Part 5201 - FEDERAL ACQUISITION REGULATIONS SYSTEM

The official NMCARS regulation resides at
https://www.secnav.navy.mil/rda/DASN-P/Pages/NMCARS.aspx

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Subpart 5201.1 - PURPOSE, AUTHORITY, ISSUANCE

5201.101 Purpose.

The Navy Marine Corps Acquisition Regulation Supplement (NMCARS) establishes uniform Department of the Navy (DON) policies and procedures implementing and supplementing the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS).

5201.103 Authority.

(b) The NMCARS is prepared, issued, and maintained pursuant to the authority of Secretary of the Navy (SECNAV) Instruction (SECNAVINST) 5400.15.

(S-90) All DON activity acquisition regulation supplements and changes thereto are required to be approved by DASN(P). Requests for review and DASN(P) approval shall be submitted annually via email to Policy@navy.mil with the subject "NMCARS 5201.103 Acquisition Regulation Supplement – Request for Approval", by August 31.

5201.104 Applicability.

The NMCARS applies to all DON activities in the same manner and to the same extent as specified in FAR 1.104 and DFARS 201.104.

5201.105 Issuance.

5201.105-2 Arrangement of regulations.

(c) *References and citations*.

(1) References to this supplement within this supplement will be without a name or acronym prefix. References to FAR citations in this supplement should be read to include any corresponding paragraphs of the DFARS and this supplement and any additional authorizations, restrictions, policies and procedures they may contain. For example, the words "...when authorized under FAR Part 25..." include authorities granted under FAR Part 25, DFARS Part 225, and Part 5225 of this supplement.

5201.105-3 Copies.

The NMCARS and NMCARS Annex templates are available electronically via the internet at https://www.secnav.navy.mil/rda/DASN-P/Pages/NMCARS.aspx.

5201.107 Certifications.

In accordance with 41 United States Code (U.S.C.) 1304, a new requirement for a certification by a contractor or offeror may not be included in any activity supplement, clause book, contract clause, solicitation provision, policy letter, policy memorandum or any other similar document unless-

(1) The certification requirement is specifically imposed by statute; or

(2) Written justification for such certification is provided to the Secretary of Defense (SECDEF) by Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), and the SECDEF approves in writing the inclusion of such certification requirement. Submit those requests for certifications to DASN(P) by email at usn.pentagon.asstsecnavrdadc.mbx.pabt@us.navy.mil with the subject "[Activity Name] DFARS 201.107 – Request for Certification."

5201.108 FAR conventions.

(b) *Delegation of authority*. The authorities assigned or delegated within NMCARS may be delegated or redelegated, unless otherwise restricted.

(S-90) When the FAR or DFARS requires submission of a document to an organization outside of the Department of the Navy and the NMCARS directs the submission of that document to DASN(P), DASN(P) assumes the responsibility for complying with the requirement in the FAR or DFARS.

5201.170 Peer reviews.

(a)(1) When Peer Reviews are required to be conducted by the Office of the Principal Director, Defense Pricing and Contracting (DPC), the Head of the Contracting Activity (HCA) shall request the review from DPC with a courtesy copy to DASN(P) by email at usn.pentagon.asstsecnavrdadc.mbx.pabt@us.navy.mil , at least 10 business days prior to the anticipated review.

(2) HCAs shall submit the quarterly rolling forecast of acquisitions requiring peer reviews by DASN(P) or DPC, in the format prescribed by Annex 8, Peer Review Rolling Forecast. Submit the required information to DASN(P) via email to usn.pentagon.asstsecnavrdadc.mbx.pabt@us.navy.mil with the subject "[Activity Name] DFARS 201.170 - Peer Review Rolling Forecast" by March 10, June 10, September 10, and December 10. Negative reports are required.

(b) The HCA shall be responsible for conducting and approving peer reviews unless the approval authority is DASN(P) or DPC. Peer reviews shall be performed on solicitations and contracts with estimated values at $50,000,000 or more (including options). For peer reviews with estimated values greater than $250,000,000, including options, the HCA shall establish a Peer Review Board. The Board shall include contracting personnel at the grade of GS-14 (or equivalent) or higher, from another HCA at the equivalent or higher echelon level. Performance Based Logistics (PBL) acquisitions with an estimated value greater than the approval authority defined in FAR 6.304(a)(4), whether sole source or competitive, shall have a DASN(P) Peer Review. Submit the PBL peer review package to DASN(P) by email at usn.pentagon.asstsecnavrdadc.mbx.pabt@us.navy.mil with the subject "[Activity Name] DFARS 201.170 –DASN(P) PBL Peer Review". See Annex 4 for Science Technology Reinvention Laboratory (STRL) deviations applicable hereto.

(1) Except for procurements for major defense acquisition programs (MDAPs) valued at or above $1,000,000,000 for which the USD(A&S) is the milestone decision authority or procurements designated by USD(A&S) as requiring a DPC conducted peer review, preaward peer reviews of solicitations for competitive procurements valued at $250,000,000 or greater are required as follows:

(i) Services. The HCA shall establish a Peer Review Board and conduct peer reviews for competitive procurements and/or contract actions valued at $250,000,000 or greater.

(ii) Supplies. The HCA shall establish procedures to conduct peer reviews.

(2) Except for contract actions designated by USD(A&S) as requiring a DPC conducted peer review, preaward peer reviews for noncompetitive procurements valued at less than $1,000,000,000 are required as follows:

(i) Services. The HCA shall establish a Peer Review Board and conduct peer reviews for non-competitive procurements and/or contract actions valued at $250,000,000 or greater.

(ii) Supplies. The HCA shall establish procedures to conduct peer reviews.

(3) The HCA shall establish postaward peer reviews of all contracts for services. Peer reviews shall be conducted at the midpoint to allow sufficient time to finalize the disposition of the peer review recommendations prior to exercise of an option.

(S-90) The HCA shall provide a copy of the peer review reports valued at $250,000,000 or greater within 15 days of completion of the peer review to DASN(P) by email at usn.pentagon.asstsecnavrdadc.mbx.pabt@us.navy.mil with the subject "[Activity Name] NMCARS 5201.170(b) - Peer Review Report."

(S-91) If a waiver from the peer review process is desired, submit the procurement history, rationale and specific circumstances surrounding the request, including impact to the program if a waiver from the peer review process is not granted, approved by the Deputy/Assistant Commander for Contracts of the cognizant HCA, without power of redelegation, to DASN(P) by email at usn.pentagon.asstsecnavrdadc.mbx.pabt@us.navy.mil with the subject "[Activity Name] NMCARS 5201.170(b)(S-91) - Peer Review Waiver Request."

5201.170-4 Administration of peer reviews.

(f) Contracting Officers shall submit copies of required memoranda documenting the disposition of peer review results and recommendations to DASN(P)/Director, Program Analysis and Business Transformation (PA&BT) by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] PGI 201.170-4 - Disposition Of Peer Review Recommendations" followed by the applicable solicitation/contract number and peer review date.

5201.190 Reports.

Annex 14 contains a consolidated listing of reporting requirements for DON components and field contracting activities. Where there is a difference between the annex and a specific reporting requirement not found in the annex, the specific requirement shall take precedence.

Subpart 5201.2 - ADMINISTRATION

5201.201 Maintenance of the FAR.

5201.201-1 The two councils.

(d)(i) Submit proposed revisions to the FAR, DFARS or NMCARS to DASN(P) via the

Deputy/Assistant Commander for Contracts of the cognizant HCA by email at Policy@navy.mil with the subject “DFARS 201.201-1 – Proposed [FAR/DFARS/NMCARS] Revision.” Each proposed revision should include a legal review and identify the name, code, and telephone number of the activity point of contact.

Subpart 5201.3 - AGENCY ACQUISITION REGULATIONS

5201.303 Publication and codification.

(a)(ii) To the extent possible, all text in this Supplement (whether implementing or supplemental) is numbered as if it were implementing the FAR or DFARS.

(A) Implementing numbering is the same as its FAR or DFARS counterpart, preceded by the prefix "52".

(B) Supplemental numbering is the same as its FAR or DFARS counterpart, preceded by the prefix “52” with the addition of a number 90 and up for parts, subparts, sections, or subsections or S-90 and up for lower divisions.

5201.304 Agency control and compliance procedures.

(2)(ii) Submit those requests for certifications requiring approval by the Secretary of Defense to DASN(P) by email at usn.pentagon.asstsecnavrdadc.mbx.pabt@us.navy.mil with the subject “[Activity Name] DFARS 201.304 –Request for Certification Requirement.”

(4) “*Componen t*” is defined as a DON HCA exercising assigned or delegated contracting authority. Component clauses or changes to existing component clauses that meet the conditions at DFARS 201.301 shall be published for public comment in the *Federal Register.*

(A) Component clauses, except as provided DFARS PGI 201.301(b)(iii)(A), require Under Secretary of Defense (Acquisition & Sustainment (USD(A&S))/DPC approval.

(B) *Clause numbering*. Clause numbers will be assigned by DASN(P).

(5) Proposed clause packages shall be submitted via DASN(P) to DPC by email at Policy@navy.mil with the subject “NMCARS 5201.304- Proposed Component Clause/Clause Update Package.”

Subpart 5201.4 - DEVIATIONS FROM THE FAR

5201.402 Policy.

(2) Submit those requests for individual or class deviation that require approval at a level higher

than the HCA to DASN(P) by email at Policy@navy.mil with the subject “DFARS 201.402 –Deviation Request.”

5201.403 Individual deviations.

(1) DASN(P) is the approval authority for:

(i) individual deviations from the FAR or DFARS other than those specified in DFARS 201.402(1) and DFARS 201.403(2) and 5201.403(2).

(ii) individual or class deviations from NMCARS.

(iii) deviations from certain component clauses (see DFARS 201.403(1)).

(2) In the case of a purchase or contract by an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, deviations from contract clauses may be granted by the HCA provided that no change in intent, principle, or substance is made. The HCA may delegate this authority no lower than one level above the contracting officer.

5201.404 Class deviations.

Deviations involving basic agreements, basic ordering agreements, or master agreements are considered class deviations.

(b)(ii) DASN(P) is the approval authority for class deviations described at DFARS 201.404(b)(ii).

Subpart 5201.6 - CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

5201.601 General.

5201.601-90 Department of the Navy authorities and responsibilities.

(a) *General*. DON HCAs are responsible for establishing adequate and effective internal controls to carefully manage and closely oversee the execution of delegated contracting authority for assigned contracting mission functions. This includes proactively working with requirements and program personnel during acquisition planning to facilitate the timely submission of requirements to the appropriate contracting activity for contract action in a manner which promotes and permits maximum competition. In conjunction with executing assigned contracting missions, there are certain types of procurements for which authority resides solely with the DON HCA as described in paragraph (c) below, unless authority is delegated in writing to another DON HCA and accepted by the receiving DON HCA to execute those procurements. Delegation of DON contracting authority applies only within the DON. Requirements executed outside of the DON shall follow the appropriate

governing rules/regulations/policies (e.g., The Economy Act, Assisted Acquisition, FAR Part 17). At a minimum, DON HCAs shall address the following requirements and how they will be met in the contracting activity's procedures for delegation of contracting authority:

(1) Tracking of all contracting authority that has been delegated and any limitations on the contracting authority.

(2) Tracking of delegations received from HCAs.

(3) Ensuring contracting authority delegations are made, in writing from DON HCA to DON HCA, without power of redelegation, to include:

(A) Documenting the rationale supporting the delegation and address why the delegation is necessary for the efficient and proper administration of the receiving DON HCA's contracting operations.

(B) The requirement that the DON HCA receiving the delegated authority affirmatively acknowledge and accept the conditions of the delegation in writing prior to exercising the delegated authority.

(C) The extent to which the HCA delegated authority may be redelegated to contracting offices not under the cognizance of the receiving HCA unless specifically requested.

(D) Ensuring the delegated contracting authority is being executed and administered in accordance with the delegation of authority and contracting regulations, rules, and procedures.

(b) *HCA responsibilities and limitations*. Each HCA is solely responsible for executing its delegated contracting authority for assigned acquisition programs and cognizant areas of responsibilities subject to any established limitation. An HCA has authority to procure supplies and services to support all organic requirements, such as those set forth in SECNAVINST 5400.15, unless such procurements fall within the scope of unique contracting responsibilities assigned to another HCA. See Annex 4 for STRL deviations applicable hereto.

(c) *HCA unique contracting authorities*. The assigned responsibilities of the DON contracting activities are as follows:

(1) Deputy Assistant Secretary of the Navy (Procurement) (DASN(P)) has the following overarching responsibilities:

(A) Serves as the principal advisor and executive agent to Assistant Secretary of the Navy (Research, Development & Acquisition (ASN(RDA)), who serves as the Navy Acquisition Executive and Senior Procurement Executive.

(B) Exercises plenary contracting authority on behalf of the Department, including approving, revising or denying DON Activity contracting responsibilities.

(C) Reviews and processes Justification and Approvals (J&As) requiring ASN(RDA) approval.

(D) Reviews and processes acquisition documents (e.g. acquisition plans, acquisition strategies for services, Determination and Findings (D&Fs)) requiring DASN(P) or higher-level approval.

(E) Approves individual and class deviations and waivers from the FAR and DFARS.

(F) Serves as the DON's representative on the Defense Acquisition Regulations (DAR) Council and

provides DON policy, guidance, oversight, and coordination for DAR Council committees and FAR teams.

(G) Serves as the DON focal point for coordination, interpretation and implementation of DOD acquisition policy, including all DOD 5000-series instructions, manuals and directives.

(H) Implements and maintains the NMCARS.

(I) Oversees, provides guidance, and conducts Procurement Performance Management Assessment Program (PPMAP) reviews and DON Peer Reviews.

(J) Executes the ASN(RDA) duties as the senior official responsible for the management of acquisition of contract services.

(K) Serves as the DON focal point for the compilation and review of the Inventory of Contracted Services.

(L) Serves as the DON lead for proposed mergers and acquisitions as well as the Committee on Foreign Investment in the United States reviews.

(M) Serves as the Competition Advocate General (CAG) of the Navy and as principal advisor to the Secretary of the Navy and to ASN(RDA) for competition policy issues. The CAG is responsible for challenging barriers to competition and promoting full and open competition in the acquisition process pursuant to the Competition in Contracting Act (CICA); developing and assigning annual competition goals for the Activities; preparing an annual report addressing DON competition results; sponsoring DON acquisition achievement awards programs; and publishing long-range acquisition estimates.

(N) Serves as the DON Acquisition Ombudsman.

(O) Chairs the Navy Contract Adjustment Board in accordance with Public Law 85-804.

(P) Represents ASN(RDA) on committees and workgroups relating to acquisition, program management, contractual services and audits conducted by the Government Accountability Office, DOD Inspector General (DODIG), Naval Inspector General, and Naval Audit Service.

(Q) Advises ASN(RDA) on matters related to contractor labor relations. Develops, implements, and oversees the execution of policies and procedures on contractor labor relations.

(R) Serves as the DON focal point for industrial base policy, to include the exercise of responsibilities related to the Defense Production Act, the Defense Priorities and Allocation System, requests for special priorities assistance, and assessments of the industrial base.

(2) *Installations and Logistics, Headquarters, U.S. Marine Corps (HQMC, I&L)* is responsible for the award and administration of contracts for supplies and services to support installation and logistics requirements of the Marine Corps Operating Forces and supporting establishments.

(3) *Marine Corps Systems Command (MARCORSYSCOM)* is responsible for awarding and administering contracts for assigned Marine Corps programs, assigned IT systems programs or components, and relevant professional, research and engineering services, except for naval aviation programs.

(4) *Military Sealift Command (MSC)* is responsible for awarding and administering contracts for

services of ocean-going ships, craft, floating dry docks, and other repair facilities, for purposes such as oceanographic research and survey, underwater research, cable laying, and range instrumentation;and contracts for the maintenance, conversion, and modernization of assigned vessels. MSC's unique contracting responsibilities include contracts for services of ferries and tugs but exclude contracts for (i) pilot services and (ii) ferries and tugs used for husbanding services, including water taxi contracts awarded outside the continental United States under husbanding services contracts. MSC transportation responsibilities are identified in the Defense Transportation Regulation.

(5) *Naval Air Systems Command (NAVAIRSYSCOM)* is responsible for awarding and administering contracts for naval aviation programs and efforts supported by the Naval Air Warfare Centers, to include relevant logistics, training and professional, research and engineering services. In addition, NAVAIRSYSCOM unique contracting responsibilities include designing, developing, procuring, and supporting naval aviation systems used by the Navy and Marine Corps.

(6) *Naval Facilities Engineering Command (NAVFACENGCOM)* is responsible for awarding and administering contracts for all architect-engineer, construction, utilities, energy, facilities support, and assigned weapon and IT system programs or components associated with Navy expeditionary forces.

(i) NAVFACENGCOM's unique contracting responsibilities include:

(A) Facility engineering and construction, including capital improvements;

(B) Utilities, including sales and privatization;

(C) Shore Energy, including renewable, conservation, Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESCs), and sales;

(D) Environmental remediation, cultural resources (on DOD installations only), historical research, natural resources conservation studies (on and off DOD installations), execution of the Defense Environmental Restoration Program (DERP), delegated caretaker functions at military installations to be closed under the Defense Base Closure and Realignment Act of 1990, and any amendments thereto;

(E) Public works, including maintenance of buildings, grounds, roads and other infrastructure;

(F) Guard services related to the protection and security of U.S. military installations and facilities;

(G) Anti-Terrorism Force Protection (ATFP) infrastructure (ashore);

(H) Contingency engineering, expeditionary and construction training systems and equipment;

(I) Logistics-over-the-shore, near shore, and ocean facilities infrastructure systems;

(J) Navy expeditionary equipment, infrastructure, and Information Technology (IT) related systems;

(K) Procurement and lease (over 120 days) of Navy (excludes United States Marine Corps (USMC)) civil engineer support equipment, including railway, construction and weight-handling equipment;

(L) Procurement and maintenance of automotive vehicles used by DON;

(M) Lease (over 120 days) of automotive vehicles used by DON;

(N) Construction, lease, purchase and/or installation of relocatable buildings; and

(O) DON acquisition of public utility services including, but not limited to, electricity, gas, water, sewerage, drainage, fire and police protection, street lighting and cleaning, and trash and garbage disposal.

In addition, NAVFACENGCOM is responsible for contract administration functions associated with construction work under contracts awarded by other DON contracting activities that contain any construction work.

(ii) Procedures.

(A) If an HCA other than NAVFACENGCOM intends to award a contract, and the contract scope contains any element of construction work, contracting officers shall consult with NAVFACENGCOM, as early as practicable in the acquisition planning process, to ensure HCA solicitations and contracts containing any element of construction work are properly structured, and the construction work under the contract is administered, in accordance with DON policy.

(B) NAVFACENGCOM will, upon request, assist contracting officers in determining whether the extent of construction activities to be performed under an HCA contract for supplies, equipment, services, or research and development, etc. requires a delegation of construction contracting authority from the Commander, NAVFACENGCOM (COMNAVFACENGCOM) and/or triggers the application of FAR Subpart 22.4, Labor Standards for Contracts Involving Construction. The delegation of authority is contingent on the HCA demonstrating, in a written request for authority, that contracting and technical/program personnel properly trained in construction contract administration and the labor standards applicable to construction work are available in the activity/organization.

(7) *Naval Sea Systems Command (NAVSEASYSCOM)* is responsible for awarding and administering contracts for ships and submarines, assigned weapon systems and platforms, and relevant professional, research and engineering services. NAVSEASYSCOM unique contracting responsibilities include awarding and administering contracts for construction, maintenance and modernization of ships and submarines, nuclear propulsion, water craft, submersibles, equipage for towing, diving and salvage, and University Affiliated Research Centers.

(8) *Naval Supply Systems Command (NAVSUPSYSCOM)* is responsible for awarding and administering contracts in support of assigned logistics support functions. NAVSUPSYSCOM's unique contracting responsibilities include procuring supplies and services for all non-contracting Navyactivities, offices or commands for which no other HCA is delegated authority.

(9) *Office of Naval Research (ONR)* is responsible for awarding and administering contracts and other instruments for assigned DON Science and Technology (S&T) research. ONR unique contracting responsibilities include the award and administration of contracts to the Navy's Federally Funded Research Development Center (FFRDC).

(10) Naval Information Warfare Systems Command (NAVWARSYSCOM) is responsible for awarding and administering contracts in the information dominance domain, including assigned programs in the areas of research and development, systems engineering and development, and other relevant professional services associated with production, installation and sustainment for Command, Control, Communications, Computers, Intelligence Surveillance, and Reconnaissance Systems (C4ISR); Joint Tactical Radios Systems (JTRS), Space Systems; Enterprise Information Systems (EIS); and Navy Chief Information Officer (CIO) supported information technology initiatives.

(11) *Strategic Systems Programs* (*SSP)* is responsible for awarding and administering contracts in support of the development, production, and life-cycle support of the TRIDENT Strategic Weapon System, and other assigned programs under the cognizance of the Director, SSP (DIRSSP).

5201.602 Contracting officers.

5201.602-1 Authority.

(b) Contract documents shall be forwarded to the appropriate attorney or attorneys in the Office of General Counsel for review as to form and legality.

5201.602-2 Responsibilities.

(d)(v)(A) Notwithstanding FAR 1.602-2(d) and DFARS PGI 201.602-2(d)(v)(A), designation of a Contracting Officer's Representative (COR) for services contracts is not required when surveillance functions are delegated to and performed by a Contract Administration Office (CAO) or the contracting officer retains surveillance functions and executes CORs duties.

5201.602-3 Ratification of unauthorized commitments.

(b)(1) Within 10 calendar days of determining the need for a ratification of an unauthorized commitment (UAC), the activity where the ratifiable action occurred shall report the UAC to its respective HCA in accordance with the Activity's procedures.

(b)(3)(i) The HCA (or designee) may delegate ratification authority as follows:

(A) Actions valued at $50,000 or less - Not lower than the Activity CCO

(B) Actions valued at $100,000 or less - Not lower than the Deputy/Assistant Commander for Contracts

(C) Actions valued greater than $100,000 – HCA without power of delegation

(ii) The authority to ratify, at any level, reverts to the HCA without power of delegation if--

(A) For HCAs except NAVSUP: The HCA has 15 or more UACs exceeding the micro- purchase threshold for that FY.

(B) NAVSUP: A Budget Submitting Office (BSO) supported by NAVSUP has more than four (4) UACs exceeding the micro-purchase threshold in a FY. Authority for delegation of ratification authority is by BSO.

(C) When the person committing the UAC has made, or the contractor performing the UAC has submitted, a UAC at any point in the past.

(iii) For counting purposes, use the date that the ratifiable action occurred not the date of reporting.

(iv) The ability to delegate in accordance with (i) resets at the beginning of each FY.

(v) The HCA shall maintain records of all ratifications regardless of dollar value and review as part of its Procurement Performance Management Assessment Program (PPMAP) (see NMCARS 5201.691).

(S-90) *DON Policy*.

(a) HCAs shall establish procedures for ratification of UACs.

(b) When an activity receives a UAC that falls within another activity's unique contracting authority (as defined in 5201.601-90), one of two actions is required to address the UAC:

(1) Authority may be requested from the HCA with the unique contracting authority to address the UAC and complete the ratification (if necessary); or,

(2) The HCA with unique contracting authority ratifies the UAC or determines it is not a ratifiable action. If ratification is necessary, a Military Interdepartmental Purchase Request (MIPR) shall be executed and funded by the activity to which the employee who committed the UAC belongs. This MIPR shall be provided to the activity with the unique contracting authority to complete the ratification.

(c) The ratifying official and the contracting officer on the ratified action shall not be the same individual.

(d) DASN(P) reserves the right to request copies of any documentation at any point in the process.

(e) Reporting.

(1) The activity executing the ratification is responsible for reporting.

(2) Submit a quarterly report of all UACs/ratifications exceeding the micro-purchase threshold, approved at a level no lower than the Deputy/Assistant Commander for Contracts, in the format prescribed in Annex 15 to DASN(P) by e-mail at Policy@navy.mil with the subject "NMCARS 5201.602-3(S-90)(e)(2) – Quarterly Ratification Report", by January 31, April 30, July 31 and October 31. Negative reports are required.

5201.603 Selection, appointment, and termination of appointment for contracting officers.

5201.603-1 General.

HCAs are the agency head's designees for the selection and appointment of contracting officers, and for the termination of their appointments. HCAs will maintain records specifying who (by position/title/office) in the contracting chain of command may select, appoint and terminate appointment of qualified individuals within the contracting activity's cognizance and specify authority limits.

5201.603-2-90 Contracting officer warrants.

Notification requirements. Submit copies of documentation supporting any warrants authorized pursuant to DFARS 201.603-2(3) and warrants issued pursuant to the exception at DFARS 201.603-2(2)(ii) to DASN(P) at Policy@navy.mil with the subject "DFARS 201.603-2(2)(ii) – Waiver of Contracting Officer Qualification" within five days of issuance.

5201.603-2-91 Contracting officer warrant issuance to non-DON employee.

Except where a DON activity is designated HCA for a joint-contracting operation, if there is a need to issue a warrant to a non-DON employee, an HCA must submit a waiver request to DASN(P) by email at Policy@navy.mil with the subject "DFARS 201.603-2 – Contracting Officer Warrant Issuance to a non-DON Employee" for approval, using the template in Annex 12, provided the individual is a civilian or military member of the DOD and meets applicable requirements commensurate to the proposed warrant level per 10 U.S.C.§1724.

5201.603-4 Termination.

A Contracting Officer appointment shall be terminated in writing when the individual is transferred from the position due to reassignment or permanent change of station/duty; the need for a contracting officer function no longer exists; the individual retires, resigns or the Agency terminates his/her employment; or the individual fails to comply with laws and regulations governing the procurement process, including the delegated warrant authority and responsibilities. Warrants issued specifically for a contingency operation are only valid for the period during which the individual is assigned to support the contingency office and shall be terminated in writing upon

detachment from that office. HCAs shall keep a copy of each terminated warrant for the period identified in 5204.805(c) beyond the date of termination.

5201.691 Procurement management oversight.

5201.691-1 Purpose.

(a) The primary objective of procurement management oversight is to validate sound contracting practices throughout the DON. This oversight encourages and assists HCAs in making continuous improvements in their acquisition and procurement processes. It also provides a mechanism for sharing "best practices" throughout the DON. Procurement management oversight in the DON is conducted through the Procurement Performance Management Assessment Program (PPMAP). The PPMAP is a flexible, performance-based, process-oriented program that requires contracting activities to perform periodic self-assessments of:

(1) critical procurement processes used to manage and execute procurement operations within the HCA, including their associated outcomes**;**

(2) performance-based metrics; and,

(3)the results of employee and customer surveys.

(b) The HCA will use the results of these self-assessments to:

(1) evaluate the quality of its procurement processes and management systems;

(2) validate execution of delegated authority is occurring according to law and regulation;

(3) mitigate risk of vulnerabilities for fraud, waste or abuse to occur; and,

(4) take appropriate corrective actions, as needed, to improve or maintain the quality of procurement operations within the contracting activity.

5201.691-2 Responsibilities.

(a) DASN(P) is responsible for managing and overseeing the performance of the DON contracting/procurement system by reviewing HCAs and other designated DON contracting organizations using the PPMAP as one of its primary methods to execute this responsibility. DASN(P) is also responsible for providing PPMAP guidance, as appropriate.

(b) Each HCA is responsible for performing management and oversight reviewsof all procurement operations performed within the HCA, *i.e*. within Headquarters and at any subordinate contracting organization or field activity with delegated procurement authority, for procurement operations associated with any delegated authority, and at any other activities as directed by DASN(P) or higher-level authority. HCAs shall:

(1) establish written procedures implementing the DON PPMAP review process for the contracting activity;

(2) perform and document periodic self-assessments (and other internal reviews) to evaluate and improve the quality of the procurement organization’s operations and processes within the contracting activity; and,

(3) conduct and document timely reviews of all subordinate organizations and field activities with delegated contracting/procurement authority to ensure execution of authority is performed according to law and regulation.

(c) HCAs will, upon request, provide contracting personnel, at a grade of GS-14 (or equivalent) or higher, to serve on DASN(P) PPMAP teams.

(d) Reporting requirements. HCAs shall provide DASN(P) the following information:

(1) By October 1st of each year, submit a PPMAP assessment plan for the new fiscal year identifying the self-assessments and activity reviews scheduled for the contracting activity, including the specific resources (by activity) that will be assigned to conduct that oversight.

(2) By January 30th of each year, submit a report summarizing for the contracting activity the outcome of the previous fiscal year’s periodic self-assessments/internal compliance reviews performed on the contracting/procurement function at Headquarters and of on-site reviews/assessments conducted on subordinate contracting organizations and field activities with

delegated procurement authority. The annual report should clearly convey the actions the HCA has taken to improve the quality of contracting/procurement operations within the contracting activity. At a minimum, the HCA's report must:

(i) include a summary of noteworthy accomplishments as well as conditions that warrant management attention or corrective action noted for the contracting activity;

(ii) identify best practices and/or process improvements which could be useful to other DON contracting activities;

(iii) describe any statutory and/or regulatory deficiencies identified;

(iv) explain associated corrective actions taken either at the contracting activity-level or

specific subordinate field activity-level;

(v) include other relevant information, i.e., the results of the HCA's annual warrant file

audits, acquisition staffing analysis and validation, external audits or reviews to include the status of

relevant recommendations; and, if applicable

(vi) address the actions taken in response to a DASN(P) PPMAP performed during the reporting period.

(3) Submit the required information in paragraphs (d)(1) and (2) above to DASN(P) by e-mail at usn.pentagon.asstsecnavrdadc.mbx.pabt@us.navy.mil with the subject "[Activity Name] NMCARS 5201.691-2 – PPMAP Reporting." Reports must be signed by the HCA's senior contracting official.

(e) DASN(P) shall be advised in writing, within five calendar days, any time an HCA revokes, suspends or reduces contracting or purchase card authority delegated to a cognizant field contracting activity or subordinate organization. Submit notifications to DASN(P) by e-mail at usn.pentagon.asstsecnavrdadc.mbx.pabt@us.navy.mil with the subject "[Activity Name] NMCARS 5201.691-2 – Revocation of [Contracting or Purchase Card] Authority."

Subpart 5201.90 - BUSINESS CLEARANCE

5201.9000 Scope.

This subpart describes requirements to be met before entering into contract actions.

5201.9001 Policy.

(a) Contract actions, as delineated in 5201.9003(a), are subject to a formal review process prior to award through the use of a business clearance. The objective of the business clearance process is to:

(1) Ensure that the proposed decision on a contract action is consistent with laws, regulations, and

DOD/DON acquisition policies.

(2) Document the basis for approval of the contract action, the basis for determination that the prices are fair and reasonable, and the application of good business practices.

(b) For contract actions requiring a business clearance, documentation generally includes the use of a pre-negotiation and post-negotiation business clearance memorandum (BCM).

(1) For acquisitions requiring competitive range determinations, the pre-negotiation BCM presents a chronology of the acquisition up to the determination to enter into discussions and provides the basis for the competitive range decision. The post-negotiation BCM continues the chronology to contract award and provides the basis for the award decision.

(2) For acquisitions requiring price negotiations, the pre-negotiation BCM presents the chronology of the acquisition prior to the start of formal negotiations and demonstrates to the approving official that the Government is ready to enter into negotiations. The post-negotiation BCM continues the chronology to contract award and describes the results of negotiations.

(3) When intending to use a combined BCM, the contracting officer must still comply with the pre-negotiation objectives documentation requirements of FAR 15.406-1 and DFARS PGI 215.406-1 or the proposal evaluation documentation requirements of FAR 15.305 and DFARS 215.305.

5201.9002 Procedures.

(a) HCAs shall establish written procedures defining the types of contract actions requiring a business clearance, the applicable dollar thresholds, and the review and approval process. HCAs must establish business clearance approval levels at least one level above the individual responsible for conducting the negotiations, or, if negotiations are not required, the individual responsible for preparing the proposed contract action. HCAs may choose to create BCM templates based on applicable regulatory and policy requirements. The degree and complexity of documentation required for various actions should be governed by the magnitude and complexity of the action being reviewed.

(b) For contract actions subject to business clearance requirements, HCAs shall ensure that business clearances include all required content and compliances outlined in Annex 2, Business Clearance Required Content. If documentation of compliance with these requirements exists elsewhere in the contract file, the business clearance may reference the existing documentation rather than restate it. If an activity plans to delete any content otherwise required by Annex 2, the activity shall notify DASN(P) by submitting its HCA approved alternate content by email at Policy@navy.mil with the subject "[Activity Name] NMCARS 5201.90 – Business Clearance Content Deviation." HCAs may add documentation requirements to the business clearance.

5201.9003 Applicability

(a) Business clearance requirements apply to the contract actions identified below. HCAs may expand this list, as appropriate.

(1) Contracts (including task and delivery orders issued against indefinite-delivery contracts and basic ordering agreements; however, see the exceptions at (b)(3) and (b)(4) for task and delivery

orders).

(2) Contract modifications not within the scope or under the terms of an existing contract with the exception of modifications to actions listed in paragraph (b).

(3) Undefinitized contract actions (see DFARS Subpart 217.74).

(4) Modifications that set or change a contract price, including definitization of any undefinitized or unpriced contract actions, change orders, engineering change proposals, value engineering change proposals, over and above work, settlement of claims, or requests for equitable adjustment.

(5) Retroactive pricing after completion, including final price determination.

(6) Advance agreements on special or unusual cost items (see 5231.109.)

(7) Actions that result in the establishment, modification, or rescission of a guarantee of performance on a government contract by a third party.

(b) The following contract actions do not require a business clearance, but the file must include the rationale for award, sufficiently documented, as prescribed by HCA procedures:

(1) Contract actions awarded under FAR Part 13, Simplified Acquisition Procedures;

(2) Contract actions awarded under FAR Part 14, Sealed Bidding;

(3) Task orders or delivery orders issued under FAR Subpart 8.4, Federal Supply Schedules; or

(4) Task orders or delivery orders issued on a firm-fixed price basis against indefinite-delivery type contracts for:

(i) Supplies for which unit prices are established in the contract; or

(ii) Services for which unit prices are established in the contract for specific tasks to be performed and where a statement of work/statement of objectives/performance work statement is not required.