MEMORANDUM FOR DISTRIBUTION

SUBJECT: Change 08-8 to the Navy Marine Corps Acquisition Regulation Supplement (NMCARS)

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

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

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

Attachment:
As stated

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SUBJECT: Change 08-8 to the Navy Marine Corps Acquisition Regulation Supplement (NMCARS)

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Incorporate the following changes into the April 2008 NMCARS (Change 08-8): 

1. Under **PART 5201 FEDERAL ACQUISITION REGULATIONS SYSTEM, SUBPART 5201.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES**, section **5201.690 Requirements to be met before entering into contracts** is revised to clarify business clearance requirements, as follows:

**SUBPART 5201.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES**

**5201.690 Requirements to be met before entering into contracts.**

(a) Contract actions must be subject to review prior to award. The formal review process is conducted and documented through the use of the business clearance. The purpose of the business clearance is to demonstrate that the proposed decision on a contract action conforms to law, regulation, good business practices and DOD/DON acquisition policy.

(b) HCAs shall establish written procedures defining the types of contract actions that will require a business clearance, the applicable dollar thresholds, and the review and approval process. At a minimum, HCA procedures shall address business clearance requirements for the actions listed below. HCAs should expand this list, as appropriate.

1. Contracts (including task and delivery orders against indefinite-delivery contracts, basic ordering agreements, blanket purchase agreements, and other contract tools).
2. Contract modifications not within the scope or under the terms of an existing contract.
3. Undefinitized contract actions (see DFARS Subpart 217.74).
5. Settlement of claims or requests for equitable adjustment not addressed under paragraph (4) above.
6. Retroactive pricing after completion, including final price determination.
7. Definitization of any undefinitized or unpriced contract action, including change orders, Engineering Change Proposals, Value Engineering Change Proposals, and Over and Above Work.
8. Advance agreements on special or unusual cost items (see 5231.109.)
9. Actions that result in the establishment, modification or rescission of a guarantee of performance on a government contract by a third party.

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

1. Contract actions awarded using simplified acquisition procedures.
2. Task orders or delivery orders issued under FAR Subpart 8.4, Federal Supply Schedules.
3. 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 is not required.
(d) 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, for
handling the proposed contract action. The degree and complexity of documentation required,
and approval levels/thresholds, for various actions should be governed by the magnitude and
complexity of the action being reviewed.
(e) The format at Annex 2, Business Clearance Memorandum, shall be used to document
decisions on contract actions that are subject to business clearance requirements, unless an
alternative format has been approved by DASN(A&LM).

2. Under PART 206 COMPETITION REQUIREMENTS, effect changes to the
subparts and sections identified below to reflect inflation adjustments authorized by
Federal Acquisition Circular (FAC) 2005-45, as follows:

a. Under SUBPART 5206.2—FULL AND OPEN COMPETITION AFTER
EXCLUSION OF SOURCES, section 5206.202 (DFARS 206.202) Establishing or
maintaining alternative sources, the acquisition threshold in paragraphs (b)(1)(A) and
(B) is increased from $78,500,000 to $85,500,000, as follows:

SUBPART 5206.2—FULL AND OPEN COMPETITION AFTER EXCLUSION OF
SOURCES
5206.202 (DFARS 206.202) Establishing or maintaining alternative sources.
(b)(1) D&Fs shall be signed as follows:
    (A) For a proposed contract not exceeding $85,500,000, the approval level is the HCA, or a
designee who—
        (a) If a member of the armed forces, is a general or flag officer; or
        (b) If a civilian, is serving in a position in grade GS 16 or above under the General
Schedule (or in a comparable or higher position under another schedule).
    (B) For a proposed contract over $85,500,000, the approval level is the NSPE.

b. Under SUBPART 5206.3 OTHER THAN FULL AND OPEN COMPETITION,
section 5206.304 (DFARS 206.304) Approval of the justification, the acquisition
threshold in paragraph (a)(2) is increased from $550,000 to $650,000, as follows:

SUBPART 5206.3—OTHER THAN FULL AND OPEN COMPETITION
* * * * *
5206.304 (DFARS 206.304) Approval of the justification.
    (a) If the dollar value of the contract is negotiated at a level that exceeds the authority of the
official who approved the original justification, a new approval shall be obtained from the
appropriate official prior to award.
    (2) DON activities with contracting authority in excess of $650,000 may be considered
"procuring activities" solely for the purpose of enabling their competition advocate to exercise the approval authority provided by FAR 6.304(a)(2).

** * * * * * 

3. Under PART 5209 CONTRACTOR QUALIFICATIONS, SUBPART 5209.1—RESPONSIBLE PROSPECTIVE CONTRACTORS, section 5209.1 Standards, 5209.104-1 (DFARS 209.104-1) General standards, new paragraph (g)(i)(B) is added to establish waiver submittal requirements; (g)(ii) Ownership or control by a foreign government when access to proscribed information is required and (C) addressing waiver submittal requirements are added to reflect DFARS Change Notice 20100623, as follows:

SUBPART 5209.1—RESPONSIBLE PROSPECTIVE CONTRACTORS

5209.104 Standards.

5209.104-1 (DFARS 209.104-1) General standards.

(g)(i) Ownership or control by the government of a terrorist country.

(1) Submit waiver requests for Secretary of Defense approval to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil. Properly identify in the subject line “DFARS 209.104-1(g)(i)(A)—SECDEF Waiver Request.”

(2) Submit the information to DASN(A&LM) via electronic mail address RDAPolicy@navy.mil. Properly identify in the subject line “DFARS 209.104-1(g)(i)—Ownership/Control Notice.”

(iii) Ownership or control by a foreign government when access to proscribed information is required.

(1) Submit waiver requests for Undersecretary of Defense for Intelligence approval via DASN(A&LM) electronic mail address RDAJ&As@navy.mil. Properly identify in the subject line “DFARS 209.104-1(g)(ii)—Waiver Request/National Security Interest Determination.”

(2) Submit waiver requests for Secretary of Defense approval to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil. Properly identify in the subject line “DFARS 209.104-1(g)(ii)(A)—SECDEF Waiver Request.”

4. Under PART 5215 CONTRACTING BY NEGOTIATION, SUBPART—5215.4 CONTRACT PRICING, subsection 5215.403-1 (DFARS 215.403-1) Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b) is revised to add "PGI" in addition to the DFARS citation, and subsection 5215.406-90 Business clearance, paragraph (d) is revised to conform to BCM format requirements set forth in the acquisition supplement, as follows:

3
SUBPART 5215.4—CONTRACT PRICING

***

5215.403-1 (DFARS & PGI 215.403-1) Prohibition on obtaining cost or pricing data (10 U.S.C 2306a and 41 U.S.C. 254b).

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(d) Use the format for business clearance memoranda located at Annex 2, unless an alternative format has been approved by DASN(A&LM).

5. Under PART 5216 TYPES OF CONTRACTS, the SUBPARTS and sections identified below are revised, as follows:

   a. SUBPART 5216.4—INCENTIVE CONTRACTS, section 5216.401 General, paragraph (d)(2) is revised to effect minor editorial revisions and conform to the authority delegated by DPAP for incentive contract determinations and findings (D&Fs), as follows:

SUBPART 5216.4—INCENTIVE CONTRACTS

5216.401 General.

(d) HCAs may delegate signature authority for approval of required determinations and findings (D&Fs), subject to the limitations established below.

(1) Award fee contract types. D&F signature authority is delegable to no lower than Deputy/Assistant Commander for Contracts.

(2) Other incentive contracts. D&F signature authority is at one level above the Contracting Officer and is not further delegable.

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b. Under SUBPART 5216.5—INDEFINITE-DELIVERY CONTRACTS, the specified sections within this subpart are revised as follows:

   (1) Section 5216.504 (DFARS 216.504) Indefinite-quantity contracts, paragraph (c)(1)(ii)(D) Limitation on single award contracts, is revised to conform to current DFARS paragraph structure, increase the acquisition threshold from $100M to $103M as authorized by FAC 2005-45, and to establish submittal requirements for congressional notifications set forth by DFARS Change Notice 20100713.
(2) Section 5216.504-90 Limitation on single award task or delivery order contracts valued at or below $100M is revised to increase the acquisition thresholds in the section title and paragraph (a) Policy from $100M to $103M, and in paragraph (b)(7) from $5.5M to $6.5M to reflect FAC-2005-45. New paragraph (b)(8) is added to exempt Architect-Engineer (A/E) contracts from HCA approval requirements for consistency with FAR 16.504(D)(3)(ii) which exempted A/E contracts from the approval requirements. Changes are effected as follows:

SUBPART 5216.5—INDEFINITE-DELIVERY CONTRACTS

5216.504 (DFARS 216.504) Indefinite-quantity contracts.

(c)(1)(ii)(D) Limitation on single award contracts.

(1) ASN(RD&A) is the approval authority for all determinations over $103M. Submit all determinations over $103M to DASN(A&LM) via electronic mail address RDAI&As@navy.mil. Properly identify in the subject line “DFARS 216.504—SINGLE AWARD” followed by the contract/task/delivery order number.

(2) Concurrent with the submission of determinations in paragraph (1) above, include the proposed congressional notification document in the DFARS PGI 216.504 prescribed format.

5216.504-90 Limitation on single award task or delivery order contracts valued at or below $103M.

(a) Policy. Unless exempted by (b) below, single awards of task or delivery order contracts valued at or below $103M require HCA approval.

(b) Exemptions. The following categories of contracts are exempt from the requirement for HCA approval for single awards of task or delivery order contracts:

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(7) Contracts with a total estimated value less than $6.5 million; and

(8) Architect-Engineer contracts awarded under FAR Subpart 36.6.

***

6. Under PART 5217—SPECIAL CONTRACTING METHODS, the specified sections within the SUBPARTS identified below are revised to align with current DFARS requirements and to reflect, where application, acquisition threshold revisions authorized by FAC 2005-45, as follows:

a. Under SUBPART 5217.1—MULTI-YEAR CONTRACTING, the acquisition threshold in paragraph (b) of section 5217.108 Congressional notification, is increased from $114.5 million to $125 million. New section 5217.175 (DFARS 217.175) Multiyear contracts for electricity from renewable energy sources is added to reflect DFARS Change Notice 20100621 and to identify the HCA responsible for such procurements within DON. These changes are reflected as follows:
SUBPART 5217.1—MULTI-YEAR CONTRACTING

* * * * *

5217.108 Congressional notification.
(b) HCAs shall submit a copy of the required written Congressional notification of a proposed multi-year contract that includes a cancellation ceiling in excess of $125 million to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil. Contracting officers shall verify that the required Congressional notification has been made and the time limit for award has been satisfied before executing contract award.

* * * * *

5217.175 (DFARS 217.175) Multiyear contracts for electricity from renewable energy sources.
(a) Only COMNAVACENGCOM has the authority to award contracts pursuant to this section.

b. Under SUBPART 5217.74—UNDEFFINITIZED CONTRACT ACTIONS, section 5217.7404-5 Exceptions is added to establish submittal requirements for agency waiver requests of limitations on UCAs; section 5217.7405 (DFARS 217.7405) Plans and Reports is revised to reflect the inclusion of unpriced change orders in the semi-annual consolidated UCA report. These revisions are necessary to reflect DFARS Change Notice 20100810, as follows:

SUBPART 5217.74—UNDEFFINITIZED CONTRACT ACTIONS

5217.7404-5 (DFARS 217.7404-5) Exceptions.
(b) Submit requests for waivers of limitations on UCAs as set forth in DFARS 217.7404-2, 217.7404-3, and 217.4704-4 to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil. Include in the subject line of the email “Waiver of limitations on UCAs—[insert applicable DFARS cite].”

5217.7405 (DFARS 217.7405) Plans and reports.
(a) HCAs shall submit by April 15 and October 15 a semi-annual consolidated undefinitized contract action (UCA) report identifying each UCA and unpriced change order with an estimated value of more than $5 million.

* * * *

c. Under SUBPART 5217.78—CONTRACTS OR DELIVERY ORDERS ISSUED BY A NON-DOD AGENCY, section 5217.7802 (DFARS 217.7802) Policy is revised to align it with current DFARS requirements, as follows:
SUBPART 5217.78—CONTRACTS OR DELIVERY ORDERS ISSUED BY A NON-DOD AGENCY

5217.7802 (DFARS 217.7802) Policy.

(b)(1) DON review/approval requirements.

(A) Assisted acquisitions.

(1) ASN(RDA) is the decision authority for assisted acquisitions exceeding $500,000,000.

(2) DASN(A&LM) is the decision authority for assisted acquisitions exceeding $50,000,000.

(3) The Requiring Organization Commander/Commanding Officer is the decision authority for assisted acquisitions at or below $50,000,000. This authority may be delegated; but, for requirements over $5,000,000, decision authority may only be delegated to an official in the Requiring Organization who is a Flag or General Officer; a member of the Senior Executive Service; or, for a requirement arising from a claimant activity without Flag/General Officer/SES, the commanding officer of that activity.

(B) Direct acquisitions. The business clearance approval official is the decision authority for direct acquisitions.

7. Under PART 5219 SMALL BUSINESS PROGRAMS, SUBPART 5219.9—VERY SMALL BUSINESS PILOT PROGRAM is removed, because the pilot program is no longer available in FAR Part 19.

8. Under PART 5222, APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS, effect the following revisions:

a. Under SUBPART 5222.70, RESTRICTIONS ON THE EMPLOYMENT OF PERSONNEL FOR WORK ON CONSTRUCTION AND SERVICE CONTRACTS IN NONCONTIGUOUS STATES, section 5222.7003 (DFARS 222.7003) Waivers is revised to effect editorial revisions by adding the email address and other details for submission of waivers, as follows:

SUBPART 5222.70—RESTRICTIONS ON THE EMPLOYMENT OF PERSONNEL FOR WORK ON CONSTRUCTION AND SERVICE CONTRACTS IN NONCONTIGUOUS STATES

5222.7003 (DFARS 222.7003) Waivers.

Submit waiver requests to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil. Include in the subject line “Waiver of DFARS 222.7002 Requirements—National Security Interest.”

b. SUBPART 5222.74—RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS and section 5222.7403 (DFARS 222.7403) Waiver are added to reflect DFARS Change Notice 20100519, as follows:
SUBPART 5222.74—RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS

5222.7403 (DFARS 222.7403) Waiver.
Submit waiver requests for the Secretary of Defense via DASN(A&LM) at electronic mail address RDAJ&As@navy.mil. Include in the subject line “SECDEF Waiver of DFARS 222.7401 requirements--DFARS 222.7403.”

9. Under PART 5237 SERVICE CONTRACTING, SUBPART 5237.1—SERVICE CONTRACTS-GENERAL, section 5237.104 (DFARS 127.104) Personal services contracts, is revised to effect an editorial change in the paragraph citation as noted below. Section 5237.170 Approval of contracts and task orders for services is revised to depict the new acquisition-related dollar thresholds in paragraphs (a)(1) and (2) of subsection 5237.170-2 (DFARS 237.170-2) Approval requirements established by DFARS Change Notice 20100802, as follows:

SUBPART 5237.1—SERVICE CONTRACTS-GENERAL

* * * * *

5237.104 (DFARS 237.104) Personal services contracts.
(b)(ii)(C)(2) Commands outside the Bureau of Medicine and Surgery (BUMED) claimancy shall obtain review and approval of Statements of Work for clinical counselors, family advocacy program staff, and victim’s services representatives as described in DFARS 237.104(b)(ii)(A)(3) from the Naval Medical Logistics Command (NAVMEDLOGCOM). See BUMEDINST 4200.2A, or version currently in effect, for information on appropriate contract procedures.

5237.170 Approval of contracts and task orders for services.
5237.170-2 (DFARS 237.170-2) Approval requirements.
(a) Acquisition of services through a contract or task order that is not performance based.

(1) The HCA is the agency’s designee for approval of acquisition of services at or below $85,500,000 that is not performance based. For acquisitions above $5 million, HCA authority may be delegated only to the Deputy/Assistant Commander for Contracts, a Flag or General Officer or SES who is a member of the Acquisition Professional Community, or, for commands/locations without a local SES/Flag/General Officer, to the Commanding Officer, but not further.

(2) For acquisitions exceeding $85,500,000, but below $500,000,000, the approval authority is DASN(A&LM).

* * * * *
10. Under PART 5242 CONTRACT ADMINISTRATION AND AUDIT SERVICES, SUBPART 5242.15—CONTRACTOR PERFORMANCE INFORMATION, section 5242.1502 (DFARS 242.1502) Policy is revised to effect minor editorial revisions and to accurately reflect the Internet website for access to the Contractor Performance Assessment Reporting System (CPARS), as follows:

**SUBPART 5242.15—CONTRACTOR PERFORMANCE INFORMATION**

5242.1502 Policy.

The Contractor Performance Assessment Reporting System (CPARS) shall be used when preparing performance evaluations. CPARS is accessed via the internet at [http://www.cpars.csd.disa.mil](http://www.cpars.csd.disa.mil).

11. Under PART 5243 CONTRACT MODIFICATIONS, SUBPART 243.2—CHANGE ORDERS, new section 5243.204 Administration, subsections 5243.204-70 Definitization of change orders and 5243.204-70-1 (DFARS 243.204-70-1) Plans and Reports, are added to reflect DFARS Change Notice 20100810, as follows:

**SUBPART 243.2—CHANGE ORDERS**

* * * *

5243.204 Administration.

5243.204-70 Definitization of change orders.

5243.204-70-1 (DFARS 243.204-70-1) Scope.

(b) Submit the required contracting officer notice to DASN(A&LM) via electronic mail address RDAJ&As@navy.mil. Properly identify in the subject line of the email “Contracting Officer Notice pursuant to DFARS 243.204-70-1—FMS/SAP Unpriced Change Orders.”

5243.204-70-7 (DFARS 243.204-70-7) Plans and Reports.

(b) Report unpriced change orders in accordance with the schedule and in the format prescribed at NMCARS 5217.7405.

12. Under PART 5245 GOVERNMENT PROPERTY, SUBPART 5245.1—GENERAL is revised in its entirety to align requirements set forth in existing sections 5245.102-90 Policy and 5245.106 Transferring Accountability to new section 5245.103 General and subsections 5245.103-70 (PGI 245.103-70) Furnishing Government Property to Contractors and 5245.103-71 Transferring Government Property Accountability, to conform with current changes set forth in the DFARS Procedures, Guidance and Instructions (PGI) that were established by DFARS Change Notice 20100723, as follows:
SUBPART 5245.1—GENERAL
5245.102-90 [REMOVED]

5245.106 [REMOVED]

5245.103 General.
5245.103-70 (PGI 245.103-70) Furnishing Government Property to Contractors.
The requiring activity decision to provide Government property shall address the
elements in PGI 245.103-70(2) in the documentation provided to the contracting officer.

5245.103-71 (PGI 245.103-71) Transferring Government Property Accountability
The contracting officer shall obtain approval of an authorized representative of the
requiring activity before transferring property between contracts.

13. Under PART 5250 EXTRAORDINARY CONTRACTUAL ACTIONS AND
THE SAFETY ACT, SUBPART 5250.1—EXTRAORDINARY CONTRACTUAL
ACTIONS, Section 5250.102 Delegation of and limitations on exercise of authority,
acquisition-related thresholds at 5250.102-1-70 Delegations are revised to reflect
DFARS Change Notice 20100802, as follows:

SUBPART 5250.1—EXTRAORDINARY CONTRACTUAL ACTIONS

***
5250.102 Delegation of and limitations on exercise of authority.
5250.102-1-70 (DFARS 250.102-1-70) Delegations.
(a) Military Departments. Subject to the restrictions on delegations of authority in
DFARS Part 250 and FAR 50.102-1 and 50.102-3, HCAs may exercise and redelegate
the authority contained in the Act and Executive Order for amounts not exceeding
$65,000.
   (i) HCAs may deny any request, regardless of dollar value.
   (ii) ASN(R&D&A) is the approval authority for requests to obligate the Government in
excess of $65,000. Submit such requests via electronic mail address to
RDAJ&As@navy.mil for adjudication by the Navy Contract Adjustment Board.
Properly identify in the subject line of the email “Extraordinary Contractual Relief
pursuant to [insert “Public Law 85-804” or “Executive Order 10789”].
14. Under Part 5252 SOLICITATION PROVISIONS AND CONTRACT CLAUSES, SUBPART 5252.3—PROVISION AND CLAUSE MATRIX, section 5252.301 (FAR 52.301) Solicitation provisions and contract clauses (Matrix), the DON matrix of FAR/DFARS and Other Government Unique Provisions/Clauses for Commercial Item Acquisitions has been updated to reflect the most current text of provisions/clauses authorized for use in commercial item acquisitions. The matrix is available at https://acquisition.navy.mil/rda/home/policy_and_guidance/nmcars.
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- Notes: N/A

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