that price could result not only in a loss, but also insolvency, and
 - Previous over-extensions may prevent the possibility of additional financing.

9.106 Preaward surveys.

Treat information about contractors obtained during preaward surveys as business sensitive information.

The preaward survey report shall include an evaluation of potential first tier subcontractors who will provide critical items such as design work; major components; material in short supply; limited-source items; long lead time items; and electrical, electronic, and GFE installation and checkout.

9.2- QUALIFICATION REQUIREMENTS

9.202 Policy.

The CCOs are the designees to prepare the written justification for qualification requirements. This authority may not be redelegated.

9.4-DEBARMENT, SUSPENSION AND INELIGIBILITY

9.406-3 Procedures.

If there appears to be cause for suspension or debarment of a contractor, the PCO shall prepare a report as specified in DFARS and NAPS cites.

Report contractors that are under criminal investigation or that have been indicted or convicted to NAVSEA 02C.

Contracting Officers cannot waive or restrict the Government's rights to debar or suspend as a part of any settlement or claim even if settled with the participation of a DOJ or U.S. Attorney. Only the DON Debarment Official makes decisions on debarment or suspension.

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PART 11 DESCRIBING AGENCY NEEDS

11.4 DELIVERY OR PERFORMANCE SCHEDULES

11.492-1 Updating current delivery dates for vessel contracts as part of an equitable adjustment (New Construction).

Any supplemental agreement incorporating a revised delivery schedule as part of an equitable adjustment requires Program Manager (PM) and PCO concurrence. Questions concerning supplemental agreement language or the determination of excusable versus non-excusable delay and compensable versus non-compensable delay shall be referred to NAVSEA OOL.

11.492-2 Delivery of completed vessels (New Construction).

When the contract contains the "Delivery of Completed Vessels" clause, the contractor cannot propose the ship for delivery until he has satisfactorily corrected contractor-responsible deficiencies discovered prior to, during, or after completion of, the acceptance trial that would adversely affect the operational capability of the vessel as defined in the clause. If the contractor and the ACO cannot agree about correction of outstanding contractor-responsible defects remaining after delivery of the vessel, the ACO may direct the contractor to remedy the defects.

11.5-LIQUIDATED DAMAGES

11.592-1 Clause (Overhaul/Repair).

If the ACO determines that liquidated damages pursuant to DFARS Clause 252.217-7009 of the MSRA/ ABR should be made a part of the job order, the solicitation must contain a provision with the formula or per diem rate which will be used in the calculation of liquidated damages.

Liquidated damages provide a fair and reasonable compensation to the Navy for losses due to delays. Compute the amount of liquidated damages for each day of delay as follows:

- For active vessels, the per day wages of the entire ship's crew including officers;
- For inactive vessels, the estimated per day wages of the ship's crew for the type of ship involved; and,
- For service craft, the daily cost of rental for commercial craft of similar type (rates may be obtained from the naval activity using service craft or, in some cases, from MSC).

Include in the contract schedule:

AMOUNT OF LIQUIDATED DAMAGES:

For each day in delay of delivery of the vessel, \$_____ shall be assessed provided, however, that liquidated damages shall not exceed 10% of the initial job order price.

Liquidated damages may be assessed when delays to the contract specified completion date are encountered, rather than when delays to other contract specific milestones are encountered.

Supplemental agreements for price adjustments for modifications during the contract, which affect the completion date of the contract, shall cite the revised completion date.

11.592-2 Assessment of liquidated damages (New Construction)

The PCO determines liquidated damages at the time of final settlement. To ensure that sufficient funds are available to cover liquidated damages that may be due the Government because of late delivery of a vessel, the ACO should accordingly advise the PCO.

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PART 13 SIMPLIFIED ACQUISITION PROCEDURES

13.2-ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD

13.201 General.

The Governmentwide Commercial Purchase Card shall be used for micro-purchases (procurements valued at or below \$2,500 or \$2,000 for construction) of commercial items.

Micro-purchases of commercial items shall not be awarded using contracts or purchase orders unless a Flag Officer, SES, or General Officer determines in writing:

- the source or sources available for required the supply or service do not accept the purchase card, BPA or SF-44 and, for future requirements, the contracting activity is seeking a sources that does; or
- the nature of the supply or service necessitates a contract or purchase order so terms and conditions can be specified.

At Naval Shipyard and SUPSHIP activities where a Flag Officer, SES, or General Officer is not assigned, Shipyard Commanders and their Directors, Executive Support staff (Code 1100), and Supervisors of Shipbuilding and their Deputies, are hereby authorized to issue the written determination.

NAVSUP Policy Letter SA97-16 provides additional guidance (<http://www.nll.navsup.navy.mil/cml/>).

13.3-SIMPLIFIED ACQUISITION METHODS

13.301 Governmentwide commercial purchase card.

The Naval Supply Systems Command (NAVSUP) is the Purchase Card Program Manager for the Navy Major Claimancies. NAVSUPINST 4200.85C , subj: Department of the Navy Simplified Acquisition Procedures (SAP), and other implementing policy provide guidance regarding simplified acquisition methods, micro-purchase procedures and other simplified purchase procedures, special attention items, and fleet purchasing.

The GS Governmentwide Commercial Credit Card Service Contract Guide (GS 23F-94031) provides guidance and policies for establishing and running Purchase Card Programs.

Other purchase card information may be accessed at <http://www.navsup.navy.mil> and <http://intranet02.navsea.navy.mil>.

NAVSEA field offices requesting purchase card authority shall forward requests to NAVSEA 028 via the parent NAVSEA organization. NAVSEA 028 is the Agency Program Coordinator (APC) for all NAVSEA field offices.

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PART 14 SEALED BIDDING

14.1-USE OF SEALED BIDDING

14.103-2 Limitations.

Flexibility to conduct negotiations is necessary in most NAVSEA headquarters acquisitions. Therefore, use of sealed bidding requires the approval of the cognizant NAVSEA 02 Division Director or Deputy except for acquisition of commercial items.

For ship repair/overhaul, obtain NAVSEA 028 approval to use sealed bidding for solicitations issued under an MSRA expected to exceed \$10,000,000 or for any availability expected to exceed 6 months.

No ship repair/overhaul awards shall be made as a result of sealed bidding when the effects of competition may have been nullified because the ship repair yards in the solicitation area are at full or nearly full capacity.

14.2-SOLICITATION OF BIDS

14.201-7 Contract clauses.

The CCOs are authorized to waive the requirement for inclusion of the clause at 52.214-27, Price Reduction for Defective Cost or Pricing Data--Modifications--Sealed Bidding, in a contract with a foreign government or agency of that government. This authority may not be redelegated.

14.201-8 Price related factors.

For ship repair, if the low bidder or offeror is displaced by foreseeable costs, notify NAVSEA 028 prior to award.

14.205-SOLICITATION MAILING LISTS

14.205-1 Establishment of lists.

Headquarters: The Naval Sea Systems Command Headquarters Master Solicitation Mailing List is maintained by NAVSEA 029. Forward Solicitation Mailing List Applications (SF 129) and supplementing data to NAVSEA 029.

14.3-SUBMISSION OF BIDS

14.392-1 Receipt of bids from non-MSRA/ABR holders.

Notify NAVSEA 028 upon firm knowledge that a non-MSRA/ABR holder has bid or is intending to bid.

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PART 15 CONTRACTING BY NEGOTIATION

15.2-SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

15.207 Handling proposals and information.

Headquarters:

All proposals shall be delivered to National Center Building #3, Room 5E40. The time of 2:00 P.M. shall be used in all NAVSEA 02 solicitations without exception unless a different time is authorized by NAVSEA 02/02B. Proposals will be retained unopened in a secured central storage area under the control of NAVSEA 029 until the date set for opening unless the cognizant PCO/negotiator approved another secured storage area.

If a proposal is opened for identification or any other purpose, the opener shall annotate on the envelope the reason for opening, the date and time opened, the RFP number, and shall sign the envelope. Immediately at each 2:00 P.M. closing, NAVSEA 029 will notify the cognizant PCO/negotiator to pick up proposals.

The PCO/negotiator and NAVSEA 029 will inventory and verify receipt of proposals from each company (e.g., number and type of packages received). The PCO/negotiator will then sign the form to take possession of the proposals. In certain instances, such as when a restricted number of sources have been solicited, and it is known that all of these sources have responded, the proposals may be released at an earlier time to the PCO/negotiator. Division director approval, however, shall be required for early release.

15.207-92 Receipt of non-MSRA/ABR holder proposals.

Notify NAVSEA 028 upon firm knowledge that a non-MSRA/ABR holder has submitted or is intending to submit a proposal.

15.3-SOURCE SELECTION

15.306 Exchanges with offerors after receipt of proposals.

Disclosure of mistakes before award (DFARS 215.607). The CCOs are authorized to make a written determination permitting the contractor to correct a mistake in its proposal when contract award without discussion is contemplated. This authority may not be redelegated.

Exchanges with offerors after establishment of the competitive range. Contracting officers may identify, in addition to significant weaknesses and deficiencies, other aspects of an offeror's proposal that could be enhanced materially to improve the offeror's potential for award. Contracting officers may not favor one offeror over another, reveal offerors' technical solutions, reveal prices without the offeror's permission, and knowingly furnish source selection information. The safeguards contained at FAR Parts 3.104, Procurement Integrity, and 24.2, Freedom of Information Act, apply.

15.4-CONTRACT PRICING

15.403 Obtaining cost or pricing data.

Ship Repair/Overhaul and New Construction. Although cost or pricing data is not required when adequate price competition exists, the PCO should request a priced work item breakdown because of the number of changes in ship repair.

15.404 Proposal Analysis.

15.404-4 Profit (DFARS 15.970 DD Form 1547, Record of Weighted Guidelines Method Application).

For contract actions of \$500,000 or more, the contracting officer must prepare a DD Form 1547 and submit the original with the contract action to NAVSEA 0293 within 3 working days after execution. NAVSEA 0293 will enter the DD Form 1547 information into the PMRS.

Contracting officers and their management are responsible for ensuring the DD Form 1547 submissions are accurate and use proper codes and parameters.

Field activities:

If local electronic entry to the PMRS is not available, submit the original with the contract action to NAVSEA 0293 within three working days after execution.

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SUPSHIPS: Due to high number of changes in ship repair contracts, SUPSHIPs may establish a reasonable profit rate to be used uniformly throughout the life of the contract.

If the change is a reduced cost modification, deduct a profit factor for the work eliminated by the change.

Attach a rationale to the DD Form 1547 documenting the various profit analysis factors. The original of the form, with the rationale, shall be included in the file of the contractual action and a copy maintained in a separate file in the Contracts Department.

According to the Changes clause and DFARS 252.217-7003, do not allow profit for late proposals when pricing change orders. In such a case, document in the business clearance that no profit was considered or included in the price of the change.

In the profit fee section of business clearances for competitively awarded CPAF contracts, add:

This contract was competitively awarded. Therefore, the percentages for base and award fee remain unchanged to maintain the integrity of the competition.

15.406 Documentation.

5215.406(90) Business clearance.

Business clearance shall be obtained on all contract actions and in all circumstances set forth in NAPS 5201.690 and other individual actions specified by NAVSEA 02/02B. Business clearance for all letter, advance acquisition and long lead material contracts shall be approved the CCO. The Contracting Officer signing the contract action is responsible for ensuring the required business clearance approval has been obtained.

Headquarters approval thresholds: NAVSEA 02 business clearances are subject to the following signature and approval thresholds:

<u>\$ LEVEL</u>	<u>SIGNS</u>	<u>APPROVES</u>
\$10 Million and below	Negotiator	PCO
Over \$10 Million - \$50 Million	Negotiator	Branch Head or GM-15 PCO
Over \$50 Million - \$100 Million	Negotiator PCO	PDD
Over \$100 Million	Negotiator PCO PDD	NAVSEA 02/02B

NAVSEA 02 Division Directors may reduce the above thresholds at their discretion.

FPO thresholds: The SUPSHIP business clearance threshold is set forth in NAVSEA letter, Ser 02B/086, of 2 Feb 98. Business clearance thresholds for all other FPO activities remain as previously delegated by NAVSUP when they were part of the Navy field contracting system, unless changed in writing by NAVSEA 02/02B.

FPOs shall assign appropriate internal review/approval procedures and thresholds, consistent with current regulatory and policy guidance, for business clearances that are within the activity's assigned threshold for local approval.

Content: Each business clearance, together with the supporting source documents, must clearly establish that:

- The negotiation objective or Government position is fair and reasonable in terms of both price and contracts terms and conditions; and

- The contemplated business arrangement and the contract to be awarded are sound and in compliance with laws, regulations, and policies.

The NAVSEA business clearance memorandum format is at NCH 53.15 -1. The format and content may be tailored for local use when the approval authority is below NAVSEA 02/02B for Headquarters clearances and below NAVSEA 028/028B for field clearance.

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SUPSHIPS: CAS business clearances for contract price adjustments for new or modified standards, noncompliances, or voluntary changes are required. CAS business clearances, regardless of dollar value, are to be forwarded to NAVSEA 02 prior to settlement. CAS business clearances which dispose of DCAA questioned costs of more than \$5,000,000 require NAVSEA 028 approval.

If exercising an unpriced option under a phased ship maintenance program:

- Prepare a pre-negotiation business clearance and obtain NAVSEA 028 approval if the cost and fee position is greater than the original clearance dollar threshold;
- Negotiate cost and fee with the contractor;
- Prepare a post-negotiation business clearance and obtain NAVSEA 028 approval if the cost and fee position is greater than the pre-clearance dollar threshold;
- When the post clearance is approved, exercise and modify the option simultaneously in a supplemental agreement;
- Establish a cut-off date for changes to the work package at approximately 90 days prior to the availability start date. Subsequent changes to the work package should be accomplished after exercising the option.

15.6-UNSOLICITED PROPOSALS

NAVSEAINST 4200.3B, subj: Unsolicited Proposals Processing provides procedures for processing unsolicited proposals received by NAVSEA.

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PART 16 TYPES OF CONTRACTS

16.1-SELECTING CONTRACT TYPES

16.192-1 Supply type contracts for vessel overhaul and repair.

If shipboard equipment requires repairs on a "ship-to-shop" basis during technical and voyage repair availabilities, the work must be contracted for outside the MSRA/ABR. Examples include design, pre-fabrication work and materials, overhaul, and alteration jobs (if such services or work are not a part of repair). If supply type requirements cannot be obtained within the simplified acquisition threshold of the cognizant contracting office, forward the requirement through a contracting office that has the appropriate contracting authority or request a one-time delegation of authority from NAVSEA 028.

16.192-2 Use of Navy repair facilities for vessel overhaul and repair.

When, due to the specialized nature of the work, Government facilities must be made available to the contractor, ensure the solicitation is clear as to whether the Government is furnishing the facilities under a Government Property clause or whether the contractor is expected to contract directly with the facility.

Obtain all necessary approvals if providing the facilities pursuant to a Government Property clause, including the D&F required by FAR 45.302.

If the facilities are physically located on a Government compound rather than being made available at the contractor facility, ensure that the Commander or Officer-in-charge concurs and is aware of how the facilities are to be made available to the contractor.

16.192-3 Towing services for vessel overhaul and repair.

Navy tugs owned or under contract are to be used whenever towing services are required for DoN vessels in connection with the performance of ship repair work on job orders under the MSRA/ABR.

If Navy tugs are not available, obtain the services of non-Navy tugs by one of the following:

- Include the towing services as a part of the job order under the MSRA/ABR when cost or other factors are more advantageous to the Government; or,
- If the towing services are within the SUPSHIP's simplified acquisition threshold, obtain the services via simplified acquisition procedures. If the requirement exceeds the SUPSHIP's simplified acquisition threshold, forward it to an activity that has the appropriate contracting authority or request a one-time delegation of authority from NAVSEA 028.

16.192-4 Use of a contractual instrument other than the MSRA/ABR for vessel overhaul and repair.

In some instances an availability might not lend itself to a FFP job order under the MSRA/ABR. Obtain NAVSEA 02's approval to use a type of contract other than a FFP under the MSRA/ABR.

16.2-FIXED-PRICE CONTRACTS

16.206-3 Limitations.

The CCOs may approve in writing the use of fixed-ceiling-price contracts with retroactive price reimbursement. This authority may not be redelegated.

16.6- TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

16.603 Letter Contracts.

The CCOs may approve determinations of reasonable price or fee when the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee. They may also determine in writing that a letter contract may be used and no other contract is suitable. This authority may not be redelegated.

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PART 17 SPECIAL CONTRACTING METHODS

17.5-INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

17.502 General.

The Economy Act authorizes an agency to place funded requirements orders either with another office within its own agency or externally with an office outside its own agency. In this context, the Department of Defense is to be considered a single agency to include the military Departments and the Defense Agencies. Interagency acquisition must not be utilized to avoid competition or requirements approvals.

Unless a more specific statute authorizes a type of interagency acquisition, the Economy Act is the authority for the use of Military Interdepartmental Procurement Request (MIPR) transactions. Acquisitions from required sources of supplies and services prescribed in FAR Part 8 have separate statutory authority; therefore, the Economy Act does not apply.

Information technology. DON activities are authorized to obtain information technology (IT) resources through GSA programs funded through the Information Technology Fund. The Information Technology Fund, established at 40 U.S.C. 757, is a revolving fund, which is used to support GSA's authorized, government-wide IT programs. Orders under programs that are funded through the Information Technology Fund are not Economy Act orders and do not require Economy Act D&Fs.

17.503 Determinations and findings requirements.

Requirement. Economy Act orders issued to non-DoD agencies must be supported by a D&F. Economy Act orders issued to other DoD activities do not require a D&F.

Determination and findings. D&Fs must follow the format at NCH 53.17-1 and must be signed by the requirements office, legal counsel, and the approval authority. Parenthetical instructions and inapplicable paragraphs and sentences may be deleted, but the D&F format and structure is to be otherwise maintained since it satisfies both legal and policy requirements.

Approval authority. Heads of NAVSEA Staff Offices and NAVSEA Directorates, the Warfare Centers' Headquarters, and PEOs are responsible for the approval of Economy Act D&Fs originating in their organizations and assigned field activities.

Economy Act D&Fs may be approved by the following personnel if a Flag or General officer or a civilian member of the Senior Executive Services (SES):

- The Vice Commander;

- The Executive Director;

- All Deputy Commanders and Heads of Staff Offices, their Assistant Deputy Commanders or Deputies, and their Executive Directors (or equivalent, if assigned);

- and the following personnel (to include their Deputy or equivalent) if a Flag or General officer or a member of the SES:

 - Commander, Naval Surface Warfare Center

 - Commander, Naval Undersea Warfare Center

 - All PEOs and their Deputies

ASN (RD&A) is the approval authority for D&Fs for Economy Act orders to be placed with agencies not subject to the Federal Acquisition Regulation (FAR). Examples of agencies not subject to the FAR are: the Federal Aviation Agency, Central Intelligence Agency, the Tennessee Valley Authority, and the Library of Congress. ASN (RD&A) is the approval authority for D&Fs for Economy Act orders to be placed with the Department of Transportation's Volpe Laboratories. Requests for ASN (RD&A) approval shall be submitted via the chain of command.

17.504 Ordering procedures.

The requiring office is responsible for preparing the D&F and its supporting questionnaire and for obtaining the necessary signatures and approval. The assistance of the cognizant contracting officer may be requested, but contracting officer signature is no longer required.

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As a minimum, the staffing package and resultant central file record should contain a copy of each Economy Act order issued under the authority of the D&F, the supporting questionnaire which is to be filed with the original D&F, and the original D&F. In general, a Class D&F is required for authority to issue multiple orders and a copy should be attached to each order.

Each activity with approval authority must establish a central repository for all orders issued under the Economy Act. The cognizant finance office of the approval authority will normally be the repository for the file record for that activity. For NAVSEA Headquarters and the PEOs, this central repository is NAVSEA 01.

Copies of all Economy Act orders (including a copy of the authorizing D&F and its supporting questionnaire) issued to the Department of Energy as the servicing agency, including those for effort to be contracted by it to its Federally Funded Research and Development Centers (FFRDCs), must be provided to ASN (RD&A) ABM at the time each Economy Act order is approved.

17.505 Payment.

If the servicing agency is outside the DoD, the transaction document must be a DD Form 448, Military Interdepartmental Purchase Request, and a D&F is required. In general, Project Orders (41 U.S.C. 23) are not to be used to transfer funds outside the DoD unless their use is approved in accordance with the current Finance Manual by the cognizant Finance Office responsible for signing the form.

17.71-MASTER AGREEMENT FOR REPAIR AND ALTERATION OF VESSELS (DFARS 217.71)

17.7102 General.

NAVSEAINST 4280.2C, subj: Master Agreement for Repair and Alteration of Vessels; Master Ship Repair Agreement (MSRA) and Agreement for Boat Repair (ABR), provides guidance and procedures.

All ship repair/overhaul solicitations must follow the Standard MSRA/ABR Solicitation format.

17.7103-2 Period of agreement.

NAVSEA 028 may cancel an agreement for any of the following:

- Bankruptcy;
- Change of firm's name, management, or owner;
- Default under a job order;
- Included in Joint Consolidated List of Debarred, Ineligible and Suspended Contractors;
- Removal or sale of facilities;
- Companies which no longer meet the eligibility criteria standards for award;

Inform NAVSEA 028 and NAVSEA 04 if any of these actions occur.

17.7103-3 Solicitations for job orders.

Do not use MSRA/ABR job orders to procure material or work which is not a part of shipboard repair, overhaul, and alteration such as:

- Towing or stevedoring when not included in the job order for repair of the vessel.
- Procurement of material and cost of packing, crating or shipping material when not included in the job order for repair of the vessel.
- Utility services when not incidental to the repair of the vessel.
- Personal services.
- Repairs to material in store.
- Manufacturing when not part of a ship work job order.
- Design work when not part of a ship work job order.
- AIT services unless it is a Government team and work is in support of an availability.

When such services are required, follow the procedures in NCH Part 16.

Ensure job orders issued are identified by a four-digit, alphanumeric code, unless NAVSEA 028 grants a written exception.

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17.7103-7 Modification of master agreements.

NAVSEA 028's approval must be obtained for changes or additions to the Standard Component Clauses, Solicitation Provisions, and Text contained in the Standard MSRA/ABR Solicitation Package.

17.7104 Contract clauses.

Orders awarded under DFARS Clause 252.217-7004, Job Orders and Compensation, may be used only in cases of real emergencies or military necessity.

17.74-UNDEFINITE CONTRACT ACTIONS (DFARS 217.74)

17.7404 Delegation of authority to approve UCAs.

NAVSEA 02/02B is the NAVSEA approval authority for letter contracts and long leadtime amendments/contracts. They are also the approval authority for all other UCAs.

Headquarters: NAVSEA 02 PDDs may approve all UCAs, except for letter contracts and long leadtime amendments/contracts. This authority may be redelegated to one level above the contracting officer.

Field: CCOs may approve all UCAs for which authority has been delegated in writing by NAVSEA 02/02B. Implemented procedures shall minimize the use of UCAs.

17.75-ACQUISITION OF REPLENISHMENT PARTS (DFARS 217.75)

17.7503 Acquisition of parts when data is not available.

The CCOs, without power of redelegation, may develop a design specification for competitive acquisition through reverse engineering.

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PART 19 SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.2-POLICIES

19.201 General Policy.

Field Activities: Appointment of Deputies for Small Business shall be in accordance with SECNAVINST 4380.8A. A copy of the written appointment, or termination of appointment, should be forwarded to the NAVSEA Small and Disadvantaged Business Utilization Office (NAVSEA 00K) within 20 days of the action.

19.5- SET-ASIDES FOR SMALL BUSINESS

19.502 Setting aside acquisitions.

19.502-3 Partial set-asides.

The CCOs may authorize partial set-asides when there is a reasonable expectation that only two concerns (one large and one small) with capability will respond. This authority may not be redelegated.

19.505 Rejecting Small Business Administration Recommendations.

The CCOs, without authority to redelegate, may receive appeals and render written decisions when a contracting officer rejects SBA procurement center representative's recommendations.

19.7-SUBCONTRACTING WITH SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS AND WOMEN-OWNED SMALL BUSINESS CONCERNS

19.705-4 Reviewing the subcontracting plan (DFARS 219.705-4).

Headquarters:

The PCO shall review the subcontracting plan for adequacy, positive goals, and compliance with FAR 19.704 requirements and forward it to NAVSEA OOK for advisory comments after initial review.

NAVSEA OOK shall provide written advisory comments to the PCO within ten working days. If none are received, the PCO may assume NAVSEA OOK concurrence and proceed with the procurement, accordingly.

When comments are received, the PCO shall consider the advisory comments in negotiating the subcontracting plan. If the PCO disagrees with the advisory, a written justification that the revision or further negotiation is not necessary must be prepared for the contract file.

When a proposal is received with an approved comprehensive subcontracting plan, it shall be accepted by the PCO after verifying the prior approval and incorporated into the contract without further review.

The PCO or negotiator shall annotate the top of the draft DD Form 350 with "Contains Subcontracting Plan" and insert the applicable code in Block D8. NAVSEA 0293 will post the subcontracting plan with the contract on the Internet.

19.706 Responsibilities of the cognizant administrative contracting officer.

Document the evaluation findings to include actual accomplishments toward achieving small business, small disadvantaged business and women-owned small business goals in subcontracting plans. Provide a copy of the annual surveillance report on the contractor's performance and compliance with each subcontracting plan to the PCO and NAVSEA OOK.

19.10-SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

19.1001 General.

The program for non-nuclear ship repair, propelled and non-propelled vessels, has been extended indefinitely. Application to ships under SIC 3731 is contained in FAR 19.1005(a) (4). Small business set-asides on acquisitions estimated to exceed \$25,000 are not required. Procurements under SIC 3732 for boat building and repair are excluded from the Demonstration Program.

PART 22

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APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1-BASIC LABOR POLICIES

22.101-3 Reporting of Labor Disputes.

Simultaneously submit DD Form 1507 and any supplemental reports to ASN (RD&A) ABM, NAVSEA 028, NAVSEA 04, and the PM or the PEO/DRPM.

22.101-4 Removal of items from contractor facilities affected by work stoppages.

If work stoppage is imminent, expedite the inspection and removal of completed work. If labor difficulties occur at a yard where work on a Navy ship has been completed, make tentative arrangements to have the ship depart the yard before a work stoppage begins. If you are unable to work out a mutual agreement, report your attempt on the reverse side of the DD Form 1507.

The reverse side of the DD Form 1507 may also be used to report supplemental information on the potential or actual effects of labor disputes on delivery schedules and to provide factors for a NAVSEA decision to move a ship with incomplete work.

The MSRA/ABR contains no provision to adjust the contract price or otherwise compensate the contractor for costs attributed to labor strikes.

22.103 Overtime

22.103-4 Approvals.

Vessel New Construction: For FFP Contracts, only NAVSEA 02/02B can authorize using overtime to obtain delivery of a vessel prior to the contract delivery date. For cost-reimbursement and letter contracts NAVSEA 022 makes overtime or multi-shift premium determinations under FAR 22.103-2 before premium costs are incurred. NAVSEA 022 may grant contractual approval retroactively if the circumstances justify. NAVSEA 022 may authorize the ACO to make determinations and approve overtime.

Ensure changes that require the use of overtime, are within the overall ceiling established by NAVSEA for the contract.

Vessel Overhaul/Repair: For the SUPSHIPs, Code 400 is the approval level, on a non-delegable basis, for all overtime determinations under cost type overhaul and repair contracts.

22.8-EQUAL EMPLOYMENT OPPORTUNITY

22.805 Procedures.

The CCOs may approve awards without preaward clearance from OFCCP for contracts and subcontracts of \$10 Million or more (excluding construction). This authority may not be redelegated.

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PART 23 ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.3 Hazardous material identification and material safety data.

23.370-4 Procedures. (DFARS 23.370-4)

The CCOs may approve either omitting the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, from solicitations and contracts or waiving the mandatory requirements of DoD 4145.26-M, DoD Contractors' Safety Manual for Ammunition and Explosives. This authority may not be redelegated.

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PART 24 PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

24.1-PROTECTION OF INDIVIDUAL PRIVACY

NAVSEAINST 5211.2, subj: Privacy Act, provides guidance about policies, conditions, and procedures that govern collecting personal information, and safeguarding, maintaining, using, accessing, amending, and disseminating personal information kept by Navy Activities.

24.2-FREEDOM OF INFORMATION ACT

NAVSEAINST 5720.5, subj: Freedom of Information Act (FOIA) Program, and SECNAVINST 5720.42, Department of the Navy Freedom of Information Act (FOIA) Program, provide guidance about the proper dissemination of public information including compliance, denial, time constraints, use of exemptions, and procedures.

24.202 Prohibitions.

Prior to release of any Business Clearance information in response to a FOIA request, the PCO must conduct a line-by-line, portion-by-portion review of the Business Clearance. Information may be released only with the concurrence of Legal Counsel and through the FOIA office.

Pursuant to FAR 42.15, past performance information should be made available to the subject contractor. Such information is not releasable to other parties.

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PART 25 FOREIGN ACQUISITION

25.1-BUY AMERICAN ACT--SUPPLIES

25.102 Policy.

The CCOs are authorized to determine whether to grant a public interest exception after consideration of the factors in 10 U.S.C. 2533 for acquisitions valued at \$100,000 or more but less than \$1,000,000. This authority may not be redelegated.

25.70-AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION (DFARS 25.70)

225.7002 Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools.

25.7002-2 Exceptions.

The CCOs, without power of redelegation, are authorized to make HCA determinations under DFARS 225.7002-2(a).

225.7011 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

25.7011-2 Restriction.

The CCOS may make written certification to Congress that work cannot be competently performed by a U.S. firm at a price equal to or less than the price of the foreign government of firm. This authority may not be redelegated.

225.7019 Restrictions on ball and roller bearings.

225.7019-3 Waiver.

The CCOs, without power of redelegation, may waive the restriction against acquiring ball and roller bearings or bearing components that are not manufactured in the U.S. or a qualifying country.

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PART 28 BONDS AND INSURANCE

28.1-BONDS AND OTHER FINANCIAL PROTECTIONS

28.101-1 Policy on use.

Vessel New Construction: NAVSEA requires bonds in boat and small ship procurements over \$100,000. Bid guarantee bonds are required prior to award. Within 10 days, the successful contractor must furnish performance and payment bonds secured by a surety acceptable to the Government in the amount stated in FAR 28.102-2, or a different percentage required by the PCO. NAVSEA 02 can terminate the contract under the default clause if the contractor fails to furnish these bonds.

Vessel Overhaul and Repair: While always a consideration in soliciting for ship overhaul and repair work, across the board requirements for payment and performance bonds are not warranted. PCOs are to examine the circumstances surrounding each requirement and make an economic decision regarding the need for bonds. If the PCO determines the bonds are necessary to protect the Navy's interest, NAVSEA 028 should be informed before issuing the solicitation.

28.103 Performance and payment bonds for other than construction contracts.

Vessel Overhaul/Repair: Under the MSRA/ABR, the PCO can require bonds at any time. The PCO shall require a payment bond when a performance bond is required. NAVSEA policy does not require performance and payment bonds after the formal opening of a solicitation if they were not required in the original solicitation. However, after solicitation opening, performance and payment bonds can be made part of the procurement with NAVSEA 028's approval.

Notify NAVSEA 028 if performance and payment bonds are not received according to the requirements of the job order.

The PCO may waive a requirement for performance and payment bonds with NAVSEA 028's approval.

Set the penal sum of a performance bond at an amount, which provides protection from probable damages resulting from default. NAVSEA 028 must approve the penal sum if it exceeds 50% of the job order price.

28.2-SURETIES AND OTHER SECURITY FOR BONDS

28.292-1 Information on completion and payment status.

Sureties to bonds posted on a contract or job order may request information from the ACO about the contractor's performance and payments made to the contractor under a job order/contract.

If the contractor's performance is satisfactory, and the contract or job order has been completed, provide the date of completion and final payment, final contract or job order price, and other information requested.

If the contract or job order has not been completed, provide the percent of completion, probable completion date, amount paid to date, amount required to be withheld under the contract or job order, and other information requested.

If the contractor's performance is less than satisfactory, forward the surety's inquiry to NAVSEA 028 (for overhaul/repair contracts or job orders), or to the NAVSEA PCO (for other contracts or job orders). Furnish details of the contractor's performance in the cover letter. Do not furnish copies of the cover letter to the contractor or to the surety.

Do not notify the surety of a possible default without NAVSEA 028's approval.

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28.3-INSURANCE

28.301 Policy.

Offices with legal counsel are authorized to process and approve insurance claims without limitation, subject to business clearance thresholds.

Insurance claims must be in writing. Insurance claims forwarded to NAVSEA for processing must include the contractor's report and an endorsement including:

- Contractor's name and contract number;
- Navy classification symbol, program, and hull designation if appropriate;
- Contract number, job order number, and claim number;
- Date of occurrence;
- Full description of accident, damage, or the event causing damage;
- Details of the estimated or actual costs of repair or replacement;
- Comments about the contractor's responsibility for the loss such as: willful misconduct, damages to material when in the possession of a subcontractor, or statements supporting contentions that the damages were not accidental; and discussions of mitigating circumstances concerning the responsibility of either party;
- Comments about Government liability for any future claims; and,
- Comments about the extent of the contractor's entitlement.

PCO or SUPSHIP ACO responsibilities include:

- Establishing and maintaining contractor insurance records.
- Ensuring the contractor maintains qualifying insurance under the annual P.L. 85-804 SECNAV Determination or individual authorization (see FAR Part 50.3).
- Establishing and maintaining contractor claims records, conducting analyses to determine if neglect or misconduct occurred if the Government assumed the risk or indemnified the contractor, and notifying the contractor.
- Not issuing modifications to repair GFM if the damages involve insurance determinations.
- Ensuring that the contractor submits an insurance claim in writing for loss or damage.

28.311-1 Contract clause (DFARS).

The CCOs are authorized to waive the use of FAR 52.228-7, Insurance--Liability to Third Persons, when applicable but may not redelegate this authority.

28.370 Additional clauses (DFARS).

The CCOs, without power of redelegation, are authorized to decide not to allow the contractor to buy insurance for war-hazard losses.

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PART 30 COST ACCOUNTING STANDARDS ADMINISTRATION

30.1-GENERAL

Business clearances for contract price adjustments for new or modified standards, noncompliances, or voluntary changes are required. The CCO of the field activity is the approval authority for all CAS business clearances for cost adjustments within the activity's approval level, and this authority is not delegable. However, CAS business clearances, regardless of dollar value, are to be forwarded to NAVSEA 02 prior to settlement.

SUPSHIP business clearances which dispose of DCAA questioned areas of more than \$5,000,000 require NAVSEA 022/028 approval, as applicable.

30.2-CAS PROGRAM REQUIREMENTS

30.201-5 Waiver.

SUPSHIP requests for CAS waivers must be signed by NAVSEA 02/02B and forwarded to ASN (RDA) ABM via NAVSEA 028.

30.202-2 Impracticality of Submission.

Requests for determinations must be forwarded to ASN (RD&A) ABM via NAVSEA 028.

30.6-CAS ADMINISTRATION

30.602-2 Noncompliance with CAS requirements.

ACOs at SUPSHIPS having local legal counsel have been delegated authority to make all determinations of noncompliance under FAR 30.602-2(a) and to issue COFDs on unsettled noncompliances for \$5,000,000 or less. COFDs for amounts over \$5,000,000 require NAVSEA 02 approval.

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PART 31 CONTRACT COST PRINCIPLES AND PROCEDURES

31.109 Advance agreements.

A precontract cost agreement is a type of advance agreement, which provides for an allowance to the contractor for beginning work and incurring costs prior to contract execution.

An advance agreement shall contain the effective date for beginning cost incurrence and the dollar limitation thereon. The agreement must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. Contract files must be documented with the rationale for the use of precontract costs. A central file of copies of all executed advance agreements and changes thereto must be maintained.

Requiring activities' Acquisition Managers and technical and contracting personnel shall not authorize or otherwise encourage contractors to begin work and incur costs without benefit of a formal contractual agreement. However, in exceptional cases, if it can be demonstrated that cost incurrence prior to the effective date of the contract contemplated is essential to achieve the contract delivery schedule, the PCO may consider entering into an advance agreement with the proposed contractor.

Acquisition Managers shall provide a written request to the cognizant contracting officer substantiating the necessity for a contractor to proceed with a negotiated effort prior to contract award, including the impact to the program if precontract costs are not approved. The written request should include the required start date of such effort, the total estimated time of the advance effort, the cost limitation, and evidence of availability of funding to cover the precontract cost amount.

The PCO shall evaluate the Acquisition Manager's request and make an initial determination of approval or rejection. If the request is rejected, the PCO shall return it to the Acquisition Manager with a statement as to the reason(s) for rejection.

Headquarters: The PCO shall obtain the PDD's written concurrence/approval if the proposed precontract costs are under \$100,000. If the proposed precontract costs are \$100,000 or above, the PCO shall obtain further written concurrence/approval from NAVSEA 02/02B.

Field Activities: FPO PCOs shall obtain the written concurrence of a Flag/SES or the Commanding Officer; however, this approval shall not exceed the activity's contracting authority. If the proposed precontract costs exceed the activity's contracting authority, the request must be forwarded to NAVSEA 028 for processing.

SUPSHIPS: SUPSHIP Contracting Officers must forward any request for precontract costs to NAVSEA 028 for processing.

Upon approval, the PCO shall:

- Prepare and forward the advance agreement to the contractor for signature;
 - Obtain the original executed advance agreement from the contractor, sign, and provide a copy to the Acquisition Manager and contractor; and,
 - Document the negotiation/contract file with all relevant information and insure that the resultant contract contains NAVSEA 5252.231-9109, PRECONTRACT COSTS (SEPT 1990), with all pertinent information filled in.
- The format for preparing a precontract cost agreement is at NCH 53.31-1.

31.2-CONTRACTS WITH COMMERCIAL ORGANIZATIONS

31.292-1 The use of compensation adjustment clauses in ship acquisition contracts.

A NAVSEA compensation adjustment clause is used instead of the standard DFARS and NAPS escalation clauses for ship and craft procurements.

Before issuing a supplemental agreement with a compensation adjustment, request an allotment from the cognizant PEO/DRPM, delineating the contract and supplemental agreement number and the amount required for each individual vessel.

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PART 32 CONTRACT FINANCING

32.1-NON-COMMERCIAL ITEM PURCHASE FINANCING

32.114 Unusual contract financing.

Requests for unusual contract financing must be submitted to NAVSEA 02/02B prior to obtaining HCA approval.

SUPSHIPS: Submit requests via NAVSEA 022 (for new construction) or NAVSEA 028 (for overhaul/repair) with a recommendation for action.

FPOs: Submit requests via NAVSEA 028.

32.192-1 Payments At and After Delivery of Vessels (New Construction).

Upon delivery of each vessel, pay the contractor the unpaid portion of the contract price less specified reserves.

Do not pay from performance reserves before final contract settlement unless NAVSEA 02 determines that such release is in the best interest of the Navy.

32.192-2 Release of Withholdings (Vessel Overhaul/Repair).

After redelivery of the vessel to the Government, retain only the amount necessary to protect the Government's interests. Once the vessel has been redelivered and accepted by the Government, the amount to be withheld generally would be less than the total amount already retained unless the ACO determines it necessary to retain the entire amount.

32.5- PROGRESS PAYMENTS BASED ON COST

32.501 General.

The following policies apply when NAVSEA PCOs, ACOs, or CORs have a contractual certification or concurrence responsibility:

- An invoice for progress payments based on percentage of completion must show the percentage of completion on which it is based, and the computation of the amount billed (including withholdings and releases). When change orders are funded by allotments requiring separate accounting and payment records, amounts included for changes should be segregated (in ship contracts on a per ship basis). Ensure that each invoice includes the following and that it is signed by the contractor:

Physical progress, including progress by subcontracting represented on and by this invoice, has been made in the performance of this contract. The amount here invoiced, when added to the total of all previous payments under this contract, does not exceed the total costs incurred to the date of this invoice in the performance of this contract plus a percent ____ (%) of such costs. Such costs equal or exceed \$ ____.*

*If the contract specifies a limitation that is less than costs incurred, change "plus" to "less." If the contract specifies a limitation not in excess of costs, omit "plus ___% of such costs."

- Invoices that include progress payments to subcontractors shall include the statement that:

- Physical progress under the subcontract is commensurate with costs claimed thereunder, and

- The amounts requested for progress payments to the subcontractor do not exceed the progress payments made by the contractor.

- Before certifying such invoices for payment, shall ensure that the requirements covering progress payments to subcontractors have been fulfilled, and that the prime contractor has provided satisfactory evidence to support his certifications of progress by subcontractors.

- Where a contractor has applied for progress payments in excess of costs incurred plus the percentage of cost permitted by the contract, return such invoices to the contractor for correction. If progress payments have been made in excess of those permitted by the terms of the contract, notify the cognizant PCO with recommendations for corrective action.

Progress payments (New Construction):

When computing physical progress, consider the changes identified in a provisional price increase modification in the same manner as if they were priced.

As long as a provisional price increase modification is outstanding (until the amount of the provisional price increase is reduced to zero), do not make a payment under the contract in an amount which, when added to the total

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of all previous payments for progress, or for any other purposes, exceeds the cost certified by the contractor on the related invoice to have been incurred by it in the performance of the contract. Until a provisional price increase has been reduced to zero, the contractor is not entitled to any payment that results in the receipt of funds in excess of his certified costs incurred.

32.7- CONTRACT FUNDING

32.703-1 General (DFARS 232.703(1)(iii)).

The CCOs may approve the use of incremental funding for either base services contracts or hazardous/toxic waste remediation contracts. This authority may not be redelegated.

32.9-PROMPT PAYMENT

32.903 Policy.

To prevent cash flow interruptions that may affect ship repair contractors, the ACO should expeditiously process valid contractor invoices. Specify a standard due date (generally 7 days for progress payments) in the Prompt Payment clause at FAR 52.232-25(b)(2).

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PART 33 PROTESTS, DISPUTES AND APPEALS

33.1-PROTESTS

33.103 Protests to the agency.

Reporting requirements for Headquarters and field activities are at NCH 4.692-4.

Field activities: Field contracting officers shall notify NAVSEA 028 prior to making awards in face of an agency protest. In FAR 33.103(d)(4) and 33.103(f), a “level above the contracting officer” shall mean the CCO or, if the CCO is less than two levels higher than the contracting officer, the CCO of the next higher office in the HCA chain of command.

33.104 Protests to GAO.

Upon notification of a protest to GAO, the field contracting officer shall immediately notify NAVSEA 028.

NAVSEA 00 is the approval authority for FAR 33.104(b) and (c). At Headquarters all contracting officer requests for determinations to make or continue contract award shall be submitted to NAVSEA 00 via NAVSEA 02. Field contracting officer requests shall be submitted via NAVSEA 028.

33.2-DISPUTES AND APPEALS

33.203 Applicability.

A claim is a nonroutine written demand or written assertion submitted under the Contracts Disputes Act by one of the contract parties seeking, as a matter of right, the payment of money in a sum certain, or the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. When submitted to the Contracting Officer for a final decision, no “antecedent dispute” is required. A claim exceeding \$100,000 must be properly certified according to the Contracts Disputes Act of 1978 and FAR 33.207, or it is not a claim.

An REA is similar to a claim except that it is a contractor request not submitted under the Contracts Disputes Act. Examples include nonroutine written requests seeking recovery when unforeseen or unintended circumstances (such as government contract modification, differing site conditions, defective or late delivered government property or issuance of a late stop work order) increase contract performance.

When there is a question as to whether the contractor submittal is an REA or a claim, request clarification and obtain concurrence from legal counsel.

NAVSEA 028 conducts periodic reviews of claims avoidance activities and provides training and assistance about claims avoidance, claims prevention, and claims settlement.

33.204 Policy.

Claims Evaluation:

The following is generally applicable to after-fact-analysis but must be specifically addressed for REAs, claims, and terminations:

Preliminary Review. For REAs and claims with allegations proposing an impact of contract delay, acceleration, disruption or loss of efficiency, and in cases involving specific constructive changes, the following documentation should be included in the claim or REA to enable government evaluation:

- Specifically identified evidence to support the claim assertions. The contractor must establish a causal link or connection between the alleged Government responsible act and the increased costs. Opinions, conclusions or judgmental assertions not supported by such evidence or by a sound and reasonable rationale which is fully discussed are without probative value and are unacceptable. (**Note:** The Government will not acknowledge damages based on a reason-value or fair market value concept; nor will it acknowledge damages based on a total cost concept. Furthermore, no presumption of reasonableness shall be attached to the incurrence of costs by a contractor; the burden of proof shall be upon the contractor to establish that such costs are reasonable. FAR 31.201-3 refers.)

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- All documents relating to the calculation of delay, acceleration, disruption or loss of efficiency related to the claim.
- All documents pertaining to scheduling information, including any and all schedules developed, utilized, created, altered, modified or varied by the contractor.
- All tabular reports pertaining to scheduling information alluded to directly above including, but not limited to:
 - a. A detailed Predecessor and Successor Report containing any and all codes (and their definitions) utilized to clarify, analyze and sort data.(and their definitions) utilized to clarify, analyze and sort data.
 - b. A list of planned holidays or non-work days utilized in schedule calculations or development.
 - c. A list of any individual schedule activities not on a five day work week calendar, and their calendar definition.
 - d. All available schedule drawings (i.e., time-scaled logic diagrams, bar charts, etc.).
 - e. All schedule related correspondence.
 - f. All reports, schedules and analyses developed by or for the contractor.
- All documents relating to estimate formation.
- All estimating forms or other source documents listing the labor man-hours, quantity, material costs, subcontractor costs, overhead and other costs by the lowest level of detail. (**Note:** This information should be provided in hard copy format and, if maintained in a computer database, in a computer ready format on a 3 1/2 inch computer diskette in dBase, or in a delimited ASCII text format with field definitions (names, length, decimals, etc.), utilizing the MS-DOS operating system.)
 - All internal memoranda or documents which describe the rationale and assumptions utilized by the contractor to establish the cost of the contract, including such items as assumed resource requirements, labor productivity, and other cost elements.
 - All information and documents related to the actual cost, man-hours and quantity incurred on the contract at the lowest level recorded for:
 - a. materials
 - b. labor
 - c. equipment
 - d. subcontracts
 - e. overhead(**Note:** This information should be provided in a hard copy format and, if maintained in a computer database, in a computer ready format as previously described above.)
 - Copies of all man-hour/manpower/cost reports whether produced periodically or as required, which set forth labor, material, equipment and subcontractor data at the lowest level recorded and which identify earned value, percent complete and variances to budget. (**Note:** This information should be provided in a hard copy format and, if maintained in a computer database, in a computer ready format as previously described above.)
 - Copies of the labor records reflecting the delay time claimed for each employee for each task or activity in the claim. (**Note:** This information should be provided in hard copy format and, if maintained in a computer database, in a computer ready format as previously described above.)

Subcontractor claims are to be settled by the prime contractor and its subcontractor, since no privity of contract exists between the Government and the subcontractor. The prime contractor must evaluate the subcontractor's claim, obtain objective evidence and demonstrate that cause and effect were beyond the control of the prime contractor's prudent management business practices. The subcontractor must define what positive management actions it took to minimize the prime contractor's exposure. (NOTE: Neither a reason-value basis nor a total costs basis will be accepted by the Government for subcontractor submissions. Prime contractors are to be cautioned to analyze subcontractor allegations under prime contractor certification thoroughly.)

Administration of REAs/Claims. The cognizant contracting officer shall consult with management concerning establishing a claims team and providing other support. If established, the claim settlement team will review the REA/claim and prepare a REA/claim settlement milestone schedule within 7 days. Whether a claims team is actually established, the cognizant contracting officer shall perform the functions of a CTM.

Reporting requirements for Headquarters and field activities are at NCH 4.692-5.

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Investigation. The claim settlement team will investigate the REA/claim and establish a Government position. Pertinent legal issues will be investigated by counsel so that the factual inquiry will be thorough and comprehensive. The investigation will obtain information from the contractor, Government, and other sources having relevant data.

The burden of proof rests with the contractor to establish which additional costs were caused by an action or a failure to act by the Government and the amount of Government-responsible costs.

The Government can request from the contractor any relevant data and records. The claim settlement team shall request the contractor to furnish the documentation required.

File Documentation:

Technical Analysis Report (TAR). The team engineer shall prepare the final TAR, after considering comments of team members. He or she shall endeavor to resolve any questions of factual issues. The TAR is a factual recitation of the claim, the facts as they exist, and the engineering evaluation and analysis of the validity of the claim on technical grounds. It should include a recommendation on quantum and entitlement, supported by analysis. The TAR should also identify questions or issues that require additional facts of expert testimony and identify those who could serve as potential witnesses. The TAR and addenda to it will be made available for use in legal and audit evaluation of the claim.

DCAA Advisory Audit Report. The audit report shall be requested for any REA/claim over \$500,000 on which cost or pricing data is provided, unless cost reasonableness can be determined by other means. The CTM will consult with the auditor as necessary to provide assistance in evaluation of the contractor's proposal. A copy of the TAR should be provided to DCAA for incorporation into the DCAA audit report if time permits.

Legal Memorandum. If necessary, the team counsel will prepare the legal memorandum, including a litigative risk assessment, and recommend a course of action based on the facts. This memorandum will be furnished to other team members for reference purposes in arriving at a pre-negotiation position.

Pre-Negotiation Position. The CTM will follow up on the due dates for the audit report, TAR, and legal memorandum to ensure advisory data is received in time. The CTM will develop a Business Clearance. The pre-negotiation position will be presented to appropriate levels for approval.

Negotiations. Negotiations shall be conducted as soon as practicable after approval of the pre-negotiation business clearance. Unless otherwise directed, the negotiation will be conducted by the CTM with other team members participating when requested by the CTM.

Post-Negotiation Position. A post-negotiation business clearance position must be approved before a settlement commitment. The CTM will prepare the post-negotiation business clearance and submit it for approval.

Certificate. After final agreement on price, the contractor shall be required to provide a Certificate of Current Cost or Pricing Data as set forth in FAR 15.403 if the settlement exceeds \$500,000.

Disposition. After approval, the final settlement of the claim/REA will be made by supplemental agreement.

Claims against a contractor.

Contracting Officers will prepare "a letter of intent" about a potential claim against a contractor. The letter, advising the contractor of the impending claim, shall:

- Identify the contract to which the claim applies;
- State the legal/contractual basis of the intended action(s) by the Government;
- Provide the facts about the potential claim;
- Request the contractor respond, with recitation of any facts to show why the impending Government claim should not be asserted;
- Establish the date on which Government action will be initiated, should the contractor not respond.

Before delivering the letter of intent to the contractor, the contracting officer shall obtain the advice of legal counsel on its legal sufficiency.

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A receipt shall be obtained from the contractor clearly showing the name of the person accepting the letter of intent and the date of acceptance.

The contracting officer shall advise NAVSEA 028 and NAVSEA 00L of the issuance of each letter of intent and provide a copy.

Upon receipt of the contractor's response, the Government's claim shall be processed in the same manner as the contractor's claim as stated in this Part.

If the Government's claim results in a Contracting Officer's Final Decision (COFD), that decision shall be processed as stated in this Part.

The applicable contract file shall include a discrete file containing all material relating to each Government claim against a contractor.

An office log shall be maintained by the PCO listing all claims against contractors and their status.

Third party lawsuits.

If a third party enters a suit against a contractor who holds a cost-reimbursement or other type of contract under which the judgment of litigation fees might be reimbursable, the cognizant contracting officer shall immediately inform NAVSEA counsel, forwarding copies of the summons and complaint. The contracting officer shall not refer the case for defense to the local United States Attorney without the concurrence of NAVSEA counsel. Before the United States Attorney makes his or her appearance, he or she should be given a Representation Agreement signed by the contractor.

33.210 Contracting Officer's authority.

PCOs are responsible for all REAs and claims under their contracts. In general, SUPSHIPs will be responsible for settling REAs and claims filed with the ACO. PCOs may delegate settlement authority to DCMC and SUPSHIP ACOs with their concurrence.

33.211 Contracting Officer's decision.

NAVSEA 028 shall provide technical support to claims and REA teams (if needed); review and approve field COFDs for disputes over \$5,000,000 and support field efforts to secure funding for claim settlement. Field activities are authorized to issue COFDs for claims and denial letters for REAs less than \$5,000,000 without prior NAVSEA approval.

If a COFD is issued, all files and back-up data will be preserved. They are essential to the defense of the Government position if the contractor appeals the decision. The CTM is responsible for all administrative closeout actions.

33.212 Contracting Officer's duties upon appeal.

When the contracting officer receives a contractor's appeal of a COFD, the contracting officer shall immediately forward the COFD and appeal to the cognizant office of counsel.

Upon notification of an appeal, the contracting officer shall compile all documentation relating to the appeal as required by legal counsel, including the COFD, the contract file, relevant correspondence, and transcripts of statements or affidavits by witnesses.

33.215 Contract clause.

The CCOs are authorized to determine that continued performance is necessary pending resolution of any claim that might rise under or be related to the contract when use of Alternate I of FAR 52.233-1, Disputes, is contemplated. This authority may not be redelegated.

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33.90-PROCEDURES (NAPS 5233.90)

33.9000 Documentation of significant contract events (NAPS).

In addition to the significant events in NAPS 5233.9000 that may contribute to a potential claim, the following circumstances may apply:

- If the contractor believes the Government has superior knowledge of an aspect of the job and withheld that knowledge from the contractor;
- If the contractor believes that Government action or conduct under one contract adversely affects contractor performance on another contract (cross-contract impact); or,
- If the contractor believes that the Government has improperly performed contract administration duties, such that their performance interfered with the contractor's conduct of its own business.

A contractor's failure to adhere to a schedule or to control costs may lead him to seek recovery of costs by filing a claim.

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PART 35 RESEARCH AND DEVELOPMENT CONTRACTING

35.105 Contracts for research with educational institutions and nonprofit organizations.

The CCOs, without power of redelegation, may approve special use allowances when the conditions at DFARS 235.015-70(c) are met.

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PART 37 SERVICE CONTRACTING

37.102 Policy.

Additional guidance is provided in NAVSEAINST 4200.19, subj: Service Contract Restrictions and Safeguards, and NAVSEAINST 4200.20, subj: Standard Source Selection Plan for Contractor Support Services.

37.204 Guidelines for determining availability of personnel (NAPS 5237.204).

The CCOs are authorized to determine that personnel with the required training and capabilities needed to conduct evaluations or analyses of any aspect of proposals for an initial contract award are not readily available within the agency or other Federal agency. This authority may not be redelegated.

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PART 42 CONTRACT ADMINISTRATION

42.2-ASSIGNMENT OF CONTRACT ADMINISTRATION

42.202 Assignment of contract administration.

The CCOs, without power to redelegate, may approve contracting office delegations of authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule (see FAR 42.202(c)(2)).

42.3-CONTRACT ADMINISTRATION OFFICE FUNCTIONS

42.302 Contract administration functions.

Vessel New Construction. The ACO can execute a change order for Field Modification Requests (FMRs). FMRs may be processed by the SUPSHIP and require a SUPSHIP technical review and cost estimate, as appropriate. The dollar threshold for a NAVSEA FMR review varies by program.

Work scope changes for Headquarters Modification Requests (HMRs) are generally more complex, higher in unit cost than FMRs, and involve specification revisions. HMRs can be delegated to ACOs.

42.6-CORPORATE ADMINISTRATIVE CONTRACTING OFFICER

42.602 Assignment and location.

Submit to NAVSEA 028 recommendations for corporate administrative contracting officer assignment, reassignment, recertification, or discontinuance corporations assigned to NAVSEA.

42.13-SUSPENSION OF WORK, STOP-WORK ORDERS, AND GOVERNMENT DELAY OF WORK

42.1303 Stop-work orders.

Vessel New Construction. The ACO is not authorized to stop all of the work in a contract containing a Stop Work Order clause. The ACO is only authorized to issue Stop Work Orders for part of the work called for by a contract containing a Stop Work Order clause when the ACO determines, with the concurrence of the PCO and PM/PEO, that an installation on board ship is not in line with Navy's latest requirements, or the installation is no longer required. Issuing a Stop Work Order must be approved at a level higher than the ACO.

42.15 CONTRACTOR PERFORMANCE INFORMATION

42.1503 Procedures.

The Department of Defense Guide to Collection and Use of Past Performance Information, May 1999, provides DoD past performance policy. The Guide is available on the Internet at <http://www.acq.osd.mil/ar/doc/ppiguide.pdf>.

The DoN Contractor Performance Assessment Reporting System (CPARS) Guide (January 1998), implemented by OASN (RDA) memorandum of 2 February 1998, establishes procedures for the collection of past performance information. The DoN CPARS Guide is available on the Intranet at <http://www.nslcptsmh.navsea.navy.mil/cparsdoc.htm>.

NAVSEAINST 4355.8, subj: Naval Sea Systems Command Contractor Performance Assessment Reporting System (CPARS), provides NAVSEA procedures and assigns responsibilities for the collection and use of CPARS.

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PART 43 CONTRACT MODIFICATIONS

43.1-GENERAL

43.101 Definitions.

Supplemental agreement is used to refer to all categories of bilateral modifications

43.102 Policy.

NAVSEA policy is to avoid unpriced contractual actions (UCAs) under contracts. If their use is necessary, they must be approved in accordance with NCH 17.7404.

43.192-1 Provisional price increase for unadjudicated changes under fixed price type contracts.

The contracting officer has authority to enter into supplemental agreements for provisional price increases because of unadjudicated changes under fixed price type contracts if the contracting officer determines in writing that settlement has been delayed for an unreasonably long time because of circumstances beyond the control of the contractor. The determination must be approved by the CCO in the field or by the Division Director at NAVSEA Headquarters.

Provisional price increases for claims are not authorized. The proper vehicle under an REA or claim is a partial settlement. Funding shall be obligated equal to the provisional price increase.

43.192-2 Supplemental agreement UCA to MSRA/ABR job orders (Vessel Overhaul/Repair).

A new procurement supplemental agreement to a job order is, in effect, a new job order. Before issuing a new procurement supplemental agreement, ensure it is fully priced.

Decreases in the scope of work may take the form of a partial termination for convenience or a supplemental agreement reducing the scope of effort with an appropriate reduction in price. If this occurs, consult NAVSEA 028 before issuing a supplemental agreement.

Partial termination may be the most appropriate method for significant decreases in the scope of work, particularly if the work deleted exceeds \$500,000 or if there is extensive inventory to be disposed of.

A supplemental agreement is appropriate for work scope decreases of less magnitude in which the impact upon delivery, price, and other factors can be negotiated in advance.

If the ACO and the contractor cannot reach an early agreement on an equitable price decrease for a proposed reduction in the scope of work, the ACO may enter into a supplemental agreement UCA which:

- Issues the modification;
- Establishes a new delivery date;
- Reflects the maximum price decrease to which the contractor will agree at that time; and,
- Provides for a later determination of the equitable price decrease with the provision that it will not be less than the amount stated.

This procedure may also be used to establish the minimum price for a change order. Such agreements adjust the job order and are included in the computation of progress payments.

Supplemental agreements which establish delivery adjustments and maximum price increases are prepared similarly to the modifications previously discussed and will provide for a later determination of an equitable price increase not to exceed the amount stated.

Supplemental agreements implementing the obligations of the parties are appropriate for equitable adjustments to the contract price/delivery schedule and for price reductions for noncompliance with specifications or actions under the Single Process Initiative (SPI). These modifications finalize issues set forth earlier, either by supplemental agreements or change orders.

A maximum priced job order or job order modification shall be used if there is time to negotiate the maximum price using price analysis or an independent estimate, but not time to complete all of the required pricing actions. Issue a supplemental agreement after completing required pricing actions.

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Supplemental agreements for unresolved work requirements are appropriate if the contractor and the Government agree that work will be required to correct an existing deficiency, but time precludes the ACO from determining if the contractor is responsible for accomplishing the work according to the terms of the existing job order, or the Government must issue a change to the job order for the work.

The corrective work must be within the scope of the job order and adequately defined.

Funds will not be obligated at the time of issuance, but the estimated cost for the item shall be obligated if the Government is found later to be responsible for the corrected work.

43.192-3 Appropriations and obligation authority for modifications.

Before executing a job order modification or task order modification increasing the work value, the contracting officer shall ensure that the purchase request or equivalent authorization from the cognizant requirements activity contains obligation authority for the amount of the increase. In the case of an unpriced modification, the amount to be obligated initially will be the Government's best estimate for the performance of the work.

43.192-4 Supplemental agreements for unresolved work requirements (Vessel New Construction).

A situation may develop in which the contractor advises, or the Government finds, that work will be required to correct an existing deficiency, but time precludes the ACO from determining if:

- The contractor is responsible for accomplishing the work pursuant to the contract, or
- The Government is responsible for the work and should issue a change reflecting this fact.
- The ACO may take corrective action by issuing a supplemental agreement prior to determining responsibility for correcting the work.

The action described above would preclude delays in the ship completion/additional costs to the Government if it is determined later that the contractor had no contractual responsibility to accomplish the work. The supplemental agreement indicates only the corrective work that is to be performed. The ACO may determine responsibility in a subsequent modification.

Use the supplemental agreement only if the following conditions are present:

- The Government's responsibility for the corrective work is not obvious;
- The delay in starting the corrective work to make the determination of responsibility could delay the ship or expose the Government to increased costs if you determine later that the contractor had no contractual responsibility for the work;
- The corrective work can be adequately described; and,
- The corrective work can be incorporated in an FMR.

A supplemental agreement for unresolved work does not obligate funds at the time its issued since it does not contain a statement committing the Government to pay for the necessary work.

If the Government is found to be responsible for the corrective work, obligate the estimate for performing the work. Such agreements must be approved by the CCO.

43.192-5 Settlement of individual changes identified in a provisional price increase modification (Vessel New Construction).

Promptly settle individual changes cited in a supplemental agreement providing for a provisional price increase.

Include in each supplemental agreement issued to price out a single change or a group of changes identified in the provisional price increase modification the following language for changes in wording for an FPI contract, until the provisional price increase is reduced to zero:

The contract price is increased by \$ _____ and the provisional increase in price provided for in Contract Modification No. A ___ is reduced by a like amount according to the provisions of paragraph ___ of said modification.

43.192-6 Supplemental agreement for issuance of Duty-Free Entry Certificate (Vessel New Construction).

The contracting officer is authorized to enter into priced supplemental agreements reflecting price reductions resulting from the issuance of a Duty-Free Entry Certificate, according to the Notice of Imports - Possible Duty-Free Entry clause of a contract. The amount of the duty which would have been paid had the certificate not been issued will be considered in negotiating the price reduction.

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Include the following in a supplemental agreement of this type under an FFP or an FPEPA contract:

Pursuant to paragraph ___ of the clause entitled "Notice of Imports-Possible Duty-Free Entry" clause, the contract price is decreased by \$ _____ which represents the amount of duty which would have been payable for the material listed in customs form 7501 covering B/L _____.

For an FPI contract, modify the wording to indicate the reductions in target cost, target profit, target price, and ceiling price.

43.2-CHANGE ORDERS

43.202 Authority to issue change orders.

The SUPSHIP CCOs and SUPSHIPDET CCOs at Pearl Harbor, Charleston, and Ingleside are authorized to approve issuing change orders to job orders issued under MSRAs or ABRs if a proposal adequate for negotiation purposes has been received and the estimated value of the change order does not exceed \$1 million. Otherwise, a change must be documented and approved in advance by NAVSEA 00 or a Flag/SES level designee. This authority may not be redelegated.

ACOs are not authorized to make a partial settlement of the price of a change, except when specifically authorized by NAVSEA 02. SUPSHIP requests for such actions shall be submitted to NAVSEA 028 and shall include justification and supporting information. Partial settlements will be approved only in exceptional cases.

ACOs are not authorized to execute a supplemental agreement for settlement of a change order until a Business Clearance has been approved.

ACOs are not authorized to reopen a supplemental agreement of the settlement of a change, nor may they price a specific item related to the settlement of the change as part of the pricing of a subsequent change or as part of any other pricing action.

43.292-1 Changes in work period of the job order (Vessel Overhaul/Repair).

A change in the start of performance for the job order resulting from either early or late delivery of the vessel can best be accomplished by execution of a supplemental agreement. If the ship is delayed, request the Type Commander (TYCOM) grant additional time equal to the delay. The supplemental agreement should establish a new starting date and extend the date of completion so that the supplemental agreement provides the same number of working days as the original award provided. If the TYCOM does not grant the additional time, the supplemental agreement should change only the starting date. If the ship is early and the TYCOM does not request a change in the completion date, the supplemental agreement should establish the new starting date. Normally, for changes involving short periods of time, no consideration will be required by either the Government or the contractor. If the contractor requests consideration and the ACO agrees, the supplemental agreement may provide for an equitable adjustment. This equitable adjustment should consider increases, as well as decreases, in costs cited which may result from a change in starting date:

- Costs for services to the ship when the ship arrives prior to the job order date and there is no change in the completion date;
- Costs resulting from disruptions and inefficiencies when the ship arrives after the job order date;
- Costs for overtime and premium shift work, and disruptions and inefficiencies when the ship arrives after the job order date and the TYCOM does not grant additional time.

If agreement cannot be reached with the contractor, the ACO may issue either a supplemental agreement or change order reflecting revised starting dates and completion dates.

43.292-2 Change in starting date of work after bid is opened, prior to award of job order (Vessel Overhaul/Repair).

If information is received after bid opening but prior to the award of the job order that a change in the starting date of the work is required, the ACO may negotiate a supplemental agreement after the award or readvertise the procurement if time permits.

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43.292-3 Change in completion date of the work (Vessel Overhaul/Repair).

Revising the completion date resulting from a request of the TYCOM for redelivery of the ship prior to the job order date may be accomplished by a unilateral or bilateral agreement. A priced supplemental agreement is the preferred method if timely agreement can be reached with the contractor.

If the contractor requires consideration, the ACO must review the current status of work to estimate what portion, if any, of the requested increase would have been incurred if the completion date had not been changed. The ACO should consider the cost elements of overtime and premium shift work, disruptions and inefficiencies, and reduction in services to the ship.

43.292-4 Other than fully definitized modifications (Vessel New Construction).

ACOs may use unpriced and not fully priced supplemental agreements only when authorized according to NCH 17.74.

Maintain current documentation for each modification that is not fully priced. Documentation should include:

- The date the need for the change was discovered, by whom reported, and the circumstances involved.
- The date the work on the change commenced.
- The date the work on the change was completed.
- The work accomplished or to be accomplished.
- The disruptive effect of the change on other work required by the contract.
- The dates when the disruption occurred or will occur, the trades involved, the number of man-days involved, the compartments involved, etc., predicted to the extent possible.
- Problems encountered by contractor or Government procurement of materials to perform the change.
- Concurrent delays resulting from other actions of the contractor.
- Concurrent delays resulting from other actions of the Government, such as late receipt of GFM. These concurrent delays are to be delineated so as to eliminate duplication in settling claims.

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PART 44 SUBCONTRACTING POLICIES AND PROCEDURES

44.2-CONSENT TO SUBCONTRACTS

44.202-1 Responsibilities

ACOs shall not ratify subcontracts as a routine procedure in lieu of granting consent prior to their placement. Ratification should be the exception to the rule and granted only on a case-by-case basis.

44.304 Surveillance.

SUPSHIPS only: As required by FAR 44.304, ACOs shall establish a surveillance plan for subcontracting operations to ensure that contractors are effectively managing their purchasing program.

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PART 45 GOVERNMENT PROPERTY

45.309 Providing Government production and research property under special restrictions.

The CCOs are authorized to determine that it is necessary to install or construct on land not owned by the Government in such fashion as to be nonseverable Government production and research property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or plant equipment. This authority may not be redelegated.

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PART 46 QUALITY ASSURANCE

46.7-WARRANTIES

46.702 General.

SUPSHIP New Construction. To ensure the full protection of the Government's interests under the guarantee provisions of a contract, furnish to the Prospective Commanding Officer or the Officer in Charge of the ship at the time of its delivery (with a copy to the appropriate Fleet Commander and TYCOM) a written notification containing the information listed below (in the case of boats and service craft, the SUPSHIP shall notify the receiving command or stocking activity):

- The date of the end of the guarantee period;
- Quoted excerpts of all applicable contract clauses pertaining to the contractor's responsibility under the guarantee provisions;
 - A notice that any failures or casualties occurring in the ship or boat during the guarantee period, including any equipment deficiencies, should be reported promptly to NAVSEA and that a copy of the report should be furnished to the SUPSHIP. In the case of commissioned ships, reports should be forwarded to NAVSEA via the SUPSHIP;
 - A notice that, prior to the end of the guarantee period, a list of unsatisfactory items, including defects, should be forwarded in sufficient time to reach the SUPSHIP and NAVSEA not later than 15 days prior to the expiration of the guarantee period. If any additional items occur after the submission of this list and prior to the expiration of the guarantee period, a supplementary list shall be immediately forwarded to the same activities;
 - A notice that during the final contract trial, the trial board should be provided with a complete list of known deficiencies for inclusion in its report.

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PART 48 VALUE ENGINEERING

48.1-POLICIES AND PROCEDURES

48.104-2 Sharing collateral savings.

The CCOs, without authority to redelegate, may determine that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

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PART 49 TERMINATION OF CONTRACTS

49.1-GENERAL PRINCIPLES

49.101 Authorities and responsibilities.

SUPSHIP Contracting Officers do not have the authority to terminate completely or partially any new construction or ship repair contracts. ACO authority to terminate a ship repair contract requires NAVSEA 028 concurrence prior to a termination for convenience (whole or in part) action, and NAVSEA 02 approval for a termination for default action.

The ACO may terminate for convenience, with approval of the CCO, locally issued job orders. NAVSEA 02 Division Director or FPO CCO approval is required prior to partial or complete terminations on non-major program contracts.

49.102 Notice of termination.

The PCO is responsible for issuing contract termination notices.

49.4-TERMINATION FOR DEFAULT

49.402-3 Procedure for default.

CCO approval is required prior to a termination for default, including "cure" and "show cause" letters. Field activities must notify NAVSEA 02/02B prior to approval.

49.402-6 Repurchase Against the Terminated Contractor's Account.

The SUPSHIP ACO shall consult with NAVSEA 028 before soliciting the completion of the work terminated by the default notice and before demanding payment of excess costs by the terminated contractor.

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PART 50 EXTRAORDINARY CONTRACTUAL ACTIONS

50.3-CONTRACT ADJUSTMENTS

50.303-1 Contractor requests.

PCOs are responsible for evaluating the contractor's request and for providing comments and recommendations to the cognizant approving official. A signed copy of the approval/denial letter to the contractor shall be provided to NAVSEA 02C.

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PART 53 FORMS

53.2-PRESCRIPTION OF FORMS

53.200 Scope of subpart.

This subpart prescribes NAVSEA formats for reports and forms specified in this Handbook. These formats may be tailored for local use.

53.204 Administrative matters.

53.204-1 Contract reporting.

The following NAVSEA formats shall be used for reporting contract actions as specified in NCH 4.6.

- NCH 53.4-1, Status Report on Specified Contract Audit Reports (see 4.692-1).
- NCH 53.4-2, Bid Opening Information/Proposal Closing Information (see 4.692-2).
- NCH 53.4-3, Agency Protest Report (see 4.692-4).
- NCH 53.4-4, REA and Claim Status Report (see 4.692-5).
- 53.4-5, Undefinitized Contractual Actions (UCAs) Report (see 4.692-6).

53.206 Competition requirements.

53.206-1 Justifications.

NCH 53.6-1, Justification and Approval to Approve Using Other Than Full and Open Competition (see 6.303-2), shall be used for justification and approvals.

53.215 Contracting by negotiation.

53.215-1 Business clearance.

53.15-1, Business Clearance Memorandum (see 15.406(90)), shall be used to request pre- and post-negotiation business clearance.

53.217 Special contracting methods.

53.217-1 Interagency acquisitions under the Economy Act.

NCH 53.17-1 Sample D&F for Economy Act Orders (see 17.503) shall be used to support Economy Act Orders.

53.231 Contract cost principles and procedures.

53.231-1 Advance agreements.

NCH 53.31-1, Advance Agreement for Precontract Costs (see 31.109), is the format for preparing a precontract cost agreement.