

# DFARS Procedures, Guidance, and Information

## PGI 201—Federal Acquisition Regulations System

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*(Revised July 29, 2009)*

### PGI 201.1--PURPOSE, AUTHORITY, ISSUANCE

#### PGI 201.109 Statutory acquisition-related dollar thresholds – adjustment for inflation.

Statutory acquisition-related dollar thresholds are reviewed every 5 years to calculate adjustment for inflation, as required by Section 807 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375). The matrix showing the most recent escalation adjustments of statutory acquisition-related dollar thresholds in the DFARS is available [here](#).

#### PGI 201.170 Peer Reviews.

##### PGI 201.170-1 Objective of Peer Reviews.

The objective of Peer Reviews is to—

- (a) Ensure that DoD contracting officers are implementing policy and regulations in a consistent and appropriate manner;
- (b) Continue to improve the quality of contracting processes throughout DoD; and
- (c) Facilitate cross-sharing of best practices and lessons learned throughout DoD.

##### PGI 201.170-2 Pre-award Peer Reviews.

(a) Pre-award Peer Reviews for competitive acquisitions shall be conducted prior to each of the following three phases of the acquisition:

- (1) Issuance of the solicitation.
- (2) Request for final proposal revisions (if applicable).
- (3) Contract award.

(b) Pre-award Peer Reviews for non-competitive acquisitions shall be conducted prior to each of the following two phases of the acquisition:

- (1) Negotiation.
- (2) Contract award.

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### PGI 201.170-3 Post-award Peer Reviews of service contracts.

(a) If the base period of performance is greater than one year, the first post-award Peer Review should take place at the mid-point of the base period of performance. If the base period of performance is one year or less, the post-award Peer Review should occur prior to exercise of the first option year. Post-award Peer Reviews should occur prior to every option period thereafter.

(b) Post-award Peer Reviews shall be focused on—

- (1) The adequacy of competition;
- (2) An assessment of actual contract performance; and
- (3) The adequacy of Government surveillance of contract performance.

### PGI 201.170-4 Administration of Peer Reviews.

(a) The results and recommendations that are products of Peer Reviews are intended to be advisory in nature. Reviews will be conducted in a manner that preserves the authority, judgment, and discretion of the contracting officer and the senior officials of the acquiring activity.

(b) Peer Review teams will be comprised of senior contracting officials and attorneys from throughout DoD. Teams will include civilian employees or military personnel external to the department, agency, or component that is the subject of the Peer Review.

(c) Generally, each review will be conducted at the location of the executing contracting organization.

(d) A list of the documents that must be made available to the review team, along with the specific elements the team will examine, is provided at the end of this PGI section.

(e) The review team observations and recommendations will be communicated to the contracting officer and the senior procurement official immediately upon completion of a review.

(f) The contracting officer shall document the disposition of all Peer Review recommendations (i.e., state whether the recommendation will be followed and, if not, why not) as a memorandum for the record in the applicable contract file, prior to contract award (or prior to the exercise of an option for post-award Peer Reviews), and shall provide a copy of the memorandum to: Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), 3060 Defense Pentagon, Washington, DC 20301-3060.

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<p style="text-align: center;"><b>Pre-Award Peer Reviews Required Documents and Elements</b></p>
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**Required Documents:** At a minimum, Peer Review teams shall have access to the following documents (as applicable):

1. The requirements document;
2. The acquisition strategy, or acquisition plan;
3. The source selection plan;
4. The initial Request for Proposals (RFP) and all amendments to include what, if any, RFP requirements (technical and contractual) were changed and why;
5. The Source Selection Evaluation Board (SSEB) analysis and findings to ensure the evaluation of offers was consistent with the Source Selection Plan and RFP criteria;
6. Any meeting minutes memorializing discussions between the Government and offerors;
7. All evaluation notices generated as a result of deficiencies in the offerors' proposals as well as the offerors' responses to those evaluation notices;
8. All minutes memorializing the conduct of Source Selection Advisory Council (SSAC) deliberations held to date;
9. The offerors' responses to the request for Final Proposal Revision;
10. The final SSAC deliberations;
11. The final SSA determination and source selection decision;
12. Award/incentive fee arrangements, documentation of any required HCA D&Fs regarding non-availability of objective criteria;
13. Justification and Approval for use of non-competitive procedures; and
14. Documentation of pre-negotiation objectives, cost/price negotiation and the assessment of contractor risk in determining profit or fee.

**Elements to be addressed:**

1. The process was well understood by both Government and Industry;
2. Source Selection was carried out in accordance with the Source Selection Plan and RFP;
3. The SSEB evaluation was clearly documented;
4. The SSAC advisory panel recommendation was clearly documented;
5. The SSA decision was clearly derived from the conduct of the source selection process;
6. All source selection documentation is consistent with the Section M evaluation criteria; and
7. The business arrangement.

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<p style="text-align: center;"><b>Post-Award Peer Reviews Required Documents and Elements</b></p>
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**Required Documents:** At a minimum, Peer Review teams shall have access to the following documents (as applicable):

1. The requirements document;
2. The business arrangement, including business case analysis;
3. Market research documentation;
4. The business clearance, including documentation of cost/price negotiation and the assessment of contractor risk in determining profit or fee.
5. Contractor surveillance documentation to include metrics, quality assurance surveillance plans; and
6. The contract and modifications thereof.

**Elements to be addressed, at a minimum, in every post-award review:**

1. Contract performance in terms of cost, schedule, and requirements;
2. Use of contracting mechanisms, including the use of competition, the contract structure and type, the definition of contract requirements, cost or pricing methods, the award and negotiation of task orders, and management and oversight mechanisms;
3. Contractor's use, management, and oversight of subcontractors;
4. Staffing of contract management and oversight functions; and
5. Extent of any pass-throughs, and excessive pass-through charges by the contractor (as defined in section 852 of the National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364).

**Elements to be addressed in post-award reviews of contracts under which one contractor provides oversight for services performed by other contractors:**

1. Extent of the DoD component's reliance on the contractor to perform acquisition functions closely associated with inherently governmental functions as defined in 10 U.S.C. 2383(b)(3); and
2. The financial interest of any prime contractor performing acquisition functions described in paragraph (1) in any contract or subcontract with regard to which the contractor provided advice or recommendations to the agency.

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(Revised July 29, 2009)

### PGI 204.6—CONTRACT REPORTING

#### PGI 204.602 General.

(1) *Helpful documents.* The Federal Procurement Data System (FPDS) website at <https://www.fpds.gov> provides useful documents and on-line training to assist with FPDS data entry. Key manuals can be found under “Downloads” at the FPDS Project Site at <http://www.fpdsng.com>, to include:

(i) FPDS Data Element Dictionary – The data dictionary outlines all relevant information for each data field. It identifies whether a data field is Required, Optional, or Not Required, for each type of data entry screen (Awards, Indefinite Delivery Vehicles, and Transactions/Modifications) broken out by civilian agencies and DoD. It also identifies the source of data entry (e.g., Contracting Officer, Central Contractor Registration, FPDS); the format of the field; and whether the field input is derived from entries in other fields. At the back of the Data Dictionary is a useful summary “J3 DoD Use Case Summary.” If a data field is identified as “Not Required,” it may mean that the data is pre-populated from another source, such as the Central Contractor Registration for vendor data, or the originating contract action report if the current action is referencing a previously reported award.

(ii) FPDS Data Validations – This document identifies all the validation rules that are applied to data entry. The majority of the rules apply Government-wide. DoD specific validation rules appear at “J5.5.1 DoD Specific Validations.”

(iii) FPDS Users Manual – This manual provides guidance on the various types of data entry screens and addresses whether a particular field is: [R] – requires contracting officer/buyer entry; [A] – pre-populated by FPDS or a contract writing system, if using machine-to-machine process; or [C] – calculated by FPDS for each type of data entry screen. However, the nature of the field is determined based on Government-wide requirements. To determine DoD-specific requirements, refer to J3 “DoD Use Case Summary” in the FPDS Data Element Dictionary.

(2) *Reporting technical or policy issues.*

(i) *Technical issues.* To report an FPDS technical issue—

(A)(1) Users of the Standard Procurement System (SPS) should contact their local SPS Help Desk (authorized SPS caller), who will then contact the CACI SPS Help Desk, by phone at 1-800-234-7453 or by e-mail at [sps.helpdesk@caci.com](mailto:sps.helpdesk@caci.com);

(2) Users of other contract writing systems should contact the local contract writing system administrator to determine the appropriate procedures; and

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(3) Web users should contact their local system administrator, who will then contact the FPDS Help Desk; or

(B) If the issue is an obvious FPDS technical issue that needs to be documented and corrected by the system, the user should contact the FPDS Help Desk, by phone at 703-390-5360 or by e-mail at [fpdssupport@gce2000.com](mailto:fpdssupport@gce2000.com). When e-mailing the FPDS Help Desk, also copy the applicable agency representative identified in paragraph (2)(iii) of this section.

(ii) *Policy issues.* Report policy issues to the applicable agency representative identified in paragraph (2)(iii) of this section.

(iii) *Agency representatives.* Department/agency FPDS representatives are as follows:

(A) Army.

Lorraine Scott, [Lorraine.Scott2@us.army.mil](mailto:Lorraine.Scott2@us.army.mil), 804-734-2146.  
Angela Hong (Technical), [angela.hong@us.army.mil](mailto:angela.hong@us.army.mil), 703-681-9783.  
Stephanie Mullen, [stephanie.mullen@us.army.mil](mailto:stephanie.mullen@us.army.mil), 703-681-5552.

(B) Navy.

Patricia Coffey, [patricia.coffey@navy.mil](mailto:patricia.coffey@navy.mil), 202-685-1279.  
Todd Hoover, [todd.hoover@navy.mil](mailto:todd.hoover@navy.mil), 717-605-2469.  
Ruby Hookfin, [ruby.hookfin@navy.mil](mailto:ruby.hookfin@navy.mil), 202-781-2896.

(C) Air Force.

Susan Haskew, [susan.haskew.ctr@pentagon.af.mil](mailto:susan.haskew.ctr@pentagon.af.mil), 703-588-7268.  
Milton Dillard, [milton.dillard@pentagon.af.mil](mailto:milton.dillard@pentagon.af.mil), 703-588-7014.

(D) Defense Logistics Agency.

Judy Lee, [judy.lee@dla.mil](mailto:judy.lee@dla.mil), 703-767-1376.

(E) Standard Procurement System (SPS).

Susan Reier, [susan.reier@bta.mil](mailto:susan.reier@bta.mil), 703-601-7412.  
Rene Soriano, [rene.soriano@bta.mil](mailto:rene.soriano@bta.mil), 703-601-7414.

(F) Defense Manpower Data Center (for overall DoD reporting).

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Brian Davidson, [brian.davidson@osd.pentagon.mil](mailto:brian.davidson@osd.pentagon.mil), 703-588-0413.

Paul Gaughan, [paul.gaughan@osd.pentagon.mil](mailto:paul.gaughan@osd.pentagon.mil), 703-588-0405.

Richard Hardy, [rich.hardy@osd.pentagon.mil](mailto:rich.hardy@osd.pentagon.mil), 703-588-0402.

Ellen Ainaire, [ellen.ainaire@osd.pentagon.mil](mailto:ellen.ainaire@osd.pentagon.mil), 703-588-0673.

### (G) Business Transformation Agency (BTA).

Gary Pugliano, [gary.pugliano@bta.mil](mailto:gary.pugliano@bta.mil), 703-607-2066.

Adarryl Roberts, [adarryl.roberts@bta.mil](mailto:adarryl.roberts@bta.mil), 703-607-3767.

### (H) Office of the Secretary of Defense, Defense Procurement.

Lisa Romney, [lisa.romney@osd.mil](mailto:lisa.romney@osd.mil), 703-602-8675.

Teresa Brooks, [teresa.brooks@osd.mil](mailto:teresa.brooks@osd.mil), 703-697-6710.

### (I) Office of Small Business Programs.

Carol Brown, [carol.a.brown@osd.mil](mailto:carol.a.brown@osd.mil), 703-604-0157, x147.

## PGI 204.606 Reporting data.

### (1) *Methods of reporting to FPDS.*

#### (i) *Individual contract action report (CAR) (one CAR per contract action).*

The normal method of reporting to FPDS is through the use of individual CARs. However, see paragraphs (1)(ii) and (iii) of this section for exceptions to individual reporting.

#### (ii) *Multiple CARs (more than one CAR per contract action).*

##### (A) Prepare multiple CARs if—

(1) The action includes foreign military sales (FMS) requirements in addition to non-FMS requirements.

(2) The action includes more than one type of contract (e.g., fixed-price, cost-plus-fixed-fee) and any of the types has a dollar value greater than \$500,000. Use a separate CAR for each contract type.

(3) The action includes civilian (non-DoD) Federal agency funded requirements and DoD-funded requirements.

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(B) The following multiple CAR transaction identification numbers have been established for reporting multiple CARs when the Procurement Desktop Defense (PD2) application is used (other contract writing applications may use different codes):

Transaction Type	Transaction Number
DoD-Cost	1
DoD-Cost-Sharing	2
DoD-CPAF	3
DoD-CPFF	4
DoD-CPIF	5
DoD-FFP	6
DoD-FP-EPA	7
DoD-FP-LOE	8
DoD-FPAF	9
DoD-FPI	10
DoD-FPR	11
DoD-LH	12
DoD-TM	13
FMS	14
Non-DoD	15
Non-FMS	16
DoD	17

(iii) *Express reporting (consolidated reporting of multiple contract actions, to be submitted at least monthly).*

(A) Express reporting may be used for—

(1) Multiple contract actions against a single contract or agreement, when monthly volume of actions is such that individual contract action reporting is overly burdensome (e.g., orders placed by the Defense Commissary Agency for resale; installation housing maintenance; and recurring blanket purchase agreement actions);

(2) Multiple contract actions accomplished away from the contracting office, such as ships away from home port; contingency, humanitarian, or peacekeeping operations; or other remote deployments;

(3) Multiple contract actions for energy-related supplies and associated services accomplished by the Defense Energy Support Center; and

(4) Orders under communications service agreements for local dial tone services, in accordance with agency procedures.



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(B) When express reports reflect more than one contractor for overseas actions, use the appropriate generic DUNS number.

(C) Express reports must be submitted no less frequently than monthly.

(2) *Entering competition-related data in FPDS.*

(i) Multiple or single award indefinite-delivery contracts (FPDS Element 6E).

(A) Multiple Award – Select Multiple Award when the contract is—

(1) One of several indefinite-delivery indefinite-quantity (IDIQ) contracts awarded under a single solicitation in accordance with FAR 16.504(c);

(2) One of several blanket purchase agreements awarded against a Federal Supply Schedule in accordance with FAR 8.405-3; or

(3) Any other IDIQ contract that an agency enters into with two or more sources under the same solicitation that requires contracting officers to compare or compete their requirements among several vendors.

(B) Single Award – Select Single Award when the contract does not satisfy the above criteria for a multiple award.

(ii) Solicitation procedures (FPDS Element 10M). When only one source is solicited, enter Single Source Solicited. Otherwise, select the appropriate entry from the following list:

(A) Single Source Solicited – Use this code if no solicitation procedure was used or only one source is solicited for the action, to include orders placed against multiple award contracts where only a single source was solicited.

(B) Negotiated Proposal/Quote – Use this code for contract actions that use negotiated procedures (FAR Part 12, 13, or 15).

(C) Sealed Bid – Use this code for contract actions using sealed bid procedures (FAR Part 14).

(D) Two Step – Use this code for contract actions that use a combination of sealed bids and negotiated procedures (FAR 6.102).

(E) Architect-Engineer FAR 6.102 – Use this code if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

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(F) Basic Research – Use this code if the action resulted from a competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

(G) Alternative Sources – Use this code if the action resulted from use of procedures that provided for full and open competition after exclusion of sources to establish or maintain alternative sources pursuant to FAR 6.202.

(H) Multiple Award Fair Opportunity – Use this code for orders placed against multiple award contracts that provided for fair opportunity pursuant to DFARS 208.405-70 or FAR 16.505/DFARS 216.505-70.

(iii) Extent Competed (FPDS Element 10A). This field is a system-derived field for DoD. FPDS derives a value for Extent Competed based upon the contracting officer's entries in the FPDS fields. The entries for Type of Set-Aside and Reason Not Competed must track to the acquisition documents for the contract action. The options DoD uses for Extent Competed are identified below. Extent Competed for orders placed by DoD is pulled from the basic contract.

(A) Full and Open Competition – The system will derive this code for the action if it resulted from an award pursuant to FAR 6.102(a), Sealed bids; FAR 6.102(b), Competitive proposals; FAR 6.102(c), Combination; or any other competitive method that did not exclude sources of any type.

(B) Not Available for Competition – The system will derive this code if the action is not available for competition (e.g., single source actions authorized by statute, international agreement, for utilities, or for resale).

(C) Not Competed – The system will derive this code when the action is not competed.

(D) Full and Open Competition after Exclusion of Sources – This code is derived when sources are excluded before competition. (Note: This terminology is broader than FAR Subpart 6.2 (which includes set-aside actions and actions to establish or maintain alternate sources) in that it also includes actions justified by a justification and approval that provided for competition.)

DoD does not use any other of the FPDS Extent Competed codes, to include Follow-On to Competed Action (which is captured in the Reason Not Competed field in FPDS).

(iv) Statutory Exception to Fair Opportunity (FPDS Element 10R). This field is the basis for determining whether competition is provided for on orders placed against multiple award contracts. Accordingly, this field must be entered for orders against IDIQ contracts coded multiple award, to include DoD contracts, Federal Supply Schedule contracts, and

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Government-wide contracts. If a Federal Supply Schedule contract or a Government-wide multiple-award contract is not coded as a multiple award vehicle, thereby preventing completion of this field, the FPDS user should notify his or her department/agency representative so that the contracting office for the multiple award contract can be notified and pursue correction.

(A) Urgency – Use this code if the action was justified pursuant to FAR 16.505(b)(2)(i).

(B) Only One Source – Other – Use this code if the action was justified pursuant to FAR 16.505(b)(2)(ii).

(C) Follow-On Delivery Order Following Competitive Initial Order – Use this code if the action was justified pursuant to FAR 16.505(b)(2)(iii).

(D) Minimum Guarantee – Use this code if it was necessary to place an order to satisfy a minimum amount guaranteed to the contractor. See FAR 16.505(b)(2)(iv).

(E) Other Statutory Authority – Use this code if a statute expressly authorizes or requires that the purchase be made from a specified source. See DFARS 208.405-70(b)(1).

(F) No Exception – Fair Opportunity Given - Use this code if fair opportunity was given pursuant to DFARS 208.405-70 or FAR 16.505/DFARS 216.505-70.

(3) *Actions not reported.* In addition, to the types of actions listed in FAR 4.606(c), do not report the following types of actions to FPDS:

(i) Orders placed by ordering officers against indefinite-delivery vehicles awarded by—

(A) The United States Transportation Command (USTRANSCOM) or its components for decentralized transportation-related services. USTRANSCOM will report these orders. Contracting officers shall submit consolidated reports of orders (bookings/bills of lading) at least annually to USTRANSCOM; or

(B) The Defense Energy Support Center (DESC) for energy-related supplies and associated services. DESC will report these orders.

(ii) Purchases made under classified contracts.

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*(Added July 29, 2009)*

### PGI 204.11—CENTRAL CONTRACTOR REGISTRATION

#### PGI 204.1103 Procedures.

(i) Use the CCR database as the primary source of contractor information for contract award and administration, to include supporting contract writing, management, and administration systems. Do not request or use contractor information from other sources, unless another source, such as the On-Line Representations and Certifications Application (ORCA), is specifically authorized. At a minimum, supporting systems shall use the CCR database as the authoritative source for the following data elements, as applicable by system, when CCR is required in accordance with FAR Subpart 4.11:

- (A) Data Universal Number System (DUNS) Number.
- (B) DUNS+4 Number.
- (C) Commercial and Government Entity (CAGE) Code.
- (D) Taxpayer Identification Number (TIN).
- (E) Legal Business Name.
- (F) Doing Business As (DBA) Name.
- (G) Physical Address.
- (H) Mailing Address.
- (I) Electronic Funds Transfer (EFT) information (includes American Banking Association (ABA) Routing Number, Account Number, and Account Type).

(ii) Ensure that CCR non-disclosure requirements regarding TIN and EFT information are followed.

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(Added July 29, 2009)

### PGI 217.74—UNDEFINITIZED CONTRACT ACTIONS

#### PGI 217.7405 Plans and reports.

(1) By October 31 and April 30 of each year, departments and agencies shall submit an updated Consolidated UCA Management Plan, and a Consolidated UCA Management Report addressing each UCA exceeding \$5 million, to:

Deputy Director, Defense Procurement and Acquisition Policy  
(Contract Policy and International Contracting)  
3060 Defense Pentagon  
Washington, DC 20301-3060.

(2) The Consolidated UCA Management Plan and the Consolidated UCA Management Report shall be prepared using the following formats:

(i) *Consolidated UCA Management Plan:*

Title: Consolidated Undefinitized Contract Action (UCA) Management Plan

1. Applicable military department, defense agency, or DoD component.
  - a. Headquarters point of contact.
  - b. Contact information.
2. Description of actions planned and taken to ensure:
  - a. Appropriate use of UCAs.
  - b. Timely definitization of UCAs.
  - c. Minimized obligation amounts at the time of UCA award, consistent with the contractor's requirements for the undefinitized period.
  - d. In determining profit/fee, appropriate recognition of the contractor's reduced cost risk during the undefinitized performance period.
  - e. Documentation of the risk assessment in the contract file.
3. Milestones for completion of planned events.

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4. Other.

(ii) *Consolidated UCA Management Report:*

The Consolidated UCA Management Report format is available [here](#).

## Consolidated Undefined Contract Action (UCA) Management Report

Contract No.	Task Order/ Delivery Order No.	Date Awarded	Program Description/ Reason for Award	Not-to-Exceed (NTE) Price	Amount Obligated	% of NTE Price Obligated	Date Definitization Scheduled	Date Qualifying Proposal Received	No. of Days Definitization Overdue	Date of Definitization Mod.	Total Amount at Definitization	Status/Comments
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Note: For UCAs greater than \$100 million, provide a copy of the DD Form 1547, Record of Weighted Guidelines, if required for the contract action being reported.

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### **PGI 223—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace**

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*(Revised July 29, 2009)*

#### **PGI 223.4—USE OF RECOVERED MATERIALS**

##### **PGI 223.405 Procedures.**

Departments and agencies must centrally collect information submitted in accordance with the clause at FAR 52.223-9 for reporting to the Office of the Deputy Under Secretary of Defense (Installations and Environment). The information is collected in the Federal Procurement Data System (FPDS).



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## PGI 225—Foreign Acquisition

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*(Revised July 29, 2009)*

### **PGI 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION**

#### **PGI 225.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.**

##### **PGI 225.7002-1 Restrictions.**

(a)(2)(A) The following are examples, not all-inclusive, of Federal Supply Classes that contain items of clothing:

(1) Clothing apparel (such as outerwear, headwear, underwear, nightwear, footwear, hosiery, or handwear) listed in Federal Supply Class 8405, 8410, 8415, 8420, 8425, 8450, or 8475.

(2) Footwear listed in Federal Supply Class 8430 or 8435.

(3) Hosiery, handwear, or other items of clothing apparel, such as belts and suspenders, listed in Federal Supply Class 8440 or 8445.

(4) Badges or insignia listed in Federal Supply Class 8455.

(B) The Federal Supply Classes listed in paragraph (a)(2)(A) of this subsection also contain items that are not clothing, such as—

(1) Visors;

(2) Kevlar helmets;

(3) Handbags; and

(4) Plastic identification tags.

(C) Each item should be individually analyzed to determine if it is clothing, rather than relying on the Federal Supply Class alone to make that determination.

(D) The fact that an item is excluded from the foreign source restriction of the Berry Amendment applicable to clothing does not preclude application of another Berry Amendment restriction in DFARS 225.7002-1 to the components of the item.

(E) Small arms protective inserts (SAPI plates) are an example of items added to, and not normally associated with, clothing. Therefore, SAPI plates are not covered under the Berry Amendment as clothing. However, fabrics used in the SAPI plate are

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still subject to the foreign source restrictions of the Berry Amendment. If the fabric used in the SAPI plate is a synthetic fabric or a coated synthetic fabric, the fibers and yarns used in the fabric are not covered by the Berry Amendment, because the fabric is a component of an end product that is not a textile product (see DFARS 225.7002-2(o)).

*Example:* A SAPI plate is compliant with the Berry Amendment if the synthetic fiber or yarn is obtained from foreign country X and woven into synthetic fabric in the United States, which is then incorporated into a SAPI plate manufactured in foreign country Y.

### PGI 225.7002-2 Exceptions.

(b) *Domestic nonavailability determinations.*

(3) *Defense agencies other than the Defense Logistics Agency.*

(A) A defense agency requesting a domestic nonavailability determination must submit the request, including the proposed determination, to—

Director, Defense Procurement and Acquisition Policy  
ATTN: OUSD(AT&L)DPAP(CPIC)  
3060 Defense Pentagon  
Washington, DC 20301-3060.

(B) The Director, Defense Procurement and Acquisition Policy, will forward the request to the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) as appropriate.

(4) *Reciprocal use of domestic nonavailability determinations (DNADs).*

(A) The military departments and the Defense Logistics Agency should establish approval authority, policies, and procedures for the reciprocal use of DNADs. General requirements for broad application of DNADs are as follows:

(1) A class DNAD approved by the USD(AT&L), the Secretary of a military department, or the Director of the Defense Logistics Agency may be used by USD(AT&L), another military department, or the Defense Logistics Agency, provided the same rationale applies and similar circumstances are involved.

(2) DNADs should clearly establish—

(i) Whether the determination is limited or unlimited in duration; and

(ii) If application outside the approving military department is appropriate.

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(3) Upon approval of a DNAD, if application outside the approving military department is appropriate, the approving department shall provide a copy of the DNAD, with information about the items covered and the duration of the determination, to—

Director, Defense Procurement and Acquisition Policy  
ATTN: OUSD(AT&L)DPAP(CPIC)  
3060 Defense Pentagon  
Washington, DC 20301-3060.

(4) Before relying on an existing DNAD, contact the approving office for current guidance as follows:

(i) USD(AT&L): DPAP/CPIC, 703-697-9352.

(ii) Army: ASA/ALT, 703-604-7006.

(iii) Navy: DASN (Acquisition and Logistics Management), 703-614-9600.

(iv) Air Force: AQCK, 703-588-7040.

(v) Defense Logistics Agency: J-71, Acquisition Policy Division, 703-767-1461.

(B) DNADs approved by USD(AT&L), that are currently available for reciprocal use, are listed at <http://www.acq.osd.mil/dpap/cpic/ic/>. To access the list: Under “Topics,” click on “Read More” in the “Berry Amendment” bar; then click on “Read More” at the bottom of the page under “DNADs.”

### **PGI 225.7003 Restrictions on acquisition of specialty metals.**

#### **PGI 225.7003-2 Restrictions.**

(a)(i) This restriction applies to the item containing the specialty metal, not just the specialty metal, as was true when the restriction was part of 10 U.S.C. 2533a. The previous practice of withholding payment while conditionally accepting noncompliant items is not permissible for—

(A) Contracts entered into on or after November 16, 2006; or

(B) New procurements or out-of-scope changes accomplished on or after November 16, 2006, through the use of bilateral modifications to contracts originally awarded prior to November 16, 2006.

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(ii) Consistent with the definition of “component” in the clause at DFARS 252.225-7009, a component is any item supplied to the Government as part of an end item or of another component. Items that are not incorporated into any of the items listed in DFARS 225.7003-2(a) are not components of those items. For example, test equipment, ground support equipment, or shipping containers are not components of the missile system.

### **PGI 225.7003-3 Exceptions.**

A department or agency requesting a determination or approval from USD(AT&L) in accordance with DFARS 225.7003-3(b)(5), (c), or (d) shall submit the request, including the proposed determination, to—

Director, Defense Procurement and Acquisition Policy  
ATTN: OUSD(AT&L)DPAP(CPIC)  
3060 Defense Pentagon  
Washington, DC 20301-3060.

The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.

#### *(b)(2) Report of COTS items.*

If a department or agency uses the exception at DFARS 225.7003-3(b)(2) for an acquisition of COTS end items valued at \$5 million or more per item, the department or agency shall address use of the exception in a year-end report, to be prepared and submitted as follows:

(A) Entitle the report “COTS Specialty Metal Exceptions Granted During Fiscal Year \_\_\_\_.”

(B) For each excepted COTS item purchased during the fiscal year, include in the report, at a minimum, the applicable—

- (1) Contract number and any applicable delivery order number;
- (2) Dollar value; and
- (3) Item description.

(C) Submit the report by October 31 of each year to:

Director, Defense Procurement and Acquisition Policy  
ATTN: OUSD(AT&L)DPAP(CPIC)  
3060 Defense Pentagon

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(b)(5) *Domestic specialty metals nonavailable as and when needed.*

(A) *Determining availability.*

(1) FAR 15.402 requires that contracting officers purchase supplies and services at fair and reasonable prices. Thus, contracting officers must determine whether any increase in contract price that results from providing compliant specialty metal is fair and reasonable, given the circumstances of the particular situation. In those cases where the contracting officer determines that the price would not be fair and reasonable, the Secretary of the military department concerned may use that information in determining whether the unreasonable price causes the compliant metal to be effectively “nonavailable.” Where these “reasonableness” limits should be drawn is a case-by-case decision.

(2) A similar approach may be used to determine whether delays associated with incorporating compliant specialty metals into items being acquired results in the metals being effectively nonavailable.

(B) *Class domestic nonavailability determinations (DNADS).* Class DNADS approved by USD(AT&L), that are available for reciprocal use in contracts issued before July 26, 2008, can be found at <http://www.dema.mil/dnad/>. These determinations are *not* authorized for use in contracts issued on or after July 26, 2008.

(b)(6) *Application of specialty metals restrictions to magnets.*

HPM = High performance magnet

COTS = Commercially available off-the-shelf

Magnet made of specialty metal is:	Commercially available, HPM	NOT Commercially available, HPM	COTS, NOT HPM	NOT COTS, NOT HPM
Incorporated into COTS assembly or COTS end item	NOT restricted	*	NOT restricted	*
NOT incorporated into COTS assembly or COTS end item	Restricted	Restricted	NOT restricted	Restricted
Included in 2 percent minimum content?	Cannot be included in 2 percent minimum	Cannot be included in 2 percent minimum	NOT restricted	Can be included in 2 percent minimum

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\* By definition, COTS assemblies and COTS end items will not include a HPM that is not commercially available or any other magnet that is not COTS.

### **PGI 225.7017 Restriction on Ballistic Missile Defense research, development, test, and evaluation.**

#### **PGI 225.7017-3 Exceptions.**

(b) Before awarding a contract to a foreign entity for conduct of ballistic missile defense research, development, test, and evaluation (RDT&E), the head of the contracting activity must certify, in writing, that a U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority must make a determination that will be the basis for that certification, using the following procedures:

- (i) The determination shall—
  - (A) Describe the contract effort;
  - (B) State the number of proposals solicited and received from both U.S. and foreign firms;
  - (C) Identify the proposed awardee and the amount of the contract;
  - (D) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and
  - (E) State that a U.S. firm cannot competently perform the effort at a price equal to, or less than, the price at which the foreign awardee would perform it.
- (ii) When either a broad agency announcement or program research and development announcement is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, use one of the following approaches:
  - (A) The determination shall specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.
  - (B) Alternately, the determination may contain—

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(1) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a broad agency announcement, program research and development announcement, or other solicitation document without any technical guidance from the program office; and

(2) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(iii) Within 30 days after contract award, forward a copy of the certification and supporting documentation to the Missile Defense Agency, ATTN: MDA/DRI, 7100 Defense Pentagon, Washington, DC 20301-7100.

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## PGI 236—Construction and Architect-Engineer Contracts

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*(Revised July 29, 2009)*

### PGI 236.6—ARCHITECT-ENGINEER SERVICES

#### PGI 236.602 Selection of firms for architect-engineer contracts.

##### PGI 236.602-1 Selection criteria.

(a) The evaluation criteria should be project specific. Use the information in the DD Form 1391, FY\_\_ Military Construction Project Data, when available, and other pertinent project data in preparing the evaluation criteria.

(4) Use performance evaluation data from the central data base identified in DFARS 236.201.

(6) The primary factor in A-E selection is the determination of the most highly qualified firm. Also consider secondary factors such as geographic proximity and equitable distribution of work, but do not attribute greater significance to the secondary factors than to qualifications and past performance. Do not reject the overall most highly qualified firm solely in the interest of equitable distribution of contracts.

(A) Consider the volume of work awarded by DoD during the previous 12 months. In considering equitable distribution of work among A-E firms, include small business concerns; historically black colleges and universities and minority institutions; firms that have not had prior DoD contracts; and small disadvantaged business concerns and joint ventures with small disadvantaged business participants if the North American Industry Classification System (NAICS) Industry Subsector of the acquisition is one in which use of a price evaluation adjustment is currently authorized (see FAR 19.201(b)).

(1) Use data extracted from the Federal Procurement Data System (FPDS).

(2) Do not consider awards to overseas offices for projects outside the United States, its territories and possessions. Do not consider awards to a subsidiary if the subsidiary is not normally subject to management decisions, bookkeeping, and policies of a holding or parent company or an incorporated subsidiary that operates under a firm name different from the parent company. This allows greater competition.

(B) Consider as appropriate superior performance evaluations on recently completed DoD contracts.

(C) Consider the extent to which potential contractors identify and commit to small business, to small disadvantaged business (SDB) if the NAICS Industry Subsector of the subcontracted effort is one in which use of an evaluation factor or subfactor for



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participation of SDB concerns is currently authorized (see FAR 19.201(b)), and to historically black college or university and minority institution performance as subcontractors.

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## PGI 253—Forms

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### **PGI 253.204**

*(Removed July 29, 2009)*