

FAR CONTINGENCY CONTRACTING PROVISIONS

The simplified acquisition threshold is increased to \$200,000 for a contract to be awarded and performed, or purchase to be made, outside the United States. (FAR Part 2)

The use of clause 52.225-5, Trade Agreements is waived for acquisitions awarded and performed outside the United States which do not exceed \$200,000. (FAR 25.1101)

DFARS CONTINGENCY CONTRACTING PROVISIONS

Exempts contractors from CCR. (DFARS 204.7302)

Overseas purchases are exempt from the requirement to use purchase cards below the micro-purchase threshold. (DFARS 213.270)

Imprest funds are authorized, without further approval, for overseas transactions at or below the micro-purchase threshold. (DFARS 213.305-5)

A head of an agency may waive limitations on the price ceiling, definitization schedule, and limitations on obligations for undefinitized contract actions if it is determined that the waiver is necessary to support a contingency operation. (DFARS 217.7404-5)

The clause *Transportation of Supplies by Sea (252.247-7023)* is required in all contracts, other than construction contracts, if any of the supplies to be transported are commercial items and are shipped in support of contingency operations. (DFARS 247.573)

DFARS requires DD Form 350 reporting of contract action that exceed \$200,000 and that are in support of contingency operation.

TEXT FOR PROVISIONS CONCERNING CONTINGENCY OPERATIONS FROM FAR & DFRAS

FAR 2 Definition

Simplified acquisition threshold means \$100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a ***contingency*** operation (as defined in 10 U.S.C.101(a)(13)) or a humanitarian or peacekeeping operation (as defined in 10 U.S.C.2302(8) and 41 U.S.C.259(d)), the term means \$200,000.

Subpart 25.11 -- Solicitation Provisions and Contract Clauses

25.1101 -- Acquisition of Supplies.

The following provisions and clauses apply to the acquisition of supplies and the acquisition of services involving the furnishing of supplies.

(c)(1) Insert the clause at 52.225-5, Trade Agreements, in solicitations and contracts valued at \$186,000 or more, if the Trade Agreements Act applies (see 25.401 and 25.403) and the agency has determined that the restrictions of the Buy American Act or Balance of Payments Program are not applicable to U.S.-made end products, unless the acquisition is to be awarded and performed outside the United States in support a ***contingency*** operation or a humanitarian or peacekeeping operation and does not exceed the increased simplified acquisition threshold of \$200,000. If the agency has not made such a determination, the contracting officer must follow agency procedures.

TEXT FROM THE DFARS

SUBPART 204.73—CENTRAL CONTRACTOR REGISTRATION

204.7302 Policy.

Prospective contractors must be registered in the CCR database prior to award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, except for $\frac{34}{34}$ ***;***

(a) Purchases paid for with a Governmentwide commercial purchase card;

(b) Awards made to foreign vendors for work performed outside the United States;

(c) Classified contracts or purchases (see FAR 4.401) when registration in the CCR database, or use of CCR data, could compromise the safeguarding of classified information or national security;

(d) Contracts awarded by deployed contracting officers in the course of military operations, including, but not contingency limited to, operations as defined in 10 U.S.C. 101(a)(13) or

humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies; and
(e) Purchases to support unusual or compelling needs of the type described in FAR 6.302-2.

SUBPART 213.2—ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD

213.270 Use of the Governmentwide commercial purchase card.
Use the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold. This policy applies to all types of contract actions authorized by the FAR unless—

(a) The Deputy Secretary of Defense has approved an exception for an electronic commerce/electronic data interchange system or operational requirement that results in a more cost-effective payment process;

(b)(1) A general or flag officer or a member of the Senior Executive Service (SES) makes a written determination that—

(i) The source or sources available for the supply or service do not accept the purchase card; and

(ii) The contracting office is seeking a source that accepts the purchase card.

(2) To prevent mission delays, if an activity does not have a resident general or flag officer or SES member, delegation of this authority to the level of the senior local commander or director is permitted; or

(c) The purchase or payment meets one or more of the following criteria:

(1) The place of performance is entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) The purchase is a Standard Form 44 purchase for aviation fuel or oil.

(3) The purchase is an overseas transaction by a contracting officer in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

(4) The purchase is a transaction in support of intelligence or other specialized activities addressed by Part 2.7 of Executive Order 12333.

(5) The purchase is for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations.

(6) The payment is made with an accommodation check.

(7) The payment is for a transportation bill.

(8) The purchase is under a Federal Supply Schedule contract that does not permit use of the Governmentwide commercial purchase card.

(9) The purchase is for medical services and—

(i) It involves a controlled substance or narcotic;

(ii) It requires the submission of a Health Care Summary Record to document the nature of the care purchased;

(iii) The ultimate price of the medical care is subject to an independent determination that changes the price paid based on application of a mandatory CHAMPUS Maximum Allowable Charge determination that reduces the Government liability below billed charges;

(iv) The Government already has entered into a contract to pay for the services without the use of a purchase card;

(v) The purchaser is a beneficiary seeking medical care; or

(vi) The senior local commander or director of a hospital or laboratory determines that use of the purchase card is not appropriate or cost-effective. The Medical Prime Vendor Program and the DoD Medical Electronic Catalog Program are two examples where use of the purchase card may not be cost-effective.

SUBPART 213.3—SIMPLIFIED ACQUISITION METHODS

213.305 Imprest funds and third party drafts.

213.305-3 Conditions for use.

(d) Imprest funds are authorized for use without further approval for—

(A) Overseas transactions at or below the micro-purchase threshold in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7); and

(B) Classified transactions.

SUBPART 217.74—UNDEFINITIZED CONTRACT ACTIONS

217.7404 Limitations.

217.7404-2 Price ceiling.

UCAs shall include a not-to-exceed price.

217.7404-3 Definitization schedule.

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of *****

217.7404-4 Limitations on obligations.

The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments).

217.7404-5 Exceptions.

(a) The limitations in 217.7404-2, 217.7404-3, and 217.7404-4 do not apply to UCAs for the purchase of initial spares.

(b) The head of an agency may waive the limitations in 217.7404-2, 217.7404-3, and 217.7404-4 for UCAs if the head of the agency determines that the waiver is necessary to support—

(1) A contingency operation as defined in 10 U.S.C.

101(a)(13); or

(2) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7).

SUBPART 247.5—OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

247.573 Solicitation provision and contract clauses.

(a) Use the provision at 252.247-7022, Representation of Extent of Transportation by Sea, in all solicitations except—

(1) Those for direct purchase of ocean transportation services; or

(2) Those with an anticipated value at or below the simplified acquisition threshold.

(b)(1) Use the clause at 252.247-7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, except—

(i) Those for direct purchase of ocean transportation services; or

(ii) Those with an anticipated value at or below the simplified acquisition threshold.

(2) Use the clause with its Alternate I in other than construction contracts, if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations.

(3) Use the clause with its Alternate II in other than construction contracts, if any of the supplies to be

transported are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) Use the clause at 252.247-7024, Notification of Transportation of Supplies by Sea, in all contracts for which the offeror made a negative response to the inquiry in the provision at 252.247-7022, Representation of Extent of Transportation by Sea.

(d) Use the clause at 252.247-7025, Reflagging or Repair Work, in all time charter solicitations and contracts for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.571(c).

252.247-7023 Transportation of Supplies by Sea.

As prescribed in 247.573(b)(1), use the following clause:

TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

ALTERNATE I (MAR 2000)

As prescribed in 247.573(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are-

(i) Noncommercial items; or

(ii) Commercial items that-

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

ALTERNATE II (MAR 2000)

As prescribed in 247.573(b)(3), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are-

(i) Noncommercial items; or

(ii) Commercial items that-

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

253.204-70 DD Form 350, Individual Contracting Action Report.

(e) Part E of the DD Form 350. Part E gathers data on specialized

items that may not become permanent reporting elements.

(1) LINE E1, CONTINGENCY, HUMANITARIAN, OR PEACEKEEPING OPERATION.

(i) Enter code Y on Line E1 if the contracting action exceeds \$200,000 and is in support of-

(A) A contingency operation as defined in 10 U.S.C. 101(a)(13); or

(B) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

(ii) Otherwise, leave Line E1 blank.