



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

SEP 11

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Change 08-5 to the Navy Marine Corps Acquisition Regulation Supplement (NMCARS)

The attached document identifies changes incorporated in the April 2008 NMCARS which are effective immediately. The online version of NMCARS will reflect these changes.

The point of contact for NMCARS is Evelyn Ortiz at telephone (703) 614-9640 or email evelyn.ortiz@navy.mil.

Elliott B. Branch

Elliott B. Branch
Executive Director
DASN(A&LM)

Attachment:
As stated

Distribution:
CMC (DC, I&L)
CNR
COMMARCORSYSCOM
COMNAVAIRSYSCOM
COMNAVFACENGCOM
COMNAVICP
COMNAVSEASYSYSCOM
COMNAVSUPSYSCOM
COMSC
COMSPAWARSYSCOM
DIRSSP
PEO (A)
PEO (C4I/SPACE)
PEO (CARRIERS)
PEO (EIS)
PEO (IW)
(continued next page)

**SUBJECT: Change 08-5 to the Navy Marine Corps Acquisition Regulation Supplement
(NMCARS)**

Distribution (continued):

PEO (JSF)

PEO (LMW)

PEO (LS)

PEO (SHIPS)

PEO (SPACE SYSTEMS)

PEO (SUB)

PEO (T)

PEO (U&W)

Copy to:

AGC

CMC (LB)

DACM

DON OSBP

MARCORSYSCOM (CT)

MSC (N10)

NAVAIRSYSCOM (2.0)

NAVFACENGCOM (ACQ)

NAVICP (02)

NAVSEASYSCOM (02)

NAVSUPSYSCOM (02)

ONR (02)

SPAWARSYSCOM (2.0)

SSP (SPN)

Attachment (1)

Incorporate the following changes into the April 2008 NMCARS:

1. Under SUBPART 5201.3—AGENCY ACQUISITION REGULATIONS, section 5201.304(DFARS 201.304) Agency control and compliance procedures, paragraph (4) DoN Procedures for Control of Component Clause Use, **subparagraph (A), Definitions**, is revised to clarify the meaning of certain terms as follows:

5201.304 (DFARS 201.304) Agency control and compliance procedures.

(4) DoN Procedures for Control of Component Clause Use.

(A) Definitions.

(a) "Clause" means a term, condition, or provision of the solicitation/contract of the type set forth in FAR Part 52, DFARS Part 252, and NMCARS Part 5252. A clause, as used in these procedures, includes everything in parts B through M of a solicitation or contract except:

- (1) The list of supplies or services and prices/costs in Section B;
- (2) Specifications and statements of work in Section C;
- (3) Packaging and marking requirements in Section D;
- (4) Requirements for place of inspection/acceptance in Section E;
- (5) Requirements for time, place, and method of delivery or performance in Section F;

(6) The list of attachments in Section J; and

(7) Brief statements of strictly administrative, informational nature that have no significant cost or administrative impact on offerors or contractors, which the originating activity has determined do not fit the above definition of "clause."

(b) "Component" means an organizational entity exercising contracting authority within DoN.

(c) "Navy Clause Baseline" means all approved DoN standard component clauses.

(d) "Non-standard Component Clause" means a component clause that is not prescribed for use in a component regulation and has no significant effect beyond the internal operating procedures of the agency nor a significant cost or administrative impact on offerors or contractors.

(e) "Regulation" means any contracting supplement, policy letter, clause book, procedure, automated system, or similar regulatory instrument.

(f) "Standard Component Clause" means a component clause that is prescribed for use in a component regulation/instruction/clause book and meets the above definition of "clause."

2. Under SUBPART 5201.3—AGENCY ACQUISITION REGULATIONS, section 5201.304(DFARS 201.304) Agency control and compliance procedures, paragraph (4) DoN Procedures for Control of Component Clause Use, **subparagraph (E), Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**, is added to clarify approval requirements for use of provisions and clauses unique to the Agency when acquiring commercial items, as follows:

5201.304 (DFARS 201.304) Agency control and compliance procedures

(4) DoN Procedures for Control of Component Clause Use.

(E) Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items.

(a) Notwithstanding the requirements set forth in paragraphs 5201.304(4)(B), (C) and (D), the following approvals are required for use of agency/component-unique provisions or clauses in solicitations/contracts for commercial items that will supplement FAR Part 12 and DFARS Part 212 provisions/clauses:

(1) DASN (A&LM) is the approval authority for inclusion of a component provision or clause that is necessary to reflect an agency-unique statute applicable to the acquisition of commercial items.

(2) The NSPE is the approval authority for inclusion of any agency/component provision or clause that is otherwise not necessary to reflect an agency-unique statute applicable to the acquisition of commercial items. This authority is not delegable.

(b) Annex (7), COMMERCIAL ITEM ACQUISITIONS CLAUSE USE, includes a “Commercial Items Clause Use Approval Matrix” outlining current sources of approval authority governing inclusion of provisions and clauses in solicitations/contracts for commercial item acquisitions issued pursuant to FAR Part 12 procedures. See NMCARS 5212.301 (DFARS 212.301) for additional guidance.

3. Under SUBPART 5201.6, CAREER DEVELOPMENT, CONTRACTING AUTHORITY AND RESPONSIBILITIES, section 5201.602, Contracting Officers, subsection 5201.602-3(FAR 1.602-3) Ratification of unauthorized commitments, **subparagraph (e)** is amplified and **subparagraph (f)** is added at (S-90)(h)(2) to reflect additional requirements as follows,

SUBPART 5201.6--CAREER DEVELOPMENT, CONTRACTING AUTHORITY AND RESPONSIBILITIES

5201.602 Contracting officers.

5201.602-3(FAR 1.602-3) Ratification of unauthorized commitments.

(S-90) DoN Guidance

(h) Reports

(2) (e) Description of Supplies/Services bought and from whom

(f) Brief description of the circumstances of the purchase, *i.e.* why normal procurement procedures were not followed.

4. Under SUBPART 5209.5, ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST, section **5209.570 Limitations on contractors acting as lead system integrators** and subsection **5209.570-2 Policy** are added to reflect DFARS Change Notice 20090715, as follows:

5209.570 (DFARS 209.570) Limitations on contractors acting as lead system integrators.

5209.570-2 Policy

(c)(2) Submit the required written determination for approval by the Secretary of Defense/USD(AT&L) via DASN(A&LM) by email at RDAJ&As@navy.mil. Properly identify in the subject line “D&F TO USE A CONTRACTOR TO PERFORM LEAD SYSTEM INTEGRATOR FUNCTIONS--DFARS 5209.570-2(c)(2), [HCA NAME].”

5. Under SUBPART 5212.2, SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS, section **5212.207 Contract type** is added to reflect DFARS Change Notice 20090715, as follows:

SUBPART 5212.2--SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS

5212.207 Contract type.

(b)(iii) Submit the required written contracting officer determination for agency head approval to DASN(A&LM) via email at RDAJ&As@navy.mil. Properly identify in the subject line “D&F TO USE T&M/LH CONTRACT TYPE FOR COMMERCIAL SERVICES-DFARS 212.207(b)(iii) [HCA NAME].”

6. Under PART 5212 ACQUISITION OF COMMERCIAL ITEMS, SUBPART **5212.3—SOLICITATION PROVISIONS AND CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS**, section **5212.301 (FAR 12.301) Solicitation provisions and contract clauses for the acquisition of commercial items**, section **5212.302, Tailoring of provisions and clauses for the acquisition of commercial items**, and supplemental paragraph (90), *Commercial Items Clause Use Guidance*, are added to clarify approval requirements governing component clause use in commercial contracts, as follows:

SUBPART 5212.3—SOLICITATION PROVISIONS AND CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

5212.301 (FAR 12.301) Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) The following approvals are required for use of agency/component-unique provisions or clauses in solicitations/contracts for commercial items that will supplement FAR Subpart 12.3/DFARS Subpart 212.3 clauses or provisions:

(1) DASN(A&LM) is the approval authority for inclusion of any agency or component provision or clause that is necessary to reflect agency-unique statutes applicable to the acquisition of commercial items.

(2) The NSPE is the approval authority for inclusion of any agency/component provision or clause that is otherwise not necessary to reflect an agency-unique statute applicable to the acquisition of commercial items. This authority is not delegable.

(3) Submit all requests for approvals to DASN(A&LM) via email at RDAJ&As@navy.mil. Include in the subject line: "APPROVAL OF UNIQUE PROVISION/CLAUSE FOR COMMERCIAL ITEM CONTRACTS-[HCA NAME]." All requests shall contain the necessary documentation justifying the proposed action.

(90) Annex (7), COMMERCIAL ITEM ACQUISITIONS CLAUSE USE, includes a table outlining the current sources of approval authority governing the use of clauses and provisions in solicitations/contracts for the acquisition of commercial items beyond those specifically prescribed for use in such actions by FAR Subpart 12.3 (DFARS Subpart 212.3). Solicitations/contracts for the acquisition of commercial items that are issued pursuant to FAR Part 12 procedures shall contain properly approved clauses/provisions. Only OUSD(AT&L)DPAP may approve the use of any component-unique clause or provision that meets the conditions of DFARS 201.304(1)(i).

5212.302 (DFARS 212.302) Tailoring of provisions and clauses for the acquisition of commercial items.

(c) *Tailoring inconsistent with customary commercial practice.* HCAs may delegate the authority to approve waivers under FAR 12.302(c) to no lower than the CCOs at their subordinate contracting organizations, except that ASN(RD&A) approval is required if any additional terms or conditions are to be included. Submit waivers requiring ASN(RD&A) approval to DASN(A&LM) via email at RDAJ&As@navy.mil. Include in the subject line: "WAIVER -AUTHORITY TO ADD TERMS & CONDITIONS INCONSISTENT WITH COMMERCIAL PRACTICE—[HCA NAME]." All waiver requests shall contain the necessary documentation justifying the proposed action.

7. Under PART 5213, SIMPLIFIED ACQUISITION PROCEDURES, Section 5213.003 Policy, SUBPART 5213.2—ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD, and SUBPART 5213.5—TEST PROGRAM FOR CERTAIN COMMERCIAL ITEMS, **delete 5213.003(g) and sections 5213.201 and 5213.500** to reflect the delegation to HCAs contained in DFARS Change Notice 20090115, specifically DFARS 218.270.

8. Under SUBPART 5217.5—INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT, **effect an editorial change** in the title of **section 5217.503** by deleting the reference to DFARS 217.503.

9. Under SUBPART 5219.2—POLICIES, **section 5219.201 General policy**, revise paragraph (d)(10)(A)(ii) by deleting the phrase “since the SBIR is limited to qualified small business concerns” and rewording as follows:

SUPBART 5219.2—POLICIES

5219.201(DFARS 219.201) General policy.

* * * * *

(d)

(10)(A) The review requirements are not applicable to—

(i) orders placed against single award indefinite delivery type contracts since the review is performed prior to award of the basic contracts; or

(ii) awards to small business concerns under the Small Business Innovation Research (SBIR) Program.”

10. Add **Part 5234—MAJOR SYSTEM ACQUISITION, SUBPART 234.70—ACQUISITION OF MAJOR WEAPON SYSTEMS AS COMMERCIAL ITEMS** and **section 5234.7002 (DFARS 234.7002) Policy**, to reflect approval requirements contained in DFARS Change Notice 20090715, as follows:

PART 5234—MAJOR SYSTEM ACQUISITION

SUBPART 234.70—ACQUISITION OF MAJOR WEAPON SYSTEMS AS COMMERCIAL ITEMS

5234.7002 (DFARS 234.7002) Policy.

(a)(1)(i) Submit the required written determination for approval by the Secretary of Defense/Deputy Secretary of Defense to DASN(A&LM) by email to RDAJ&As@navy.mil. Identify in the subject line “D&F: APPROVAL TO ACQUIRE A MAJOR WEAPON SYSTEM AS A COMMERCIAL ITEM-DFARS 234.7002(a)(i), [HCA NAME].” The determination should be accompanied by a proposed Congressional notification letter satisfying the requirements at DFARS 234.7002(a)(1)(iii).

11. Under Annex 4—RATIFICATION REPORT, **the table** is revised to add reporting elements contained at NMCARS 5201.602-3(S-90)(h)(2).

12. Add new Annex (7), **Commercial Item Acquisitions Clause Use**, which provides a Commercial Items Clause Use Approval Matrix for FAR Part 12 acquisitions, as follows:

ANNEX 7-- COMMERCIAL ITEM ACQUISITIONS CLAUSE USE

1. Commercial Items Clause Use Approval Matrix. The following table summarizes the approval requirements for provision or clause use in Part 12 acquisitions:

Action	Approval Authority	FAR/DFARS citation
Include a provision similar to FAR 52.212-2 containing all evaluation factors required by FAR 13.106, 14.2 or 15.3	Contracting Officer	FAR 12.301(c)(2)
Include in solicitations & contracts other FAR provisions & clauses when their use is consistent with the limitations in FAR 12.302 (<u>Discretionary use only due to nature of procurement action, e.g.</u> FAR 16.506 clauses for IDIQ contracts; FAR 17.208 when Options included; etc.)	Contracting Officer	FAR 12.301(e)
Tailor FAR provision 52.212-1 or FAR clause 52.212-4 identified in FAR 12.301, <u>after</u> conducting appropriate market research, to adapt to the market conditions for each acquisition (<i>i.e.</i> tailor only <u>consistent</u> with commercial practices).	Contracting Officer	FAR 12.302(a) FAR 12.301(b)(1) FAR 12.301(b)(3)
Tailor FAR clause 52.212-4 (except as noted in FAR 12.302(b)) in a manner that is <u>inconsistent</u> with customary commercial practice for the item being acquired, if waiver is approved.	HCA; Except ASN(RD&A) approval is required if tailoring results in adding of any new terms or conditions	FAR 12.302(c) DFARS 212.302(c)
Deviate from FAR provision 52.212-3 <u>only</u> in accordance with FAR Subpart 1.4	ASN(RD&A)/DASN(A&LM)	FAR 12.301(b)(2) DFARS 201.4
Supplement provisions & clauses in FAR/DFARS Parts 12/212 with use of additional clauses & provisions <u>only</u> as necessary to reflect agency-unique statutes applicable to acquisition of commercial items.	OASN (RD&A)/DASN (A&LM)	FAR 12.301(f)
Supplement provisions & clauses in FAR/DFARS Parts 12/212 with use of additional clauses & provisions other than those necessary to reflect agency-unique statutes applicable to acquisition of commercial items	Navy Senior Procurement Executive (ASN RD&A) or Director, Defense Procurement and Acquisition Policy (DPAP) without power of delegation	FAR 12.301(f)

Note: Only OUSD(AT&L)DPAP may approve the use of any Component-unique clause or provision that meets the conditions of DFARS 201.304(1)(i).