

252.217-7230 Audit by Department of Defense.

As prescribed at 217.7104(b), insert FAR clause(s) 52.214-26 or 52.215-2 (APR 1984), as applicable.

252.217-7231 Subcontractor Cost or Pricing Data.

As prescribed at 217.7104(b), insert FAR clause 52.215-25 (APR 1984), as applicable.

252.217-7232 Value Engineering.

As prescribed at 217.7104(b), insert FAR clause 52.248-1 (APR 1984), as applicable.

252.217-7233 [Reserved]**252.217-7234 Required Sources for Precision Components for Mechanical Time Devices.**

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.208-7001 (AUG 1971), as applicable.

252.217-7235 New Material.

As prescribed at 217.7104(b), insert FAR clause 52.210-5 (APR 1984), as applicable.

252.217-7236 Government Surplus.

As prescribed at 217.7104(b), insert FAR clause 52.210-6 or 52.210-7 (APR 1984), as applicable.

252.217-7237 Utilization of Women-Owned Business Concerns.

As prescribed at 217.7104(b), insert FAR clause 52.219-13 (APR 1984), as applicable.

252.217-7238 Material Inspection and Receiving Report.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.246-7000 (DEC 1969), as applicable.

252.217-7239 Protection of Government Buildings, Equipment, and Vegetation.

As prescribed at 217.7104(b), insert FAR clause 52.237-2 (APR 1984), as applicable.

252.217-7240 Government Delay of Work.

As prescribed at 217.7104(b), insert FAR clause 52.212-15 (APR 1984), as applicable.

252.217-7241 Distribution of Defense Subcontracts Placed Overseas.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.204-7005 (JUN 1982), as applicable.

252.217-7242 Safety Precautions for Ammunition and Explosives.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.228.7007 (SEP 1970), as applicable.

252.217-7243 Cost Accounting Standards.

As prescribed at 217.7104(b), insert FAR clause(s) 52.230-3 and 52-230-4 (APR 1984), as applicable.

252.217-7244 Notification of Changes.

As prescribed at 217.7104(b), insert FAR clause 52.243-7 (APR 1984), as applicable.

252.217-7245 Engineering Change Proposals (ECP's).

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.243-7000 (APR 1984), as applicable.

252.217-7246 Change Order Accounting.

As prescribed at 217.7104(b), insert FAR clause 52.243-6 (APR 1984), as applicable.

252.217-7247 Contracts Conditioned Upon the Availability of Funds.

As prescribed at 217.7104(b), insert FAR clause(s) 52.232-18 or 52.232-19 (APR 1984), as applicable.

252.217-7248 Preference for Domestic Specialty Metals.

As prescribed at 217.7104(b), insert the clause at 252.225-7012 (OCT 180), as applicable.

252.217-7249 Preference for United States-Flag Air Carriers.

As prescribed at 217.7104(b), insert FAR clause 52.247-63 (APR 1984), as applicable.

252.217-7250 Exclusionary Policies and Practices of Foreign Governments.

As prescribed at 217.7104(b), insert the clause at 252.225-7019 (JAN 1977).

252.217-7251 Hazardous Material Identification and Material Safety Data.

As prescribed at 217.7104(b), insert FAR clause 52.223-3 (APR 1984), as applicable.

252.217-7252 Certification of Requests for Adjustment or Relief Exceeding \$100,000.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.233-7000 (FEB 1980), as applicable.

252.217-7253 Qualifying Country Sources as Subcontractors.

As prescribed at 217.7104(b), insert clause 252.225-7002 (OCT 1980).

252.217-7254 Stop Work Orders.

As prescribed at 217.7104(b), insert FAR clause 52.212-13 (APR 1984), as applicable.

252.219-7000 [Amended]

16. Section 252.219-7000 is amended by adding the word "cognizant" after the word "Contractor's" and before the

word "Contract" appearing in the clause.

252.231-7000 [Amended]

17. Section 252.231-7000 is amended by removing the word "are" appearing in the clause and inserting in its place the word "is," and by revising the reference in the clause reading "Subpart 41.2" to read "Subpart 31.2."

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48 CFR Parts 204, 209, 211, 213, 215, 219, 225, 227, 230, 236, 237, 242, 245, 252, 270

[Defense Acquisition Circ. 84-6]

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 84-6 amends the DoD FAR Supplement with respect to procurement instrument identification numbers; consolidated list of debarred, suspended, and ineligible contractors; acquisition and distribution of commercial products; discounts, negotiated procurements; standard forms for use in contracting for construction or dismantling, demolition, or removal of improvements; production surveillance and reporting—assignment of criticality designator; Government property—plant clearance program; DD Form 882, Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause); acquisition of computer resources; and provides an index to the DoD FAR Supplement.

EFFECTIVE DATE: Upon receipt, in accordance with DoD FAR Supplement 201.301(S-70)(4).

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, OUSDRE (AM)(DARS), OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301-3062, telephone (202) 697-7268.

SUPPLEMENTARY INFORMATION:**Background**

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1984 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-3.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

List of Subjects in 48 CFR Ch. 2

Government procurement.

James T. Brannan,
Director, Defense Acquisition Regulatory
Council.

Defense Acquisition Circular

(Number 84-6)

June 15, 1984.

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective upon receipt in accordance with DoD FAR Supplement 201.301(S-70)(4).

Defense Acquisition Circular (DAC) 84-6 amends the DoD FAR Supplement and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—Notes and Filing Instructions for DoD FAR Supplement

Beginning with the issuance of this DAC, there will be included a list of all replacement pages (DoD loose-leaf edition). This list is provided to facilitate filing and may be used as a check list to ensure no pages are missing because of mechanical error in printing.

Item II—Procurement Instrument Identification Numbers

Paragraph 204.7003-1(c) is revised to add Instrument Code K, Short Form Research Contract.

Item III—Consolidated List of Debarred, Suspended, and Ineligible Contractors

Paragraph 209.405(c) is revised to substitute "Department of Defense" for "Government."

Item IV—Acquisition and Distribution of Commercial Products

A change is made to 211.005(b) to identify Pub. L. 98-63 and 98-212. This information was not included when the coverage was initially published in DAC 84-2.

Item V—Discounts, Negotiated Procurements

A new subparagraph (xix) is added to 213.505-2(S-73)(1) to prescribe the use of the provision at 252.214-7000, Discounts. A new section 215.407(S-70) is added to prescribe use of the provision at 252.214-7000, Discounts, in solicitations where prompt payment discounts may be offered. The preface at 252.214-7000 is revised to add reference to the paragraphs cited above.

Item VI—Standard Forms for Use in Contracting for Construction or Dismantling, Demolition, or Removal of Improvements

Paragraph (c) is added to 236.701 to state that Optional Forms 347 and 348 are not authorized for use in the Department of Defense.

Item VII—Production Surveillance and Reporting—Assignment of Criticality Designator

A change is made to 242.1105(b) to remove language which is considered unnecessary, and to conform the coverage to DoD Directive 4410.6

Item VIII—Government Property—Plant Clearance Program

A new section 245.603-70 is added to adopt use, on an optional basis, of a modified plant clearance program. It is expected that this program will reduce administrative interface between contractor and Government personnel, and at the same time provide adequate surveillance requirements to protect the Government's interests.

Item IX—DD Form 882, Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause)

A revised DD Form 882, Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause), 82 OCT, is included in this DAC. (DoD forms are not printed in the Federal Register.) The 1982 edition of the form replaces the 1975 edition which was included in the initial printing of the DoD FAR Supplement.

Item X—Acquisition of Computer Resources

As a result of review of Part 270, the following changes are made:

Section 270.302-29(d) is revised to add a reference to 270.8. Section 270.307(c) is revised to delete the phrase "and subject to the types of funds available (e.g., O&M, Procurement, etc.)," to conform to legislation. Section 270.309 is revised to accommodate small purchases. Subpart 270.6 is amended by relocating the format referenced in 270.604(f)(1) immediately following 270.604. New clauses have been added at 252.270-7061 through 252.270-7064. These clauses were adopted by GSA after completion of drafting of the DoD FAR Supplement and do not represent any substantive changes to acquisition procedures. Paragraphs 270.1103(a) and (c) are revised to include prescription for use of the additional clauses.

The clause at 252.270-7045 is revised to add to the list of Federal Information Processing Standards (FIPS), FIPS PUB

95, Code for the Identification of Federal and Federally-assisted organizations.

Item XI—Index to the DoD FAR Supplement

Included in this DAC is a Topical Index to the DoD FAR Supplement which was not available at the time of initial printing of the Supplement. (Topical Index is not published in the Federal Register.)

Item XII—Editorial Corrections

Paragraph 225.102(S-71)(2) is revised to change the dollar figure cited from \$25,000 to \$250,000.

Subparagraph (b)(iv) of the clause at 252.225-7000, inadvertently included in the initial printing of the clause in DAC 84-1, is deleted.

Subparagraph (d)(iii) of the clause at 252.225-7008 is revised to reflect the correct address for DCASMA New York.

Paragraph (e) of the clause at 252.229-7000 is revised to change the word "refundable" to "nonrefundable."

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

1. The authority for 48 CFR Chapter 2 reads as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.7003-1 is amended by adding Instrument Code K in alphabetical sequence to paragraph (c) to read as follows:

204.7003-1 Elements of Number.

* * * * *

(c) * * *

K Short Form Research Contract

* * * * *

204.7004-4 [Amended]

3. Section 204.7004-4 is amended by revising the entry reading "1A" to read "2A" in the phrase reading "then 1A, 2B, and so on to 2Z" in paragraph (b)(4).

PART 209—CONTRACTOR QUALIFICATIONS

209.405 [Amended]

4. Section 209.405 is amended by substituting the words "Department of Defense" for the word "Government" in paragraph (c).

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

5. Section 211.005 is revised to read as follows:

211.005 Acceptability.

(b) The 1983 Supplemental Appropriations Act (Pub. L. 98-63) contained a provision limiting the acquisition of commercial products by Department of Defense contracts; this same provision was enacted as Section 779 of the 1984 DoD Appropriations Act (Pub. L. 98-212). When using funds appropriated by these acts, or any future appropriation act containing the same provision, no solicitation shall impose a requirement that in order to be eligible to submit a bid or an offer on a contract to be let for the supply of commercial or commercial-type products, a small business concern must demonstrate that its product is accepted in the commercial market (except to the extent that may be required to evidence compliance with the Walsh-Healey Public Contracts Act) or satisfy any other prequalification to submitting a bid or an offer for the supply of any such product. Under this prohibition, solicitations may not exclude small business concerns from being considered for award, whether or not former suppliers under detailed specifications, solely because the product of the small business does not meet the definition of a "commercial product" or "commercial-type product" in FAR 11.001.

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

6. Section 213.505-2 is amended by adding paragraph (S-73)(1)(xlx) to read as follows:

213.505-2 Agency Order Forms in Lieu of Optional Forms 347 and 348.

(S-73) * * *
(1) * * *
(xlx) In accordance with FAR 14.407-3, insert the provision at 252.214-7000, Discounts.

PART 215—CONTRACTING BY NEGOTIATION

7. Section 215.407 is added to read as follows:

215.407 Solicitation Provisions.

(S-70) Pursuant to the policy of FAR 14.407-3, the contracting officer shall insert the provision at 252.214-7000, Discounts, in solicitations where prompt payment discounts may be offered.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.505 [Amended]

8. Section 219.505 is amended by redesignating paragraphs (c), (d), and (e) as (d), (e), and (f) respectively.

PART 225—FOREIGN ACQUISITION

225.102 [Amended]

9. Section 225.102 is amended by substituting \$250,000 for \$25,000 in paragraph 225.102(S-71)(2).

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.412 [Amended]

10. Section 227.412 is amended by removing a duplicate paragraph (n).

PART 230—COST ACCOUNTING STANDARDS

230-7003 [Amended]

11. Section 230.7003 is amended by substituting the word "net" for the word "new" in the second sentence of paragraph (a).

12. Section 230.7006 is amended by revising paragraph (a) to read as follows:

230.7006 Post Award Facilities Capital Applications.

(a) *Interim Billings Based on Costs Incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205-10, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

13. Part 236 is amended by adding new Subpart 236.7, consisting of section 236.701, to read as follows:

Subpart 236.7—Standard Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard Forms for Use in Contracting for Construction or Dismantling, Demolition, or Removal of Improvements.

(c) Optional Forms 347 and 348 are not authorized for use in the Department of Defense (see 213.505-2(S-70)).

PART 237—SERVICE CONTRACTING

14. Section 237.7002 is amended by revising paragraph (a) and amending the last line of paragraph (b) by revising the words "(Manpower, Reserve Affairs and Logistics)" to read "(Manpower, Installations and Logistics)" as follows:

237.7002 Contracting for Engineering and Technical Services.

(a) General. Every contract calling for engineering and technical services, whether it calls for only those services or whether it calls for those services in connection with the furnishing of an end item, shall show those services as a separate and identifiable line item separately priced. The contract shall contain definitive specifications for the services and shall show the man-months involved.

PART 242—CONTRACT ADMINISTRATION

15. Section 242.1105 is amended by revising paragraph (b) to read as follows:

242.1105 Assignment of Criticality Designator.

(b) DoD contract items on which a priority 01, 02, 03, or 06 (if emergency supply of clothing) has been assigned based on DoDD 4410.6, Uniform Material Movement and Issue Priority System, shall fall under Criticality Designator A.

PART 245—GOVERNMENT PROPERTY

16. Sections 245.603 and 245.603-70 are added to read as follows:

245.603 Disposal Methods.

245.603-70 Contractor Performance of Selected Plant Clearance Duties and Responsibilities.

(1) A DoD Component may, at its option and under the guidance in this section, provide instructions to its contract administration offices which would authorize selected contractors

under its administrative cognizance to perform certain plant clearance functions under the surveillance of the contracting officer or a designated representative. Such authorizations should be considered by the DoD Component only when plant clearance personnel are stationed at the facility where the contractor's plant clearance function operates and when the DoD Component and the contractor agree that the volume of plant clearance actions warrants such an authorization.

(2) Such authorizations shall be made in writing and shall, as a minimum:

(i) Specify the plant clearance functions to be performed;

(ii) Apply to all Government contracts which contain a Government Property clause at one or more plants, as appropriate;

(iii) Specify that the authorization may be unilaterally cancelled in whole or in part by the Government through written notice by the contracting officer or a designated representative;

(iv) Provide for such direct Government participation in plant clearance cases as may be required by Government regulation or circumstances at hand. The authorization shall be approved at a level above the contract administration office as designated by the DoD Component having administrative cognizance over the contractor; and

(v) Designate the contractor authorized under (1) above to perform specified plant clearance functions as an "accredited contractor."

(3) In each case of such an authorization, the DoD Component will plan and conduct a program of surveillance which will insure effective and regular evaluations of contractor performance and prompt corrective actions when appropriate. The plant clearance case file maintained by the contractor shall be the official case file.

(4) When paragraphs (1) and (2) above are implemented, the following additional responsibilities shall be performed by the plant clearance officer:

(i) Evaluate the adequacy of contractor procedures for the performance of the tasks prescribed in (5) below. Insure that these procedures are complied with. Discrepant conditions must be promptly resolved in order for the contractor to remain accredited;

(ii) Advise the accredited contractor of the identity of redistribution screening activities and the number of copies of inventory schedules to be submitted to these activities for screening. This includes screening prescribed herein and prescribed by

inventory control points and the plant clearance officer;

(iii) Review and act on the contractor's proposals to withdraw items of Government-furnished property from inventory schedules (see FAR 45.606-4);

(iv) Continuously evaluate physical, quantitative, and technical allocability of contractor inventory prior to its disposal by the accredited contractor. These evaluations shall be incorporated within the surveillance program required by (3) above. Greatest emphasis shall be placed on high dollar value property that constitutes a claim against the Government. In the event that assets are considered to be nonallocable, the contractor will be directed to delay disposition pending the contracting officer's resolution of the issue. Completion of SF 1423, Inventory Verification Survey is not required. However, the applicable questions on the SF 1423 should be answered as part of the evaluation program;

(v) Establish, with contractor assistance, criteria under which certain disposal determinations by the contractor will be reviewed and approved or disapproved by the plant clearance officer. The criteria should be detailed in the accredited contractor's plant clearance procedures;

(vi) Complete the first endorsement section of DD Form 1640, Request for Plant Clearance, upon receipt of incoming referral cases for subcontractor inventory. Inventory schedules will be forwarded to the contractor for plant clearance. Upon case completion, obtain the case file from the contractor, prepare a DD Form 1640, and forward the file to the referring activity;

(vii) Work with the contractor, buyers, and screeners of contractor inventory to the extent required to assure that the Government shall realize maximum asset reutilization and disposal proceeds; and

(viii) Provide continuous training and assistance to the contractor as requested or as necessary.

(5) The accredited contractor will perform the following designated tasks which are identified within the referenced paragraphs as plant clearance officer functions. The accredited contractor shall:

(i) Assign the Automatic Release Date (ARD) and screening release date (SRD), initiate screening prescribed herein or as prescribed by the plant clearance officer, and effect resulting transfer and donation actions (see FAR 45.608, 45.609);

(ii) Withdraw items, except for Government-furnished property, from

inventory schedules without plant clearance officer approval and notify the affected screening activities. Plant clearance officer approval will be obtained for withdrawal of Government-furnished property from inventory schedules (see FAR 45.606-4);

(iii) Assure acceptability of inventory schedules. DD Form 1637, Notice of Acceptance of Inventory, is not required but may be used for internal contractor case coordination (see FAR 45.606-3);

(iv) Suspend disposition of property when assets are determined to be nonallocable by the plant clearance officer (see FAR 45.606-3);

(v) Arrange for the physical inspection of property by prospective transferees as appropriate;

(vi) Determine the method of disposal under established priorities (see FAR 45.603) and document disposal decisions and actions (see FAR 45.609, 45.610, 45.611, 45.613). Use of the DD Form 1641, Disposal Determination Approval, is not required as long as equivalent documentation is maintained. The plant clearance officer shall be notified in writing in advance in each instance when the contractor is bidding on property to be sold under FAR 45.610. Sales under FAR 45.610-3 shall not be conducted by an accredited contractor;

(vii) Account for disposal of all contractor inventory and application of proceeds. SF 1424, Inventory Disposal Report, or a contractor form containing comparable data elements is required to be submitted to the plant clearance officer (see FAR 45.610-3, 45.615);

(viii) Maintain the donable property file (see FAR 45.609);

(ix) Release property to eligible donees (see FAR 45.609);

(x) Properly prepare, approve, sign, and maintain official plant clearance files and required forms including:

(A) Plant clearance case number (see FAR 45.7102-4);

(B) DD Form 1635, Plant Clearance Case Register, or comparable contractor document (see FAR 45.7101-8);

(C) SF 120, Reporting of Excess Personal Property (see FAR 45.608-2, 45.608-8);

(D) DD Form 1342, DoD Property Record, and transmittal letter (see FAR 45.7102-3); and

(E) DD Form 1348-1, DoD Single Line Item Release/Receipt Document, for transfers (turn-ins) to the Defense Property Disposal Service or inventory control points; and

(xi) All completed case files and subcontractor inventory cases received for plant clearance shall be retained by the contractor in the official case file.

245.610 [Amended]

17. Section 245.610-1 is amended by redesignating (a)(2)(iii), Bid reservations, and (iv), Approval of sale, to read (iv) and (v) respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 252.214-7000 is amended by revising the introductory text to read as follows:

252.214-7000 Discounts.

As prescribed at 213.505-2(S-73)(1)(xix), 214-407-3, and 215.407(S-70), insert the following provision:

* * *

252.225-7000 [Amended]

19. Section 252.225-7000 is amended by removing paragraph (b)(iv) of the clause.

252.225-7008 [Amended]

20. Section 252.225-7008 is amended by revising the address of DCASMA New York to read "201 Varick Street, New York, NY 10014" in place of "60 Hudson Street, New York, NY 10013."

252.229-7000 [Amended]

21. Section 252.229-7000 is revised to change the word "refundable" to read "nonrefundable" in the first sentence of paragraph (e) of the clause.

22. Section 252.270-7045 is amended to add FIPS PUB 95 at the end of the list of Federal Information Processing Standards in the clause as follows:

252.270-7045 Interchange of Machine Processable Data Between and Among Agencies.

* * *

FIPS PUB 95 Code for the Identification of Federal and Federally-Assisted Organizations.

(End of clause)

23. Sections 252.270-7061 through 252.270-7064 are added to read as follows:

252.270-7061 Additional American Standard Code for Information Interchange (ASCII) Controls for Character-Imaging ADP Equipment or Services.

As prescribed by 270.1103(a)(38), insert the following clause:

Additional American Standard Code for Information Interchange (ASCII) Controls for Character-Imaging ADP Equipment or Services (Jun 1984)

All applicable ADP character-imaging equipment or services (e.g., interactive ADP terminals of the display and printer type, line printers, microfilm printers, typesetting compositors, word processors, and related devices or services using such devices)

offered as a result of this solicitation shall comply with the requirements set forth in FIPS PUB 86 when such equipment or services employ the character set and encoding conventions prescribed in FIPS PUB 1-1 and FIPS PUB 35, employ primarily character-oriented controls, and are consistent with the architectural assumptions for devices in Appendix B, ANS X3.64-1979. All ADP terminals that meet these conditions are included in this requirement if they contain alphanumeric keyboards CRT displays or printers that may be used in any form of on-line interactive application or standalone off-line data preparation. Computer resident control software may be used, but is not required, to implement specific features of FIPS PUB 86, unless specified otherwise in this document (insert reference).

(End of clause)

252.270-7062 Cryptographic Components, Equipment, Systems, and Services.

As prescribed in 270.1103(c)(9), insert the following clause:

Cryptographic Components, Equipment, Systems, and Services (Jun 1984)

If a requirement for the encryption protection of unclassified digital information in the telecommunications environment is specified elsewhere in this solicitation, all cryptographic components, equipment, systems, and services offered to meet that requirement shall comply with FED-STD 1027 and be endorsed as so complying by the National Security Agency prior to being proposed. These items include standalone DES cryptographic equipment as well as any Data Terminal Equipment and Data Circuit-Terminating Equipment utilizing the DES algorithm (described in FIPS PUB 46) for digital encryption. Arrangements for endorsement may be made with the Communications Protection Special Projects Office (S84), National Security Agency, 9800 Savage Road, Fort George G. Meade, MD 20755.

(End of clause)

252.270-7063 Acquisition, Design, or Development of Group 3 Facsimile Apparatus.

As prescribed by 270.1103(c)(10), insert the following clause:

Acquisition, Design, or Development of Group 3 Facsimile Apparatus (Jun 1984)

All Group 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED-STD 1062.

(End of clause)

252.270-7064 Acquisition, Design, or Development of Group 1, 2, and 3 Facsimile Apparatus.

As prescribed by 270.1103(c)(11), insert the following clause:

Acquisition, Design, or Development of Group 1, 2, and 3 Facsimile Apparatus (Jun 1984)

All Group 1, 2, and 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED-STD 1063.

(End of clause)

PART 270—ACQUISITION OF COMPUTER RESOURCES**270.101 [Amended]**

24. Section 270.101 is amended by revising the last sentence in paragraph (c) to read "Policies and procedures for these 'other acquisitions' are contained in Subpart 270.6 and FAR Subpart 8.8" and by removing from paragraph (d) the last sentence which reads: "Acquisitions of all other software shall be in accordance with Subpart 270.75."

25. Section 270.302-2 is amended by revising paragraph (d) to read as follows:

270.302-2 Exceptions.

* * *

(d) Services. GSA approval is not required for other services. (But see 270.8 for use of the GSA Teleprocessing Services Program.)

26. Section 270.307 is amended by revising the introductory text of paragraph (c) to read as follows:

270.307 Evaluation Factors.

* * *

(c) Unless waived in accordance with Departmental procedures, the contracting officer shall solicit and evaluate, over the projected systems life, all forms of financing an acquisition. These include:

* * *

27. Section 270.309 is amended by revising the introductory text to read as follows:

270.309 Determination of Selection Factors.

The prices offered for the systems or items life and conversion costs, whether based on prices offered or a Government estimate, shall be included in determining the lowest overall cost. Determination of system/item life is optional for a system/item with a purchase price of \$25,000 or less; however, this does not apply if the system/item is to be leased or rented. The following are examples of other factors to be considered:

* * *

Subpart 270.6 [Amended]

28. Subpart 270.6 is amended by relocating the format at the end of Section 270.608 to follow at the end of Section 270.604.

29. Section 270.1103 is amended by adding paragraphs (a)(36) and (c)(9), (10), and (11) to read as follows:

270.1103 Solicitation Provisions and Contract Clauses.

(a) * * *

(38) 252.270-7061, Additional American Standard Code for Information Interchange (ASCII) Controls for Character-Imaging ADP Equipment or Services; when acquiring ADPE such as interactive terminals, line and microfilm printers, word processors and other types of character-imaging equipment subject to 270.1103(a)(1) and (14).

(c) * * *

(9) 252.270-7062, Cryptographic Components, Equipment, Systems, and Services; when acquiring these items to be used in a telecommunication environment and this clause is more appropriate for use than the one indicated at 270.1103(a)(16).

(10) 252.270-7063, Acquisition, Design, or Development of Group 3 Facsimile Apparatus; when acquiring, designing or developing Group 3 facsimile equipment. This clause is not applicable to equipments subject to Military Standard 188-161 or equipments to be used in the transmission of mixed mode information (e.g., code character data and image data).

(11) 252.270-7064, Acquisition, Design, or Development of Group 1, 2, and 3 Facsimile Apparatus; when acquiring, designing or developing Group 1, 2, and 3 facsimile equipment.

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48 CFR Parts 213, 214, 217, 225, 231, 235, 252, 253, and 270

[Defense Acquisition Circular 84-5]

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 84-5 amends the DoD FAR Supplement with respect to make-or-buy programs, purchase orders, mistakes in bids; real property construction, repair, and maintenance—Balance of Payments Program; applicability of contract cost principles and procedures—construction and architect-engineer contracts,

lobbying cost principle, short form research contracts, DoD contract simplification test, acquisition of computer resources; and provides guidance with respect to OMB clearance of DoD Acquisition Regulatory System, and a policy statement on the use of DAR and FAR Forms.

EFFECTIVE DATE: Upon receipt, in accordance with DoD FAR Supplement 201.301(S-70)(4).

FOR FURTHER INFORMATION CONTACT:

Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, OUSDRE(AM) (DARS), OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301-3062, telephone (202)697-7268.

SUPPLEMENTARY INFORMATION:**Background**

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1984 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-3.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

List of Subjects in 48 CFR Ch. 2

Government procurement.

James T. Brannan,

Director, Defense Acquisition Regulatory Council.

Defense Acquisition Circular

[Number 84-5]

April 30, 1984.

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective upon receipt in accordance with DoD FAR Supplement 201.301(S-70)(4).

Defense Acquisition Circular (DAC) 84-5 amends the DoD FAR Supplement and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—Paperwork Reduction Act (Public Law 96-511), OMB Clearance of DoD Acquisition Regulatory System

The Office of Management and Budget (OMB) recently issued a rule (5 CFR Part 1320), 48 FR 13666, clearly establishing applicability of the Paperwork Reduction Act to collection of information associated with Federal acquisition. Requests for information from 10 or more firms in connection with the acquisition of goods or services by the Federal Government are now subject to the same review and approval requirements as are other collections of

information under the act. In compliance with that ruling, blanket clearances have been obtained for the Defense Acquisition Regulatory System (which includes the DAR and Military Services/Defense Agency implementation thereof); for solicitations, primarily for the purpose of covering information collection not mandated by the DAR, and for the Acquisition Management Systems and Data Requirements Control List (AMSDL). These clearance numbers and their applicability are as follows:

OMB Number 0704-0189 covers the Defense Acquisition Regulatory System, including the Defense Acquisition Regulation and implementation/supplementation thereof by the Military Services and Defense agencies. This clearance number has been approved through March 31, 1987.

OMB Number 0704-0188 applies to all information collection requirements contained in the existing AMSDL or those contained in previous lists which are in contracts now in place. It is valid through June 30, 1986.

OMB Number 0704-0187 applies to all DoD solicitations and covers all information collection in support of the DoD acquisition process necessary to evaluate bids and responses from potential suppliers for the purpose of making awards. This clearance number remains in effect and is valid through April 30, 1986.

OMB Number 0704-0193 covers the Department of Defense Supplements to the Federal Acquisition Regulation including the DoD FAR Supplement and all such supplementing and implementing regulations of the Military Services and Defense agencies. This clearance number is valid through March 31, 1986.

For purposes of compliance with the requirement to display the applicable OMB clearance numbers, a notice is published in the *Federal Register*, in addition to this information item, and the numbers need not be physically affixed to solicitations, contract documents, and other information collection requests.

Item II—Policy Statement on the Use of DAR and FAR Forms

It has come to the attention of the DAR Council that some contracting offices are experiencing difficulties in obtaining new and revised Standard Forms in a format which may be used in their automated systems. This is especially true of Standard Forms 26, 30, and 36. In order to address this situation, the DAR Council has added the following clarifying language to paragraph (d) of the policy statement on

the use of DAR and FAR forms which appeared in DAC 84-1:

It should be noted that, in the event new editions of Standards Forms are not available in the medium, e.g., pin-fed version, used by the contracting office, the form is deemed unavailable for implementation. In such cases the contracting office may continue to use the obsolete edition of the Standard Form or the superseded DD Form in the required medium until the new editions of the Standard Forms become available in that medium.

Item III—Make-or-Buy Programs

Pending action on a proposed revision to 15.704 of the Federal Acquisition Regulation (FAR) and notwithstanding language in the DoD FAR Supplement, for the Department of Defense, the actual application of the general rule set forth in FAR as to the content of make-or-buy programs is that, as a general guideline, a make-or-buy program should not include items or work efforts costing less than 1% of the total estimated contract price or \$500,000, whichever is less.

Item IV—Purchase Orders

Paragraph 213.505-2(S-70) is amended to delete reference to Standard Form 44 which is covered in FAR 13.505-3.

Coverage is added to 213.505-3(b)(1) to permit use of Standard Form 44 for purchases of aviation fuel and oil in amounts up to \$10,000.

Item V—Mistakes in Bids

The Federal Acquisition Regulation (FAR) authorizes new policy and procedures with regard to mistake-in-bid cases. Specifically, FAR 14.406-3(c) authorizes the contracting officer to permit withdrawal of a mistake in bid only after the agency head or a high level designee has elected not to take action in the case. Moreover, FAR 14.406-3(c)(2) authorizes withdrawal of a bid when the evidence reasonably supports the existence of a mistake but is not clear and convincing. Without clarifying guidance, these two authorizations would constitute major changes to DoD policy and procedures for handling alleged mistakes in bids. To preclude this unintended result, 214.406-3(e) of the DoD FAR Supplement has been revised to allow delegation of appropriate authority to the contracting officer to handle simple withdrawal of bid cases. Moreover, the revision also clarifies DoD policy that a bid should generally neither be corrected nor withdrawn when the evidence of mistakes is less than clear and convincing.

Item VI—Real Property Construction, Repair and Maintenance—Balance of Payments Program

Revision has been made to 225.302(a)(S-71) to clarify that the special International Balance of Payments analyses for overseas construction projects do not require application of Balance of Payments Program evaluation procedures as set forth at 225.303, but rather are accomplished by project sponsors and engineering personnel in the design and project approval phases prior to construction contracting. Any direct purchase of construction material for use overseas will fall under the current Balance of Payments procedures set forth in 225.303.

Item VII—Applicability of Contract Cost Principles and Procedures—Construction and Architect-Engineer Contracts

In pricing construction and related contracts and contract modifications, FAR 31.105(d) recognizes that a contractor's accounting records may not be adequate to determine actual cost data for both ownership and operating costs of construction equipment. Accordingly, FAR 31.105(d)(2)(i)(A) authorizes the contracting agency to specify the use of a schedule of predetermined rates. To clarify DoD policy in this area, 231.105(d)(2)(i)(A) is added to the DoD FAR Supplement specifying use of either the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, or any other published schedule that does not include costs that are otherwise unallowable under the FAR or the DoD FAR Supplement cost principles. The Council recognizes that it may be desirable to provide additional guidance on how to modify rates to make them compatible with the cost principles, and is considering this topic as well as possible future revisions to the FAR itself.

Item VIII—Lobbying Cost Principle

The Office of Management and Budget (OMB) has directed that the agencies implement the intent and substance of the OMB Circular A-122 lobbying cost principle in FAR Subpart 31.2, Contracts with Commercial Organizations. Federal Acquisition Circular (FAC) 84-2 contains a complete revision to FAR 31.205-22 that defines unallowable lobbying cost activity in a manner consistent with the OMB circular.

The revised cost principle contained in FAC 84-2 becomes effective July 1, 1984; therefore, 231.205-22 of this

Supplement will remain in effect until July 1, 1984, and should be deleted from this Supplement on that date.

Item IX—Subpart 235.70, Short Form Research Contract

A new Subpart 235.70, Short Form Research Contract, is added to provide guidance for use of a Short Form Research Contract (SFRC) for awards to educational institutions and nonprofit organizations whose primary purpose is the conduct of scientific research, when the basis of award is an unsolicited proposal. Related clauses are included in Part 252, and DD Forms 2222 through 2222-2 are provided in Part 253.

Item X—DoD Contract Simplification Test

Item VIII of DAC #76-47, dated December 15, 1983, published three omnibus clauses to be used in the DoD Contract Simplification Test. The deviation authority for the test, originally granted by the Deputy Secretary of Defense on March 5, 1982, has been renewed for the FAR under the provisions of 201.402 and 201.404 of the DoD FAR Supplement.

To continue the use of the omnibus clauses and provisions, they are being republished using the new FAR citations. The omnibus clause for fixed-price supply contracts, 7-110, is being republished as 252.252-7000. DAR 7-1913, for services, is being republished as 252.252-7001.

The solicitation provisions originally published as DAR 7-2004 are changed to 252.252-7002 and 252.252-7003 for negotiated and formally advertised contracts, respectively. All contracts and solicitations that incorporate FAR provisions or clauses by reference must contain the provision at FAR 52.252-1 and the clause at FAR 52.252-2.

These omnibus clauses and provisions may be cited by reference and included in contracts and solicitations. Use of these omnibus clauses and provisions is authorized only for use at Service and DLA designated test activities for noncomplex supplies and services up to \$500,000.

Item XI—Acquisition of Computer Resources (Subparts 270.1 and 270.4)

An editorial change is made to 270.101(b) to remove the sentence at the end of (b)(5) and to place a parenthetical note ("see also Subpart 270.4") at (b) since it applies to all of paragraph (b) and not merely (b)(5).

Revision is made to 270.400(e) to add a line which was omitted in the initial printing of the DoD FAR Supplement.

A new 270.402 is added to provide guidance in procedures to be used in acquiring automatic data processing resources covered by 10 U.S.C. 2315 authority.

Item XII—Editorial Corrections

DAC #84-4 (Item V), dated March 23, 1984, issued new coverage at Subpart 217.71, Master Agreement for Repair and Alteration of Vessels.

Titles to certain clauses referenced in 217.7104 were inadvertently omitted at that time and are included in this DAC.

Subpart 225.71 is revised to add 225.7103, Guarantee by Canadian Government, which was omitted from the DoD FAR Supplement in its initial printing.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

1. The authority for 48 CFR Chapter 2 reads as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

2. Section 213.505-2 is amended by removing the last sentence of paragraph (S-70), by revising paragraphs (S-73)(1) (ix) and (xxi), by revising the reference reading "252.225-7013" in paragraph (S-73)(1)(xxx) to read "252.225-7019" and by revising the references to "252.227-7011" and "252.227-7012" in paragraph (S-73)(2)(ii)(E) to read "252.225-7011" and "252.225-7012" as follows:

213.505-2 Agency Order Forms in Lieu of Optional Forms 347 and 348.

(S-73) * * *

(1) * * *

(ix) When the order is for Military Assistance Program items, the United States Products Certificate (Military Assistance Program), at 252.225-7015, and the clause, United States Products (Military Assistance Program), in 252.225-7016, shall be inserted in the Schedule, and Clause 6, Foreign Supplies, of the General Provisions shall be deleted. In addition, the contractor's signature shall be obtained on DD Form 1155r.

(xxi) At the contracting officer's discretion, the clause, Duty-free Entry—Qualifying Country End Products and Supplies, at 252.225-7008 may be used (see 225.605(a)(S-72)).

3. Section 213.505-3 is added to read as follows:

213.505-3 Standard Form 44, Purchase Order—Invoice—Voucher.

(b)(1) The \$2,500 limitation applies to all purchases except for aviation fuel and oil purchases which will not exceed \$10,000.

PART 214—FORMAL ADVERTISING

4. Section 214.406-3 is amended by redesignating the introductory text of paragraph (e) as (e)(1), redesignating the existing paragraphs (e)(1) through (e)(8) as (e)(1)(i) through (e)(1)(viii), revising redesignated paragraphs (e)(1)(iv), (vi), (vii), and (viii), and adding paragraph (e)(2) to read as follows:

214.406-3 Other Mistakes Disclosed Before Award.

(e)(1) * * *

(iv) Defense Logistics Agency: The General Counsel and Assistant General Counsel.

(vi) Defense Communications Agency: The General Counsel.

(vii) Defense Nuclear Agency: The General Counsel.

(viii) Defense Mapping Agency: The General Counsel.

(e)(2) Authority to elect not to correct a bid but to allow withdrawal when clear and convincing evidence establishes only the existence of the mistake may be delegated, without power of redelegation, to any procuring activity having legal counsel available. Any case involving evidence that is less than clear and convincing shall be processed under FAR 14.406-3(d) and paragraph (1) above.

PART 217—SPECIAL CONTRACTING METHODS

5. Section 217.7104 is amended by revising paragraphs (a)(22), (23), (b)(4), (5), (7), (8), and (27) to read as follows:

217.7104 Contract Clauses.

(a) * * *

(22) 252.217-7121 Authorization and Consent.

(23) 252.217-7122 Notice and Assistance Regarding Patent and Copyright Infringement.

(b) * * *

(4) 252.217-7203 Patent Indemnity.

(5) 252.217-7204 Filing of Patent Applications.

(7) 252.217-7290 Reporting and Refund of Royalties.

(8) 252.217-7207 Rights in Data and Computer Software.

(27) 252.217-7226 Required Sources for Jewel Bearings and Related Items.

PART 225—FOREIGN ACQUISITION

6. Section 225.302 is amended by revising paragraph (a)(S-71) to read as follows:

225.302 Policy.

(a) * * *

(S-71) Real Property Construction, Repair, and Maintenance.

(1) Contracts for construction, repair, and maintenance of real property outside the United States will, to the extent required by DoD Directive, specify that U.S. materials will be used, or that Government materials and equipment will be furnished, only when the cost of the U.S. items (including costs associated with transportation and handling) does not exceed the cost of acceptable foreign items plus 50 percent. A differential greater than 50 percent may be used when specifically authorized in accordance with departmental procedures.

(2) The evaluation referred to in (1) above is normally accomplished in the estimating process prior to solicitation for award of a real property construction, repair or maintenance contract. This paragraph does not apply to direct contracts for acquisition of construction materials and equipment for use outside the United States. The procedures of 225.303 shall be used for such acquisitions (also see 225.302(S-73)).

7. Section 225.7103 is added to read as follows:

225.7103 Guarantee by Canadian Government.

The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation in connection with any contract or order issued to said Corporation by any contracting activity of the U.S. Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations, or covenants.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

8. Section 231.105 is added to read as follows:

231.105 Construction and Architect-Engineer Contracts.

(d)(2)(i)(A) When the contracting officer cannot determine actual cost data for both ownership and operating costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records, costs shall be determined in accordance with the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, unless another schedule is specified in the contract. Costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see FAR 31.109(c)). For example, a schedule must be adjusted for Government contract costing purposes if it is based on replacement cost, includes unallowable interest costs, or uses improper cost-of-money rates or computations.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

9. Subpart 235.70, consisting of sections 235.7000 through 235.7009, is added to read as follows:

Subpart 235.70—Short Form Research Contract**235.7000 Scope of Subpart.**

This subpart prescribes procedures for contracting for research on a cost-reimbursement basis with educational institutions or nonprofit organizations within the United States whose primary purpose is the conduct of scientific research, when the basis for award is an unsolicited proposal.

235.7001 Definitions.

(a) Educational institution means an institution of higher learning providing facilities for teaching and research and authorized to grant academic degrees.

(b) Nonprofit organization—organizations of the type described in Section 501(c)(3) and (d) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific organization qualified under a state nonprofit organization statute.

(c) Research includes all effort described as research in 235.001 including that part of exploratory development applicable to applied research.

235.7002 Applicability.

(a) The procedures contained in this subpart may be used for contracting:

(1) whenever the principal purpose is the acquisition of research from an

educational institution or a nonprofit organization; or

(2) when the work is to be accomplished on a cost-reimbursement basis;

(3) when the basis for award is an unsolicited proposal; and

(4) when the contract requires the delivery of designs, drawings or reports as end items.

(b) When the circumstances in (a) above are present, the Short Form Research Contract (SFRC) may be used. The SFRC shall not be used for any purpose other than as described herein.

235.7003 Content of Unsolicited Proposals.

Unsolicited proposals submitted for award in accordance with these procedures shall contain all the information in FAR 15.505. A contract may be awarded on the basis of the unsolicited proposal exactly as submitted or as subsequently amended by the offeror, if the proposal contains the information listed in (a) through (h) below.

(a) In addition to the information identified in FAR 15.505(b), a statement of work in accordance with 235.005 and FAR 35.005 and a breakdown on the time, identifying man-days, man-months or man-years to be devoted to the contract by the principal investigator and any associates (see FAR 35.015(a)). A separate work statement which can be incorporated by reference in the SFRC is preferred.

(b) In addition to information identified in FAR 15.505(c), the following executed representations and certifications and DD Form 2222-1:

(1) Organization Conflicts of Interest—FAR 15.505(c)(6);

(2) Contingent Fee Representation and Agreement—FAR 52.203-4;

(3) Certification of Nonsegregated Facilities—FAR 52.222-21;

(4) Previous Contracts and Compliance Reports—FAR 52.222-22;

(5) Affirmative Action Compliance—FAR 52.222-25;

(6) Clean Air and Water Certification (if proposal exceeds \$100,000) in FAR 52.223-1;

(7) Insurance—Immunity from Tort Liability—FAR 52.228-7. Offerors may elect to submit the representations and certifications on a one-time basis to each contracting office. Such representations and certifications would be valid for all SFRC contract awards; *Provided*, for each proposal submitted, the offeror references the submission and confirms in writing its validity for the research proposal.

(c) A statement that the Government may award a contract in accordance

with the procedures of this Subpart 235.70 as applicable.

(d) Identification of property, as defined in 252.235-7005 showing, when possible, the description or title and estimated or known cost of each item. For facilities only (FAR 45.301), the offeror must include a statement as to why it is necessary to acquire these items with contract funds and express in writing his unwillingness or financial inability to acquire the items with his own resources. When special test equipment or components are proposed, individual items of less than \$1,000 may be grouped by category (FAR 45.307-2). The description or title of all property for which contract funds are requested should be in sufficient detail to enable the contracting officer to:

(1) determine whether or not the Government will furnish such property, pursuant to 235.014, FAR 35.014 and FAR 45.302-1 and,

(2) for property which may be contractor-acquired (versus Government-furnished)—

(i) accept it as advance notification required by FAR 52.244-2; and

(ii) authorize acquisition at the time of award.

(e) A Contract Pricing Proposal Cover Sheet (SF 1411) or acceptable substitute. Information for subcontracts listed in FAR 52.244-2, subparagraph (b), shall be as prescribed by that subparagraph.

(f) If the proposal includes data that the offeror does not want disclosed for any purpose other than evaluation, he shall mark the title page and each restricted sheet as prescribed by FAR 15.509. If the offeror grants permission to the Government to have non-Government evaluators review his proposal, he should either make this statement in his offer or check block A on page 2 of the DD Form 2222-2.

(g) The offeror's proposal shall include the following statement:

"This proposal incorporates by reference, and makes a part thereof, all applicable clauses in DFARS 252.235-7005 in effect on the date of this proposal or such other date as may be mutually agreed upon."

(h) The parties may also incorporate, by mutual consent, any other FAR or DFARS clauses which are determined to be applicable because of the nature of the particular acquisition.

235.7004 Contracting Procedures.

(a) The contracting officer may award an SFRC resulting from an unsolicited proposal when the requirements of FAR 15.505 and 235.7003 are satisfied, and noncompetitive award is appropriate under 215.507 and FAR 15.507

(b) Contracts resulting from unsolicited proposals may be affected by using the procedures in either (c) or (d) below, as appropriate.

(c) When the unsolicited proposal, either as submitted initially, or as amended in writing by the offeror, is satisfactory to the Government, the proposal should be accepted by the contracting officer and a contract formed by incorporating the entire proposal by reference, or by incorporating the statement of work by reference and executing the SFRC.

(d) When acceptance of the entire proposal is not considered advantageous to the Government, the contracting officer should use such parts of the unsolicited proposal as are considered appropriate, either by actual attachment or incorporation by reference, to develop a contract for execution by both parties. In this event, the SFRC shall be executed by the contractor prior to signature by the Government.

(e) Modifications shall be effected by use of the DD Form 2222.

(f) The offeror may offer options to the Government or the parties may agree to options to conduct research effort beyond the initial research program proposed. The initial dollar amount and period of performance specified at the time of award shall not include the cost and period of the options. The cost and period of such options shall be separately identified. The option may be exercised by the Government by unilateral modification of the contract.

(g) The policy and background regarding vesting of title in property to organizations defined in 235.7001 are set forth in 235.014 and FAR 35.014. Title to property which is not vested in the contractor or for which the determination regarding vesting of title is deferred shall be identified in the DD Form 2222.

(h) By submission of his proposal pursuant to this subpart 235.70, the offeror must agree to be bound by all terms and conditions of the resulting contract.

235.7005 Advance Payments.

SFRCs awarded to institutions and organizations authorized to receive advance payments in accordance with subpart 232.4 and FAR Subpart 32.4, shall be clearly marked to read "ADVANCED PAYMENT POOL CONTRACT PURSUANT TO ATTACHED PAYMENT PROVISION."

235.7006 Methods of Funding.

SFRCs may be fully or incrementally funded in accordance with departmental procedures. If incrementally funded, the

SFRC shall specify the total estimated cost for the full period of the research program, both funded or unfunded, and the amount of funds currently obligated. For the purpose of establishing the period covered by the incremental funds available, the funds available will be prorated by dividing the number of months into the dollars available. If this method is not acceptable, the offeror shall specify an alternate method of establishing the time period.

235.7007 Proposal Format.

Contractors are encouraged to use DD Form 2222-2 in the submission of research proposals for SFRC awards. Use of this format will promote consistency in award procedures among DoD funding agencies and expedite the award of the SFRC.

235.7008 SFRC Clauses.

(a) The clauses in 252.235-7005 are applicable to all SFRC awards of \$10,000 or more as of the date of the offeror's proposal, unless such date is modified by mutual agreement. Such modification may be included in the offeror's proposal or may be specifically identified in the contract document. Inclusion of the change in the contract document will necessitate execution of the contract by the signature of both contracting parties.

(b) Uniform contract clauses to be used in Short Form Research Contracts (SFRCs) with educational institutions and other nonprofit organizations are set forth in 252.235-7005.

(c) For purposes of this subpart, "contract action" is defined as the amount of the initial contract of the amount of a modification for new procurement to the contract. It does not include the amount of any unexercised options.

(d) Clauses specified in 252.235-7005 are considered part of the General Provisions of an SFRC unless inapplicable in accordance with the conditions set forth at the clause citation.

(e) SFRC awards of less than \$10,000 shall identify the clauses in 252.235-7005 which are not applicable when the contract amount is under \$10,000.

235.7009 Price Negotiation Memorandum.

The price negotiation memorandum (FAR 15.808/DFARS 215.808) shall include information necessary for appropriate contract administration. Included, for example, will be a statement as to whether FAR clause 52.215-30 or 52.215-31 is applicable (Facilities Capital Cost of Money clauses).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 252.235-7005 is added to read as follows:

252.235-7005 Short Form Research Contract Clauses.

As prescribed in 235.7008(b), insert the following clauses in SFRC awards to educational institutions and nonprofit organizations. The clauses set forth below are incorporated with the same force and effect as if set forth in full. Clauses with a single asterisk (*) are applicable to educational institutions only. Clauses with a double asterisk (**) are applicable to nonprofit institutions only. For awards where the amount is less than \$10,000, the inapplicable clauses shall be identified in the contract.

- Definitions. FAR 52.202-1.
- Assignment of Claims. FAR 52.232-23 Alternate I.
- Disputes. FAR 52.233-1.
- Equal Opportunity. FAR 52.222-26. Alternate 1 shall be added as a special provision when applicable per Alternate 1 instructions.
- Officials Not to Benefit. FAR 52.203-1.
- Covenant Against Contingent Fees. FAR 52.203-5.
- Notice and Assistance Regarding Patent and Copyright Infringement. FAR 52.227-2 (applicable only if amount of contract action exceeds \$25,000).
- Affirmative Action for Special Disabled Veterans and Vietnam Era Veterans. FAR 52.222-35.
- Utilization of Small Business Concerns and Small Disadvantaged Business Concerns. FAR 52.219-8.
- Examination of Records by Comptroller General. FAR 52.215-1.
- Convict Labor. FAR 52.222-3.
- Utilization of Labor Surplus Area Concerns. FAR 52.220-3 (applicable only if contract action exceeds \$25,000).
- Audit—Negotiation. FAR 52.215-2.
- Excusable Delays. FAR 52.249-14.
- Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions). FAR 52.249-5 (applicable as set forth in clause preamble).
- Authorization and Consent. FAR 52.227-1, and Alternate I. FAR 52.246-9.
- Government Property (Cost-Reimbursement, Time and Material, or Labor-Hour Contracts). FAR 52.245-5 and Alternate I.
- Affirmative Action for Handicapped Workers. FAR 52.222-36.
- Subcontracts Under Cost-Reimbursement and Letter Contracts. FAR 52.244-2.
- Allowable Cost and Payment. FAR 52.216.
- Rights in Technical Data and Computer Software. (See 252.227-7013 of this Supplement.)
- Identification of Technical Data. (See 252.227-7029 of this Supplement.)
- Restrictive Markings on Technical Data. (See 252.227-7018 of this Supplement.)

Insurance—Liability to Third Persons. FAR 52.228-7. Alternates I or II apply under the circumstances set forth herein.

Government Supply Sources. FAR 52.251-1. Preference for United States—Flag Air Carriers. FAR 52.247-63.

Patent Rights—Retention by the Contractor (Short Form). FAR 52.227-11.

Patents—Subcontracts. 252.227-7034.

Competition in Subcontracting. FAR 52.244-5 (applies only if contract action exceeds \$25,000).

Utilization of Women—Owned Small Businesses. FAR 52.219-13 (applicable only if contract action exceeds \$25,000).

Payment for Overtime Premiums. FAR 52.222-2. (Note: The word "zero" is inserted in the blank space indicated by an asterisk. Clause applicable only in contracts over \$100,000.)

Care of Laboratory Animals. 252.235-7003.

Limitation of Cost. FAR 52.232-20 (applicable only when contract action is fully funded).

Limitation of Funds. FAR 52.232-22 (applicable only when contract action is incrementally funded).

Clean Air and Water. FAR 52.223-2 (applicable only if contract action exceeds the dollar amount set forth in the preamble to the clause).

Overseas Distribution of Defense Subcontracts. 252.204-7005 (applicable only when contract action exceeds \$500,000 or when any modification increases contract amount to more than \$500,000).

Gratuities. FAR 52.203-3.

Certification of Requests for Adjustment or Relief Exceeding \$100,000. 252.233-7000 (applicable only if contract action exceeds \$100,000).

Ordering From Government Supply Sources. (See 252.251-7000 of this Supplement.)

*Predetermined Indirect Cost Rates. FAR 52.216-15 (applicable only when the contractor has an executed negotiation agreement with the cognizant contract administration office).

**Limitation on Withholding of Payments. FAR 52.232-9.

**Notice of Intent to Disallow Costs. FAR 52.242-1.

**Subcontractor Cost or Pricing Data. FAR 52.215-24 (applicable only if contract action exceeds \$500,000).

**Technical Data—Withholding of Payment. (See 252.227-7030 of this Supplement.)

**Fixed Fee. FAR 52.218-8 (applicable only in cost-plus-fixed-fee contracts).

**Price Reduction for Defective Cost or Pricing Data. FAR 52.215-22 (applicable only if contract action exceeds \$500,000).

**Cost Accounting Standards. FAR 52.230-3 (applicable only if contract action exceeds \$100,000 and the contract is not exempt per FAR 30.301).

**Disclosure and Consistency of Cost Accounting Practices. FAR 52.230-5 (applicable only if contract action exceeds \$100,000 and the contract is not exempt per FAR 30.301).

**Administration of Cost Accounting Standards. FAR 52.230-4 (applicable only if contract action exceeds \$100,000 and the contract is not exempt per FAR 30.301).

**Changes—Cost-Reimbursement. FAR 52.243-2 and Alternate V.

**Facilities Capital Cost of Money. FAR 52.215-30 (applicable as set forth in the clause).

**Waiver of Facilities Capital Cost of Money. FAR 52.215-31 (applicable as set forth in the clause).

**Termination (Cost-Reimbursement). FAR 52.249-6 (applicable only to cost-plus-fixed-fee contracts).

**Excusable Delays. FAR 52.249-14 (applicable only to contracts to which FAR clause 52.249-6 "Termination (Cost-Reimbursement)" is applicable).

Work to be Performed.

WORK TO BE PERFORMED (AUG 1983)

The Contractor shall perform research as specified in the unsolicited proposal and identified in the Short Form Research Contract (SFRC) document.

(End of clause)

Acknowledgement of Sponsorship.

ACKNOWLEDGEMENT OF SPONSORSHIP (APR 1984)

(a) The Contractor agrees that in the release of information relating to an SFRC, such release shall include a statement to the effect that the project or effort depicted was or is sponsored by the agency set forth in the SFRC, and that the content of the information does not necessarily reflect the position or the policy of the Government, and no official endorsement should be inferred.

(b) For the purpose of this clause, information includes news releases, articles, manuscript, brochures, advertisements, still and motion pictures, speeches, trade association proceedings, symposia, etc.

(c) Nothing in the foregoing shall affect compliance with the requirements of the clause entitled "Security Requirements" (FAR 52.204-2), if such clause is a part of the contract.

(End of clause)

Publications.

PUBLICATIONS (AUG 1983)

Publication of results of the research project in appropriate professional journals is encouraged as an important method of recording and reporting scientific information. One copy of each paper planned for publication will be submitted to the Scientific Program Officer simultaneously with its submission for publication. Following publication, copies of published papers shall be submitted to the Scientific Program Officer, or to the other addresses in quantities as may be directed by the Contracting Officer.

(End of clause)

Reporting Requirements.

REPORTING REQUIREMENTS (APR 1984)

(a) Reporting shall be as specified in the SFRC. Unless specified otherwise, reporting requirements will include annual letter reports for multiyear research programs and a final technical report due within sixty (60) days after the expiration date of the SFRC.

(b) The Contracting Officer, after coordination with the Scientific Program

Officer, will specify the form and content of the required reports. These requirements may be furnished the Contractor as may be mutually agreed.

(c) Technical data and computer software, as defined in 252.227-7013 shall be delivered to the Scientific Program Officer. Unless otherwise specified in the SFRC, these items shall be delivered as part of the final technical report.

(End of clause)

Option to Extend the Term of the SFRC.

OPTION TO EXTEND THE TERM OF THE SFRC (APR 1984)

(a) If the Contractor's proposal covers an additional period(s) which could be treated as an optional period(s), such additional period(s) of research may be added to the contract, at the option of the Government, by the Contracting Officer's giving written notice exercising such option(s) at anytime during the performance period specified in the contract or any extensions thereof.

(b) If the Government exercises an option, the Contractor agrees to the following:

(i) to comply with the applicable clauses listed in the SFRC; and

(ii) to comply with the policies and regulations for the SFRC as set forth in Subpart 235.70.

(End of clause)

Contractor-Acquired Property.

CONTRACTOR-ACQUIRED PROPERTY (APR 1984)

(a) As used in this clause, "property" is as defined in subparagraph (b)(1) of the clause of this contract entitled "Title to Contractor-Acquired Property" which has been specifically identified in the Contractor's proposal which is the basis for award or modification.

(b) The identification and description in the Contractor's proposal of property to be Contractor-acquired may be accepted by the Contracting Officer as advance notification required by subparagraphs (a) and (b) of the clause of this contract entitled "Subcontracts Under Cost-Reimbursement and Letter Contracts" (FAR 52.244-2).

(c) Award of this contract, and modifications thereto, shall constitute the written consent of the Contracting Officer, required by subparagraph (c) of FAR 52.244-2, to acquire property identified in the Contractor's proposal, except for those items specifically identified in the contract as required by Block 27A of the DD Form 2222.

(d) The decision to approve subcontracts for acquisition of items listed in Block 27A of the contract will be made subsequent to award of the contract or modification pursuant to FAR 52.244-2.

(End of clause)

Title to Contractor-Acquired Property.

TITLE TO CONTRACTOR-ACQUIRED PROPERTY (APR 1984)

(a) This paragraph implements subparagraph (c)(4) of the clause of this contract entitled "Government Property

(Cost-Reimbursement, Time and Material, or Labor Hour Contracts)" and FAR 35.014.

(b) For purposes of this paragraph, "property" is all nonexpendable tangible personal property, except material:

(1) as described in FAR 45.101, including ADPE defined in FAR 31.001 and facilities defined in FAR 45.301; and

(2) which is acquired with funds available for the conduct of research; and

(3) For which the Contracting Officer has authorized acquisition by the Contractor: (i) at the time of award of the contract or modification as provided in 252.235-7005; or (ii) subsequent to award pursuant to the Subcontracts clause of this contract.

(c) Title to all property having an acquisition cost of \$1,000 or more which is specifically identified in the Contractor's proposal shall vest in the Contractor without further obligation to the Government, unless the determination regarding vesting of title is deferred until after acquisition. Property for which the determination regarding title is deferred shall be identified in Block 27B of DD Form 2222, and title to such property shall vest in accordance with the provisions of (d) below.

(d) Title to all property having an acquisition cost of \$1,000 or more which was not specifically identified in the Contractor's proposal, or for which the determination regarding title is deferred pursuant to (c) above, shall vest as follows:

(1) in the Government pursuant to FAR 35.014; or

(2) in the Contractor; or

(3) in the Contractor subject to the right of the Government to direct transfer of the title back to the Government or third parties. This right may be exercised at anytime up to and including the twelfth (12th) month after completion or termination of the contract. The Government may at anytime remove an item of property from this category and transfer title to the Contractor without right of the Government to direct transfer of the title back to the Government or to third parties.

(e) Transfer of title back to the Government or third parties shall not be the basis for any claim by the institution. The provisions of the clause of this contract entitled "Government Property (Cost-Reimbursement, Nonprofit)" apply to any changes in property.

(f) Until title to property acquired with funds made available under this contract has been vested in the Contractor, without right of the Government to direct transfer of the title back to the Government or third parties, it shall be considered Government Property and subject to the provisions of FAR 52.245-5 and Alternate I.

(g) The Contractor shall furnish the Contracting Officer a list of all property having an acquisition cost of \$1,000 or more acquired under this contract, to which title has not been vested in the Contractor, within forty-five (45) days following the end of the calendar year of the Contractor's fiscal year during which such property was acquired.

(End of clause)

Research Responsibility.

RESEARCH RESPONSIBILITY (APR 1984)

(a) The Contractor shall bear responsibility for the conduct of the research specified in the Contractor's unsolicited proposal identified in the SFRC. The Contractor will exercise judgment in attaining the stated research objectives within the limits of the terms and conditions of the SFRC; *Provided*, however, that the Contractor will obtain the Contracting Officer's approval to change the Statement of Work. Consistent with the foregoing, the Contractor shall conduct the work as set forth in his proposal and accepted by the contract award.

(b) When the decision to enter into the SFRC is based upon the principal investigator's knowledge of the field of study, and his capabilities to manage the research project in an effective and productive manner, the principal investigator identified in the unsolicited proposal shall be continuously responsible for the conduct of the research project, and shall be closely involved with the research efforts.

(c) The Contractor shall advise the Contracting Officer if the principal investigator(s) identified in the SFRC plans to devote substantially less effort to the work than set forth in the proposal.

(d) The Contractor shall obtain the Contracting Officer's approval prior to changing the principal investigator(s) identified in the proposal.

(End of clause)

Restriction on Printing.

RESTRICTION ON PRINTING (AUG 1983)

The Government authorizes the reproduction of reports, data, or other written materials, if required; *Provided*, the material produced does not exceed 5,000 production units of any page, and items consisting of multiple pages do not exceed 25,000 production units in the aggregate. The Contractor shall obtain the express prior written authorization of the Contracting Officer to reproduce material in excess of the quantities cited above.

(End of clause)

Contract Items Requiring Experimental, Developmental or Research Work.

CONTRACT ITEMS REQUIRING EXPERIMENTAL, DEVELOPMENTAL OR RESEARCH WORK (AUG 1983)

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the Rights in Technical Data and Computer Software clause of this contract, it is understood and agreed that the work to be performed under this contract requires the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this contract falls within the definition of limited rights data.

(End of clause)

Advance Payments.

ADVANCE PAYMENTS (AUG 1983)

Advance payments shall be made under this contract pursuant to the advance

payment pool agreement between the Contractor and one or more Military Departments applicable to this contract, in effect as of the date of this contract. If such an agreement is not in effect as of the date of award of this contract, the Contractor will be paid in accordance with the clause of this contract entitled "Allowable Cost and Payment."

(End of clause)

11. Sections 252.252-7000 through 252.252-7003 are added to read as follows:

252.252-7000 Simplified Supply Contract Required Clauses.

The following clause for fixed price supply contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SUPPLY CONTRACT REQUIRED CLAUSES (APR 1984)

The clauses set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR or DoD FAR supplement clause
Definitions (APR 1984)	52.202-1
Officials Not to Benefit (APR 1984)	52.203-1
Gratuities (APR 1984)	52.203-3
Covenant Against Contingent Fees (APR 1984)	52.203-5
New Material (APR 1984)	52.210-5
Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property (APR 1984)	52.210-7
Priorities, Allocations and Allotments (APR 1984)	52.212-8
Variation in Quantity (APR 1984)	52.212-9
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (APR 1984)	52.219-8
Utilization of Labor Surplus Area Concerns (APR 1984)	52.220-3
Notice to the Government of Labor Disputes (APR 1984)	52.222-1
Convict Labor (APR 1984)	52.222-3
Walsh-Healey Public Contract Act (APR 1984)	52.222-20
Equal Opportunity (APR 1984)	52.222-26
Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)	52.222-35
Affirmative Action for Handicapped Workers (APR 1984)	52.222-36
Buy American Act, Trade Agreements Act, and the Balance of Payments Program (APR 1984)	252.225-7006
Federal, State, and Local Taxes (APR 1984)	52.229-3
Payments (APR 1984)	52.232-1
Discounts for Prompt Payment (APR 1984)	52.232-8
Interest (APR 1984)	52.232-17
Assignment of Claims (APR 1984)	52.232-23
Invoices (OCT 1982)	252.232-7000
Disputes (APR 1984)	52.233-1
Changes (APR 1984)	52.243-1
Contractor Inspection Requirements (APR 1984)	52.246-1
Inspection of Supplies—Fixed Price (APR 1984)	52.246-2
Responsibilities for Supplies (APR 1984)	52.246-16
Termination for Convenience of the Government (Fixed Price) (APR 1984)	52.249-2
Default (Fixed Price Supply and Service) (APR 1984)	52.249-8

(End of clause)

252.252-7001 Simplified Services Contract Required Clauses.

The following clause for fixed price services contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SERVICES CONTRACT REQUIRED CLAUSES (APR 1984)

The clauses set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR or DoD FAR supplement clause
Definitions (APR 1984)	52.202-1
Officials Not to Benefit (APR 1984)	52.203-1
Gratuities (APR 1984)	52.203-3
Covenant Against Contingent Fees (APR 1984)	52.203-5
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (APR 1984)	52.219-6
Utilization of Labor Surplus Area Concerns (APR 1984)	52.220-3
Notice to the Government of Labor Disputes (APR 1984)	52.222-1
Convict Labor (APR 1984)	52.222-3
Contract Work Hours and Safety Standards Act—Overtime Compensation (JAN 1984)	DAR 207-103.16(a)
Payrolls and Basic Payroll Records (JAN 1984)	DAR 207-103.16(c)
Equal Opportunity (APR 1984)	52.222-26
Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)	52.222-35
Affirmative Action for Handicapped Workers (APR 1984)	52.222-36
Service Contract Act of 1965 (JAN 1984)	DAR 207-1903.41(a)
Federal, State, and Local Taxes (APR 1984)	52.229-3
Payments (APR 1984)	52.232-1
Discounts for Prompt Payment (APR 1984)	52.232-6
Interest (APR 1984)	52.232-17
Assignment of Claims (APR 1984)	52.232-23
Invoices (OCT 1982)	252.232-7000
Disputes (APR 1984)	52.233-1
Changes—Fixed-Price, Alternate II (APR 1984)	52.243-1
Inspection of Services—Fixed Price (APR 1984)	52.246-4
Default (Fixed-Price Supply and Service) (APR 1984)	52.249-8

(End of clause)

252.252-7002 Simplified Supply and Services Provisions (Negotiated).

The following solicitation provision for fixed-price negotiated contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SUPPLY AND SERVICES PROVISIONS (NEGOTIATED) (APR 1984)

The solicitation provisions set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR provision
Solicitation Definitions (APR 1984)	52.215-5
Unnecessarily Elaborate Proposals or Quotations (APR 1984)	52.215-7
Acknowledgement of Amendments to Solicitations (APR 1984)	52.215-8
Submission of Offers (APR 1984)	52.215-9
Restriction on Disclosure and Use of Data (APR 1984)	52.215-12
Preparation of Offers (APR 1984)	52.215-13
Explanation to Prospective Offerors (APR 1984)	52.215-14
Failure to Submit Offer (APR 1984)	52.215-15
Contract Award (APR 1984)	52.215-16
Order of Precedence (APR 1984)	52.215-18

(End of provision)

252.252-7003 Simplified Supply and Services Provisions (Advertised).

The following solicitation provision for fixed-price advertised contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SUPPLY AND SERVICES PROVISIONS (ADVERTISED) (APR 1984)

The solicitation provisions set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR provision
Solicitation Definitions—Formal Advertising (APR 1984)	52.214-1
Acknowledgement of Amendments to Invitations for Bids (APR 1984)	52.214-3
False Statements in Bids (APR 1984)	52.214-4
Submission of Bids (APR 1984)	52.214-5
Explanation to Prospective Bidders (APR 1984)	52.214-6
Failure to Submit Bid (APR 1984)	52.214-8
Contract Award—Formal Advertising (APR 1984)	52.214-10
Order of Precedence—Formal Advertising (APR 1984)	52.214-11
Preparation of Bids (APR 1984)	52.214-12

(End of provision)

PART 253—FORMS**253.270 [Amended]**

12. The following forms are added to the list following section 253.270:

253.303-70-DD-2222 DD Form 2222: Short Form Research Contract (SFRC) Modification (Page 1)

253.303-70-DD-2222 DD Form 2222: Short Form Research Contract (SFRC) Modification (Page 2)

253.303-70-DD-2222 Instructions for Completing DD Form 2222

253.303-70-DD-2222-1 DD Form 2222-1: Representations and Certifications From Offerors Submitting Proposals Under DFARS 235.70

253.303-70-DD-2222-1 DD Form 2222-1: Representations and Certifications From Offerors Submitting Proposals Under DFARS 235.70 (Page 2)

253.303-70-DD-2222-2 DD Form 2222-2: Short Form Research Contract Research Proposal Cover Page

253.303-70-DD-2222-2 DD Form 2222-2: Short Form Research Contract Research Proposal (Page 2)

PART 270—ACQUISITION OF COMPUTER RESOURCES**270.101 [Amended]**

13. Section 270.101 is amended by adding "(see also Subpart 270.4)" at the end of the introductory text of paragraph (b) and removing the last sentence of paragraph (b)(5).

14. Section 270.400 is amended by revising paragraph (e)(9) to read as follows:

270.400 Scope of Subpart.

(e)

(9) Logistics systems which provide direct support to operating forces or provide direct support to maintenance of weapons systems (e.g., organic supply, software support facilities for weapon systems, etc.). This does not include logistic systems supporting, contracting, accounting, disbursement and budgeting, etc.

15. Section 270.402 is added to read as follows:

270.402 Procedures.

Unless the contracting officer elects to use the procedures at 270.3, normal acquisition procedures as prescribed in the FAR and this Supplement shall be used in acquiring automatic data processing resources covered by the 10 U.S.C. 2315 authority. Other DoD and Departmental regulations treating acquisition and management of ADP resources may also apply.

[FR Doc. 85-7206 Filed 3-27-85; 8:45 am]

BILLING CODE 3510-01-M

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Determination of Threatened Status and Critical Habitat for the Big Spring Spinedace**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Big Spring spinedace (*Lepidomeda mollispinis pratensis*) to be threatened and delineates its critical habitat. This action is being taken because one population of this fish has been

eliminated and the one remaining population is potentially threatened by habitat alteration and the possible introduction of exotic species. Also, the present limited distribution of the existing population leaves it vulnerable to extirpation by a major flood or severe drought. The Big Spring spinedace occurs in a single location, Meadow Valley Wash in Condor Canyon, northeast of Panaca, Nevada, which is being designated as critical habitat. A special rule allowing take for certain purposes in accordance with State laws and regulations is included. This final rule will implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is April 29, 1985.

ADDRESSES: The complete file for this rule is available for inspection during business hours at the U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The big Spring spinedace (*Lepidomeda mollispinis pratensis*) is one of seven taxa belonging to the Plagopterini, a unique tribe of cyprinid fishes. The fishes of this tribe are restricted to the lower Colorado River System and are characterized by the possession of two spiny rays in the dorsal fin and reduction in scales in some species (Miller and Hubbs, 1960; Uyeno and Miller, 1973). The Big Spring spinedace is the representative of this tribe within Meadow Valley Wash. During pluvial times, 10,000 to 40,000 years ago the area referred to as Meadow Valley Wash contained Lake Carpenter, and its outflow river, the Carpenter River (Hubbs *et al.*, 1974). The Carpenter River flowed into the Colorado River by way of the White River, and as these waters dried the spinedace was restricted to remnant habitats that retained water.

When the Big Spring spinedace was originally described, it was known only from specimens collected in the 1930's from a marshy area adjacent to Big Spring near Panaca, Nevada (Miller and Hubbs, 1960). By the time of the description in 1960, it was believed that the fish was extinct. Agricultural modification of the area as well as the

introduction of the exotic mosquitofish, *Gambusia affinis*, had apparently caused its extinction from the marsh and spring area (Miller, 1961; Miller and Hubbs, 1960).

During 1978, personnel from the Nevada Department of Wildlife discovered a few individuals of this "extinct" subspecies in Condor Canyon, just northeast of Panaca. Condor Canyon is a small area of Meadow Valley Wash with perennially flowing water. Since the discovery of the Condor Canyon population, some of the fish have been transplanted above a barrier falls and now occur in most of the available habitat within Condor Canyon. The relocation of fish above the barrier falls was carried out by the Nevada Department of Wildlife (Hardy, 1980a). However, the available habitat within the approximately 4-mile-long Condor Canyon is limited. This restricted habitat is threatened by the possible introduction of exotic species and by habitat alteration. The habitat could also be threatened by a major flood (Cal Allan, Nevada Department of Wildlife, retired, pers. comm.; Hardy, 1980b) or a severe drought. Renovation of former habitat in areas downstream from the area where it presently occurs could reduce this threat.

The Big Spring spinedace was included in the Service's Notice of Review of Vertebrate Wildlife published December 30, 1982 (47 FR 58454). The Service received a petition from the Desert Fishes Council on April 12, 1983, to add the Big Spring Spinedace to the List of Endangered and Threatened Species. The petition was evaluated and found to present substantial information supporting the petitioned action, and a notice of finding to this effect was published on June 14, 1983 (48 FR 27273). A proposal to list the Big Spring spinedace as threatened with critical habitat was published on November 30, 1983 (48 FR 54082).

Summary of Comments and Recommendations

In the November 30, 1983, proposed rule (48 FR 54082), and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A notice was published in the following newspapers: *Las Vegas Review Journal* (December 26, 1983), *Ely Daily Times* (December 29, 1983), and *Lincoln County Record* (December 29,

1983). Six letters of comment were received and are discussed below.

Comments were received from The Nature Conservancy, Nevada State Office of Community Services; Nevada Department of Wildlife (NDOW); Nevada Division of State Parks; Nevada Wildlife Federation; and Dr. James E. Deacon, University of Nevada, Las Vegas. All comments supported the proposed rule. The Nevada Division of State Parks pointed out that 40 acres at the upper end of Condor Canyon are owned by The Nature Conservancy, and that Condor Canyon is on the Nevada National Heritage Site list but is not afforded any extra protection by such designation. The Nature Conservancy expressed an interest in a further, clearer definition of the boundaries of the critical habitat area and in working with agencies in the future to protect the spinedace. The Service is satisfied that the critical habitat description adopted in the final rule is sufficiently precise to alert Federal agencies of their consultation responsibilities under Section 7(a)(2). NDOW commented that several introduced game fishes are present upstream of the proposed critical habitat in several miles of stream and two reservoirs. NDOW expressed concern that these areas support an important recreational fishery, and that listing of the Big Spring spinedace should consider any possible consequences to this fishery. The Service notes that it may only consider scientific and commercial data in making a listing determination; consideration of economic or other impacts is appropriate only for critical habitat designation. Nevertheless, the Service responds that no known effect(s) on the existing fishery upstream of Condor Canyon will occur because of listing as a threatened species with critical habitat. Since the presence of exotic fishes is an identified threat to the Big Spring spinedace, the accidental introduction of upstream fishes into Condor Canyon during periods of high runoff is a possibility. Such an occurrence appears highly unlikely, however, since the upstream reservoir fishery has existed for many years, yet no non-native fishes are known to have successfully established populations within Condor Canyon. In the unlikely event that fishes from upstream reservoirs became established, prompt removal of the exotics within the spinedace habitat would be required and would necessitate coordination and agreement between responsible agencies, (U.S. Fish and Wildlife Service (USFWS), Bureau of Land Management (BLM), and (NDOW).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Big Spring spinedace should be classified as a threatened species. Procedures found at Section 4(a)(1) of the Endangered Species Act [16 U.S.C. 1531 *et seq.*] and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Big Spring spinedace (*Lepidomeda mollispinis pratensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Prior to the mid-1930's, Big Spring flowed unrestricted to the west and south creating a substantial marsh area adjacent to the spring. During the 1930's spinedace were collected from this marsh and these fish were subsequently described as a new subspecies, *Lepidomeda mollispinis pratensis* (Miller and Hubbs, 1960). Visits by ichthyologists to the marsh area during 1959 revealed that the spinedace had been eliminated because of diversion of the water for agricultural purpose, and the introduction of the exotic mosquitofish. Currently, Big Spring flows toward the north and west in a highly modified canal system (Cal Allan, Nevada Department of Wildlife, retired pers. comm.).

The Big Spring spinedace is presently known from one locality, Meadow Valley Wash in Condor Canyon. This restricted habitat could be easily disrupted by a reduction or alteration in water flow. Activities such as overgrazing, groundwater pumping, diversion and channelization of the stream, loss of riparian vegetation, or a combination of these factors could result in the Big Spring spinedace becoming endangered.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* Although Nevada State law adequately regulates the taking of the Big Spring spinedace, there are no protective regulations for spinedace habitat under State law.

E. *Other natural or manmade factors affecting its continued existence.* The introduction of exotic organisms, especially fishes, is detrimental to the

Big Spring spinedace. The introduction of mosquitofish (*Gambusia affinis*) into Big Spring contributed to the extirpation of the spinedace at that locality (Miller, 1961; Miller and Hubbs, 1960). The introduction of exotic fishes is usually detrimental to native fishes because of competition, predation, or the introduction of exotic parasites and diseases (Deacon *et al.*, 1964; Hubbs and Deacon, 1964). Although unlikely, accidental introduction of non-native game fishes from two existing upstream reservoirs could possibly occur during high runoff if either reservoir overflowed.

Because of the restricted range of the Big Spring spinedace in Condor Canyon, a severe flood could also eliminate the spinedace from parts or all of its habitat (Hardy, 1980b). This problem could be reduced or possibly alleviated by renovation of former habitat and reintroduction of the Big Spring spinedace.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Big Spring spinedace as threatened with critical habitat. Threatened status is appropriate because, although not immediately in danger of extinction, the species is likely to become endangered if trends in population decline and habitat alteration continue. Proper and adequate management could prevent the species from becoming endangered. Reasons for critical habitat designation are discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat is being designated for the Big Spring spinedace as follows: 4 stream

miles along Meadow Valley Wash in Condor Canyon, Lincoln County, Nevada, and a 50 foot riparian zone on either side of the stream. The 50 foot riparian zone along each side of the stream is included in the critical habitat designation because this zone is helpful in preventing runoff pollutants from entering the stream and in reducing siltation, and thereby protects the chemical and physical properties of the stream ecosystem. The vegetation in the riparian zone provides shading to the stream, which helps stabilize the water temperature and dissolved oxygen levels. The area proposed as critical habitat satisfies all known criteria for the ecological, behavioral, and physiological requirements of the subspecies. The area proposed includes most of the presently occupied habitat of this subspecies.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, the inclusion of a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Major alteration of the critical habitat could eliminate the Big Spring spinedace. Activities such as channelization, water diversion, or removal of groundwater could result in significant changes in the environment of the Big Spring spinedace. Any activity that would alter the existing chemical and physical characteristics of the aquatic habitat in Meadow Valley Wash could adversely impact the Big Spring spinedace. Such activities include overgrazing or removal of riparian vegetation thereby causing increased silt loads, lowering of the water table, and diversion of water from the main channel of the stream. The introduction of exotic fishes contributed to the decline and ultimately the extirpation of one population of the Big Spring spinedace. Any exotic fishes introduced into the critical habitat could alter the habitat of the Big Spring spinedace.

One Federal activity known to potentially affect critical habitat in Condor Canyon is the issuance of leases for livestock grazing on the Bureau of Land Management (BLM) lands that include approximately half of the total critical habitat. However, the grazing allotments are currently in non-use status. Any federally authorized increase in grazing (or reactivation of the current allotment) could result in overgrazing and the removal of riparian vegetation. This would result in siltation and reduce the ability of the soil to retain water, resulting in lower water levels. Removal of riparian vegetation

would also result in higher temperatures and reduced dissolved oxygen levels. If in the future such activities are proposed on Federal lands, coordination through Section 7 to ensure the protection of the spinedace will be necessary.

A Union Pacific Railroad line is present within the critical habitat area on BLM land in Condor Canyon. There are also several railroad bridge crossings in the area. The rail line has not been used by Union Pacific for several years and was proposed for abandonment at one time. Recently, the rail line was proposed as one of three alternative corridors to supply coal for the proposed White Pine Power Project (WPPP). The WPPP involves construction of a 1,500 megawatt coal-fired generating plant to be located at one of three sites in White Pine County, Nevada. Selection of the rail corridor alternative within the critical habitat area would require upgrading of the rail line and bridges. Possible selection of this alternative rail corridor and subsequent upgrading activities were addressed in a Section 7 consultation regarding the WPPP. Upgrading activities and use of the rail line were found to have the potential to adversely modify the proposed critical habitat. This rail line, however, is not the preferred corridor. The preferred corridor utilized the existing Nevada Northern Railroad Line. It is not expected that the Union Pacific Railroad line on BLM land within the proposed critical habitat will be the corridor selected as the supply route for the WPPP.

An irrigation diversion which supplies private lands below the mouth of Condor Canyon is present on BLM land near the downstream end of the canyon. The BLM does not anticipate any changes in the irrigation diversion that would affect the proposed critical habitat. BLM management of the irrigation diversion is expected to be compatible with the designation of critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of specifying a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant information obtained through the comment process and concludes that no adjustments to the area proposed as critical habitat is appropriate.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for

Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. With the exception of grazing allotments mentioned above, there is no known Federal involvement expected for this species.

The Act and its implementing regulations, found at 50 CFR 17.21 and 17.31, set forth a series of general prohibitions and exceptions that apply to all threatened fish or wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species there are also permits for zoological

exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Section 4(d) of the Act authorizes the Secretary to issue special regulations for a threatened species that are necessary and advisable for the conservation of the species. A special rule is included in this regulation, which will allow take for certain purposes in accordance with State game and fish laws and regulations. The State laws and regulations in Nevada prohibit taking of the Big Spring spinedace without a valid State collecting permit. This special rule, adopted substantially as proposed, will allow for more efficient conservation activities for the species and thus enhance the status of the species. Without this special rule, all the prohibitions of endangered status would apply to the species. The Big Spring spinedace is threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species. The State's collection permit system is more adequate to protect the species from excessive taking. For these reasons the Service concludes that the special rule is necessary and advisable for the conservation of the Big Spring spinedace.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an environmental assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There is no known involvement of Federal funds or permits for activities occurring on private lands within the critical habitat for the spinedace. This designation of critical habitat is not expected to result in any significant economic impacts to activities occurring on Federal land. These determinations are based on a Determination of Effects that is

available from the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE Multnomah Street, Portland, Oregon 97232. This rule contains no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Literature Cited

- Deacon, J.E., C. Hubbs, and B.J. Zahuranec. 1964. Some effects of introduced fishes on the native fish of southern Nevada. *Copeia* 1964:384-388.
- Hardy, T. 1980a. The inter-basin area report—1978. *Proc. Desert Fishes Council* 10:5-21.
- Hardy, T. 1980b. Interbasin report to the Desert Fishes Council—1979. *Proc. Desert Fishes Council* 11:68-70.
- Hubbs, C., and J.E. Deacon. 1964. Additional introductions of tropical fishes into southern Nevada. *Southwestern Nat.* 9:249-251.
- Hubbs, C.L., R.R. Miller, and L.C. Hubbs. 1974. Hydrographic history and relic fishes of the north-central Great Basin. *Memoirs California Acad. Sci.* 7:1-259.
- Miller, R.R. 1961. Man and the changing fish fauna of the American Southwest. *Pap. Michigan Acad. Sci. Arts Letters* 46:365-405.
- Miller, R.R., and C.L. Hubbs. 1960. The spiny-rayed cyprinid fishes (Plagopterini) of the Colorado River System. *Misc. Publ. Mus. Zool., Univ. Michigan* 115:1-39.
- Uyeno, T., and R.R. Miller. 1973. Chromosomes and the evolution of the plagopterin fishes (Cyprinidae) of the Colorado River System. *Copeia* 1973:776-782.

Author

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the

following, in alphabetical order under "FISHES," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Spinedace, Big Spring	<i>Lepidomeda mollispinis pratensis</i>	U.S.A. (NV)	Entire	T	173	17.95(e), 17.44(j)	

3. Add the following as a new paragraph (i) to § 17.44:

§ 17.44 Special rules—fishes

(i) Big Spring spinedace, *Lepidomeda mollispinis pratensis*.

(1) All the provisions of § 17.31 apply to this species, except that it may be taken in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to this species will also be a violation of the Endangered Species Act.

4. Amend § 17.95(e) by adding critical habitat of the Big Spring spinedace as follows: (The position of this entry under § 17.95(e) will follow the same sequence as the species occurs in § 17.11.)

§ 17.95 Critical habitat—Fish and wildlife.

(e) * * *

Big Spring Spinedace (*Lepidomeda mollispinis pratensis*)

Nevada. Condor Canyon, Lincoln County. Four stream miles of Meadow Valley Wash and 50 feet on either side of the stream as it flows through the following sections: T. 1 S., R. 68 E., Sections 13, 23, 24, 26, 27, and 28.

Known constituent elements include clean permanent flowing spring-fed stream with deep pool areas and shallow marshy areas along the shore and the absence of exotic fishes.

BIG SPRING SPINEDACE
Lincoln County, NEVADA



Dated: February 27, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-7357 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Hutton Tui Chub and Fosskett Speckled Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.