

DFARS Procedures, Guidance, and Information

PGI 204—Administrative Matters

(Revised April 26, 2007)

PGI 204.6—CONTRACT REPORTING

PGI 204.670 Contract action reporting requirements.

PGI 204.670-1 Definitions.

As used in this section and in PGI 253.204-70—

(a) “Contract administration office” means an office, other than the contracting office, that awards or executes contracting actions on behalf of the contracting office, including actions relating to the settlement of terminated contracts.

(b) “Contracting action” means any action related to the purchasing, renting, or leasing of supplies, services, or construction. The term does not include grants, cooperative agreements, or training authorizations. The term includes, but is not limited to, the following:

- (1) Definitive contracts, including notices of award.
- (2) Letter contracts.
- (3) Purchase orders.
- (4) Purchases made using the Governmentwide commercial purchase card.
- (5) Actions for purchase of land or rental or lease of real property.
- (6) Orders under existing contracts or agreements, e.g.—
 - (i) Orders against basic ordering agreements, including service orders issued on DD Form 1164, Service Order for Personal Property, by installation transportation offices;
 - (ii) Calls against blanket purchase agreements;
 - (iii) Job orders;
 - (iv) Task orders;
 - (v) Delivery orders;
 - (vi) Communication services authorizations; and
 - (vii) Notices of termination or cancellation.

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(7) Contract modifications, e.g.—

- (i) Change orders;
- (ii) Supplemental agreements;
- (iii) Funding actions; and
- (iv) Option exercises.

(c) “Departmental data collection points” means—

(1) For the Army (including Corps of Engineers Civil Works):

Department of the Army
ATTN: SAAL-PA
5109 Leesburg Pike, Suite 302
Falls Church, VA 22041-3201

(2) For the Navy:

Fleet Industrial Supply Center
Norfolk Detachment Washington, DC
ATTN: PMRS, Code 02W4.A
1014 N Street SE, Suite 400
Washington Navy Yard
Washington, DC 20374-5014

(3) For the Air Force:

SAF/AQCI
1060 Air Force Pentagon
Washington, DC 20330-1060

(4) For the Defense Logistics Agency:

Headquarters, Defense Logistics Agency
ATTN: Acquisition, Technical and Supply Directorate
(Policy Branch)
8725 John J. Kingman Road, Suite 3147
Fort Belvoir, VA 22060-6221

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(5) For the Defense Contract Management Agency (excluding contract administration office responsibilities in PGI 204.670-4):

Defense Contract Management Agency
ATTN: DCMA-DSP
6350 Walker Lane, Suite 300
Alexandria, VA 22310-3226

(6) For other DoD contracting activities:

Department of the Army
ATTN: SAAL-PA
5109 Leesburg Pike, Suite 302
Falls Church, VA 22041-3201

(d) “United States and outlying areas” is defined in Federal Information Processing Standard Publication (FIPS PUB) 55, Guideline: Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States and Outlying Areas. Outlying areas are—

- (1) American Samoa;
- (2) The Federated States of Micronesia;
- (3) Guam;
- (4) The Marshall Islands;
- (5) Northern Mariana Islands;
- (6) The Trust Territory of Palau;
- (7) Puerto Rico;
- (8) The U.S. Minor Outlying Islands; and
- (9) The U.S. Virgin Islands.

PGI 204.670-2 Reportable contracting actions.

(a) Except as provided in paragraph (c) of this subsection, complete a DD Form 350 for the following types of contracting actions in accordance with the instructions in PGI 253.204-70:

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- (1) Actions that obligate or deobligate more than \$2,500.
- (2) Actions that obligate or deobligate \$2,500 or less and are—
 - (i) Under a very small business set-aside;
 - (ii) Requirements that DoD is processing for a non-DoD Federal agency;
 - (iii) Multiple reports required by PGI 204.670-6(c)(1) to separate foreign military sales (FMS) requirements from non-FMS requirements; or
 - (iv) In a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR Subpart 19.10), except for—
 - (A) Foreign military sales;
 - (B) Orders or modifications under Federal schedules;
 - (C) Actions with government agencies;
 - (D) Actions with non-U.S. business firms; and
 - (E) Actions where the place of performance is other than the United States and its outlying areas.
- (3) Actions that establish an indefinite-delivery contract not reported under other paragraphs of this subsection.
- (4) Actions of any dollar value that the contracting office chooses to report on a DD Form 350.
 - (b) Do not report the following types of contracting actions on either the DD Form 350:
 - (1) Imprest fund transactions, SF 44 purchases, and micro-purchases obtained through use of the Governmentwide commercial purchase card.
 - (2) Transactions that cite only nonappropriated funds (Treat funds held in trust accounts for foreign governments as appropriated funds).
 - (3) Transactions for purchase of land, or rental or lease of real property, when the General Services Administration (GSA) executes the action.
 - (4) Orders from GSA stock and the GSA Consolidated Purchase Program.

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(5) Transactions that involve Government bills of lading or transportation requests, except orders placed under Regional Storage Management Office basic ordering agreements.

(6) Requisitions transferring supplies within or among the departments or agencies.

(7) Orders placed by other contracting activities against indefinite-delivery contracts awarded by the—

(i) Military Surface Deployment and Distribution Command;

(ii) Defense Energy Support Center for energy related supplies and associated services that are characterized by decentralized ordering; or

(iii) Defense Supply Center, Richmond, for petroleum products.

PGI 204.670-3 Contracting office responsibilities.

(a) Prepare the appropriate type of DD Form 350 (see PGI 204.670-6) in accordance with the instructions in PGI 253.204-70, for all reportable contracting actions (see PGI 204.670-2(a)), including actions accomplished by contract administration offices on behalf of the contracting office.

(b) Complete the DD Form 350 when funds are obligated or deobligated or when an indefinite-delivery contract is established with no initial obligation of funds. For actions accomplished by a contract administration office, complete the DD Form 350 upon receipt of the contractual instrument annotated “DD FORM 350 REPORTING COPY.”

(c) Submit all DD Forms 350 for the calendar month to the departmental data collection point (see PGI 204.670-1(c)) in accordance with departmental or agency procedures.

(d) Prepare and submit a corrected or canceling DD Form 350 as required in accordance with departmental data collection point instructions.

(e) Establish a control system for assigning report numbers to DD Forms 350 (Line A2 of the DD Form 350). The number must have six positions and may be any combination of alpha or numeric characters. If more than one activity within a contracting office uses the same reporting office code, the contracting office must assign separate blocks of numbers to each activity to prevent duplication of report numbers.

(f) Maintain the DD Form 350 in the contract file in any medium, in accordance with departmental or agency procedures.

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PGI 204.670-4 Contract administration office responsibilities.

Contract administration offices executing actions subject to DD Form 350 reporting must submit an annotated copy of the contractual instrument to the contracting office so that the contracting office can submit the required report. Annotate in the heading of the contractual instrument in large block letters “DD FORM 350 REPORTING COPY.” Send the annotated copy to the contracting office within one working day after the action date.

PGI 204.670-5 Departmental data collection point responsibilities.

Departmental data collection points—

(a) Collect DD Form 350 data provided by their contracting offices;

(b) Electronically record the data in accordance with the instructions for recording and editing developed by WHS-DIOR with the majority agreement of the departments and agencies and prescribed by the Director of Defense Procurement and Acquisition Policy; and

(c) Submit monthly reports (noncumulative) to Washington Headquarters Services, ATTN: DIOR, within 18 days after the close of the reporting period, except the due date for September may be extended for no more than ten days. Report Control Symbol DD-AT&L(M)1014 applies to reports for DD Form 350 actions.

PGI 204.670-6 Types of DD Form 350 reports.

There are three types of reports—single, consolidated, and multiple.

(a) A single report is one DD Form 350 report per action.

(b) A consolidated report combines several actions.

(1) Prepare consolidated reports for—

(i) Military Surface Deployment and Distribution Command awards of indefinite-delivery contracts for ocean transportation. The Command reports at the beginning of each fiscal year the estimated value of the orders for that fiscal year on one DD Form 350.

(ii) Defense Energy Support Center or Defense Supply Center, Richmond, indefinite-delivery contracts for petroleum or petroleum supplies. The Centers, at the time of award, report the estimated value of the orders to be placed against the contract on one DD Form 350.

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(iii) Orders placed by the Defense Commissary Agency (DeCA) for resale items over \$2,500. DeCA consolidates the orders monthly and reports the cumulative dollar amounts and actions on one DD Form 350.

(iv) Vouchers processed by the U.S. Army Contracting Command, Europe (USACCE), for the purchase of utilities from municipalities (e.g., gas, electricity, water, sewage, steam, snow removal, and garbage collection). USACCE consolidates these transactions monthly and reports the cumulative dollar amounts and actions on one DD Form 350.

(2) Consolidated reports may be prepared in accordance with departmental or agency procedures for orders under communications service agreements for local dial tone services.

(c) A multiple report is more than one DD Form 350 per contracting action. Prepare multiple reports if—

(1) The action includes FMS requirements in addition to non-FMS requirements (Line B9 on the DD Form 350). Submit one DD Form 350 report for the FMS requirements and another DD Form 350 report for the non-FMS requirements.

(2) The action includes more than one type of contract (Line C5 on the DD Form 350) and the type with the least dollar value exceeds \$500,000. Prepare a separate DD Form 350 for each contract type.

(3) The action includes non-DoD Federal agency requirements and DoD requirements. Submit one DD Form 350 for the non-DoD requirements and another DD Form 350 for the DoD requirements.

PGI 204.670-7 Security classification.

Submit DD Forms 350 as unclassified documents. Classified contracts are not exempt from reporting solely because the contract is classified. Contact the appropriate departmental data collection points for special instructions if it is necessary for security reasons to modify coding of any information on the DD Form 350. If contact cannot be made for security reasons, obtain instructions from the Director of Security, Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence), (703) 614-0578, or DSN 224-0578.

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PGI 219—Small Business Programs

(Added April 26, 2007)

PGI 219.6—CERTIFICATES OF COMPETENCY

PGI 219.602 Procedures.

PGI 219.602-1 Referral.

When making a nonresponsibility determination on a small business concern, the contracting officer shall notify the contracting activity's small business specialist.

PGI 219.602-3 Resolving differences between the agency and the Small Business Administration.

(a)(3)(A) If the contracting officer believes the agency should appeal, the contracting officer shall immediately inform the departmental director of the Office of Small and Disadvantaged Business Utilization and shall send the director, through departmental channels—

(1) A request for appeal, summarizing the issues. The request must be sent to arrive within 5 working days after receipt of the SBA Headquarters' written position; and

(2) An appeal file, documenting the contracting activity's position. The file must be sent to arrive within 5 working days after transmission of the request.

(B) The departmental director will determine whether the agency will appeal and will notify the SBA of the agency's intent.

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PGI 219—Small Business Programs

(Added April 26, 2007)

PGI 219.7—THE SMALL BUSINESS SUBCONTRACTING PROGRAM

PGI 219.702 Statutory requirements

(i) The test program—

(A) Will be conducted—

(1) From October 1, 1990, through September 30, 2010;

(2) In accordance with the DoD test plan, “Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans”; and

(3) By the military departments and defense agencies through specifically designated contracting activities; and

(B) Permits contractors selected for participation in the test program by the designated contracting activities to—

(1) Negotiate plant, division, or company-wide comprehensive subcontracting plans instead of individual contract subcontracting plans; and

(2) Use the comprehensive plans when performing any DoD contract or subcontract that requires a subcontracting plan.

(ii) During the test period, comprehensive subcontracting plans will be—

(A) Negotiated on an annual basis by the designated contracting activities;

(B) Incorporated by the contractors' cognizant contract administration activity into all of the participating contractors' active DoD contracts that require a plan; and

(C) Accepted for use by contractors participating in the test, whether performing at the prime or subcontract level.

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PGI 219—Small Business Programs

(Added April 26, 2007)

PGI 219.8—CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

PGI 219.800 General.

A copy of the Partnership Agreement (PA) between DoD and the Small Business Administration (SBA) is available [here](#).

PGI 219.803 Selecting acquisitions for the 8(a) Program.

(1) Contracting activities should respond to SBA requests for contract support within 30 calendar days after receipt.

(2) Before considering a small business set-aside, review the acquisition for offering under the 8(a) Program.

PGI 219.804 Evaluation, offering, and acceptance.

PGI 219.804-2 Agency offering.

(1) For requirements processed under the PA cited in DFARS 219.800 (but see paragraph (2) of this subsection for procedures related to purchase orders that do not exceed the simplified acquisition threshold), the notification to the SBA shall clearly indicate that the requirement is being processed under the PA. All notifications should be submitted in writing, using facsimile or electronic mail, when possible, and shall specify that—

(i) Under the PA, an SBA acceptance or rejection of the offering is required within 5 working days of receipt of the offering; and

(ii)(A) For sole source requirements, an SBA acceptance shall include a size verification and a determination of the 8(a) firm's program eligibility, and, upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(B) For competitive requirements, upon acceptance, the contracting officer will solicit offers, conduct source selection, and, upon receipt of an eligibility verification, award a contract directly to the selected 8(a) firm.

(2) Under the PA cited in DFARS 219.800, no separate agency offering or SBA acceptance is needed for requirements that are issued under purchase orders that do not exceed the simplified acquisition threshold. After an 8(a) contractor has been identified, the

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contracting officer shall establish the prices, terms, and conditions with the 8(a) contractor and shall prepare a purchase order consistent with the procedures in FAR Part 13 and DFARS Part 213, including the applicable clauses required by DFARS Subpart 219.8. No later than the day that the purchase order is provided to the 8(a) contractor, the contracting officer shall provide to the cognizant SBA Business Opportunity Specialist, using facsimile, electronic mail, or any other means acceptable to the SBA district office—

(i) A copy of the signed purchase order; and

(ii) A notice stating that the purchase order is being processed under the PA. The notice also shall indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

(3) The notification to SBA shall identify any joint venture proposed for performance of the contract. SBA shall approve a joint venture before award of an 8(a) contract involving the joint venture.

(4) For competitive requirements for construction to be performed overseas, submit the notification to SBA Headquarters.

PGI 219.804-3 SBA acceptance.

For requirements processed under the PA cited in DFARS 219.800, SBA's acceptance is required within 5 working days (but see PGI 219.804-2(2) for purchase orders that do not exceed the simplified acquisition threshold).

PGI 219.805 Competitive 8(a).

PGI 219.805-2 Procedures.

For requirements processed under the PA cited in DFARS 219.800—

(1) For sealed bid and negotiated acquisitions, the SBA will determine the eligibility of the firms and will advise the contracting officer within 2 working days after its receipt of a request for an eligibility determination; and

(2) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on all firms in the competitive range if discussions are to be conducted, or on all firms with a realistic chance of award if no discussions are to be conducted.

PGI 219.808 Contract negotiations.

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PGI 219.808-1 Sole source.

For requirements processed under the PA cited in DFARS 219.800—

(1) The agency may negotiate directly with the 8(a) contractor. The contracting officer is responsible for initiating negotiations;

(2) The 8(a) contractor is responsible for negotiating within the time established by the contracting officer;

(3) If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the contracting officer may, after notifying the SBA, proceed with the acquisition from other sources;

(4) If requested by the 8(a) contractor, the SBA may participate in negotiations; and

(5) SBA approval of the contract is not required.

PGI 219.811 Preparing the contracts.

PGI 219.811-1 Sole source.

(1) Awards under the PA cited in DFARS 219.800 may be made directly to the 8(a) contractor and, except as provided in paragraph (2) of this subsection and in DFARS 219.811-3, award documents shall be prepared in accordance with procedures established for non-8(a) contracts, using any otherwise authorized award forms. The “Issued by” block shall identify the awarding DoD contracting office. The contractor’s name and address shall be that of the 8(a) participant.

(2) Use the following alternative procedures for direct awards made under the PA cited in DFARS 219.800:

(i) Cite 10 U.S.C. 2304(c)(5) as the authority for use of other than full and open competition.

(ii) Include the clause at DFARS 252.219-7009, Section 8(a) Direct Award, in accordance with the prescription at DFARS 219.811-3(1). Identify the cognizant SBA district office for the 8(a) contractor.

(iii) No SBA contract number is required.

(iv) Do not require an SBA signature on the award document.

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PGI 219—Small Business Programs

PGI 219.811-2 Competitive.

Awards made under the PA cited in DFARS 219.800 shall be prepared in accordance with the procedures in PGI 219.811-1.

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PGI 222—Labor Laws

(Revised April 26, 2007)

PGI 222.1--BASIC LABOR POLICIES

PGI 222.101 Labor relations.

PGI 222.101-1 General.

The contracting officer shall obtain approval from the labor advisor before—

- (1) Contacting a national office of a labor organization, a Government agency headquarters, or any other organization on labor relations matters or disputes; or
- (2) Making recommendations for plant seizure or injunctive action relating to potential or actual work stoppages.

PGI 222.101-3 Reporting labor disputes.

The contract administration office shall—

- (1) Notify the labor advisor, the contracting officer, and the head of the contracting activity when interference is likely; and
- (2) Disseminate information on labor disputes in accordance with departmental procedures.

PGI 222.101-3-70 Impact of labor disputes on defense programs.

(a) If the dispute involves a product, project (including construction), or service that must be obtained in order to meet schedules for urgently needed military programs or requirements, each department and agency shall consider the degree of impact of potential or actual labor disputes, and each contracting activity involved shall obtain and develop data reflecting the impact of a labor dispute. Upon determining the impact, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor. This reporting requirement is assigned Report Control Symbol DD-AT&L(AR)1153.

(b)(i) The report to the labor advisor must be in narrative form and must include—

- (A) Location of dispute and name of contractor or subcontractor involved;
- (B) A description of the impact, including how the specific items or services affect the specific programs or requirements;

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(C) Identity of alternate sources available to furnish the supply or service within the time required; and

(D) A description of any action taken to reduce the impact.

(ii) The head of the contracting activity shall submit impact reports to the agency head when—

(A) Specifically requested; or

(B) The department or agency considers the impact to be of sufficient urgency to warrant the attention of the agency head.

(iii) The labor advisor will expand the report submitted under paragraph (b)(ii) of this subsection by addressing the following, as appropriate:

(A) *Description of military program, project, or service.* Identify item, project, or service that will be or is being affected by the work stoppage. Describe its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials, identify the end item(s) for which they are used.

(B) *Requirements and assets.* Identify requirements and assets in appropriate detail in terms commonly used by the DoD component.

(1) For production programs, include requirements for each using military service. Where applicable, state in detail production schedule, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(2) For projects, describe the potential adverse effects of a delay in meeting schedules, and its impact on the national security.

(3) For services, describe how a loss or interruption affects the ability to support Defense operations in terms of traffic requirements, assets, testing programs, etc.

(C) *Possible measures to minimize strike impact.* Describe—

(1) Capabilities, if any, to substitute items or to use alternate sources and indicate the number of other facilities available and the relative capabilities of such facilities in meeting total requirements;

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(2) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(3) The feasibility of transferring assets from theater to theater to relieve deficits in some areas of urgency.

(D) *Conclusion.*

(1) Describe the impact on operations of a 15-30, 30-60, and a 60-90 day work stoppage.

(2) Project the degree of criticality of a program, project, or service resulting from a work stoppage on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the number of days required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

PGI 222.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a)(ii) Include the following information in the request:

(1) Contract number.

(2) A statement as to the urgency and criticality of the item needed.

(3) A description of the items to be moved (nature of the item, amount, approximate weight and cubic feet, item number, etc.).

(4) Mode of transportation by which the items are to be moved, if different than in the contract, and whether by Government or commercial bill of lading.

(5) Destination of the material, if different from that specified in the contract.

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PGI 222.4--LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

PGI 222.404 Davis-Bacon Act wage determinations.

PGI 222.404-2 General requirements.

(c)(5) Clarification concerning the proper application of wage rate schedules to the type or types of construction involved shall be obtained from—

- (A) For the Army - The appropriate district commander, Corps of Engineers.
- (B) For the Navy - The cognizant Naval Facilities Engineering Command division.
- (C) For the Air Force - The appropriate Regional Industrial Relations Office.

PGI 222.406 Administration and enforcement.

PGI 222.406-8 Investigations.

(a) Under Reorganization Plan No. 14 of 1950, contracting agencies are tasked with the primary responsibility for the conduct of labor standards compliance activities for construction contracts subject to the Davis-Bacon Act. When such compliance assurance activities disclose potential violations that are substantial in amount (wage underpayments in excess of \$1,000) or when requested by the Department of Labor, the contracting officer or a designee should take the following steps to ensure compliance with the investigative requirements of the Department of Labor:

- (i) *Beginning of the investigation.* The investigator shall—
 - (A) Inform the contractor of the investigation in advance;
 - (B) Verify the exact legal name of the contractor, its address, and the names and titles of its principal officers;
 - (C) Outline the general scope of the investigation, including the examination of pertinent records and the interview of employees;
 - (D) Inform the contractor that the names of the employees to be interviewed will not be divulged to the contractor; and

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(E) When requested, provide a letter from the contracting officer verifying the investigator's authority.

(ii) *Conduct of the investigation.* Labor standards investigations are comprised of the following essential components:

(A) Review of the contract.

(1) Verify that all required labor standards and clauses and wage determinations are included in the contract.

(2) Review the following items in the contract file, if applicable:

(i) List of subcontractors.

(ii) Payroll statements for the contractor and subcontractors.

(iii) Approvals of additional classifications.

(iv) Data regarding apprentices and trainees as required by FAR 22.406-4.

(v) Daily inspector's report or other inspection reports.

(vi) Employee interview statements.

(vii) Standard Form (SF) 1413, Statement and Acknowledgement.

(B) Interview of the complainant. If the investigation is based upon the receipt of a complaint, the investigator should interview the complainant unless this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, explain such omission in the investigator's report.

(C) Interview of employees and former employees.

(1) Interview a sufficient number of employees or former employees, who represent all classifications, to develop information regarding the method and amount of payments, deductions, hours worked, and the type of work performed.

(2) Interview employees at the job site if the interviews can be conducted privately and in such a manner so as to cause the least inconvenience to the employer and employees.

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(3) Former employees may be interviewed elsewhere.

(4) Do not disclose to any employee any information, finding, recommendation, or conclusion relating to the investigation except to the extent necessary to obtain required information.

(5) Do not disclose any employee's statement to anyone, except a Government representative working on the case, without the employee's written permission.

(6) Obtain information by mail when personal interviews are impractical.

(7) Use SF 1445, Labor Standards Interview, for employee interviews.

(8) Ask employees to sign their statements and to initial any changes.

(9) Provide an evaluation of each employee's credibility.

(D) Interview of foremen. Interview foremen to obtain information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

(E) Interview of the contractor.

(1) Interview the contractor whenever the investigation indicates the possibility of a violation.

(2) Inform the contractor that—

(i) The interview does not mean that a violation has been found or that a requirement for corrective action exists; and

(ii) The purpose of the interview is to obtain only such data as the contractor may desire to present in connection with the investigation.

(3) Do not disclose the identity of any individual who filed a complaint or was interviewed.

(F) Review of contractor and subcontractor records.

(1) Review contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, fringe benefits, and payment records. Compare them with submitted payrolls. When discrepancies are found, include pertinent excerpts or copies of

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the records in the investigation report with a statement of the discrepancy and any explanation the investigator obtains. When wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor, examine the contractor records to ensure such approval has been obtained and that any requirements specified in the approval have been met. (See FAR 22.406-2(a)(3).)

(2) Review contractor's and subcontractor's weekly payrolls and payroll statements for completeness and accuracy regarding the following:

(i) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period.

(ii) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract.

(iii) Computation of daily and weekly hours.

(iv) Computation of time-and-one half for work in excess of 40 hours per week in accordance with FAR 22.406-2(c).

(v) Gross weekly wages.

(vi) Deductions.

(vii) Computation of net weekly wages paid to each employee.

(viii) Ratio of helpers, apprentices, and trainees to laborers and mechanics.

(ix) Apprenticeship and trainee registration and ratios.

(x) Computation of fringe benefits payments.

(3) Transcribe the contractor's records whenever they contain information at variance with payrolls or other submitted documents.

(i) Make the transcriptions in sufficient detail to permit them to be used to check computations of restitution and to determine amounts to be withheld from the contractor.

(ii) Follow the form used by the contractor.

(iii) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

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(iv) Determine whether the wage determination, any modifications of the determination, and any additional classifications are posted as required.

(iii) *Submission of the report of investigation.* The investigator shall submit a report of the investigation in accordance with agency procedures. Each report shall include at least—

(A) The basis for the investigation, including the name of the complainant;

(B) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(C) Contract number, date, dollar value of prime contract, and date and number of wage determination included in the contract;

(D) Description of the contract and subcontract work involved;

(E) Summary of the findings with respect to each of the items listed in PGI 222.406-8(a)(ii);

(F) Concluding statement concerning—

(1) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards Act;

(2) Whether violations are considered to be willful or due to the negligence of the contractor or its agent;

(3) The amount of funds withheld from the contractor; and

(4) Other violations found; and

(G) Exhibits indexed and appropriately tabbed, including copies of the following, when applicable—

(1) Complaint letter;

(2) Contract wage determination;

(3) Preconstruction letter and memorandum of preconstruction conference;

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- (4) Payrolls and statements indicating violations;
 - (5) Transcripts of pertinent records of the contractor, and approvals of fringe benefit payments;
 - (6) Employee interview statements;
 - (7) Foreman interview statements;
 - (8) Statements of others interviewed, including Government personnel;
 - (9) Detailed computations showing kickbacks, underpayments, and liquidated damages;
 - (10) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and
 - (11) Receipts and cancelled checks.
- (d) *Contracting officer's report.* This report shall include at least--
- (i) SF 1446, Labor Standards Investigation Summary Sheet;
 - (ii) Contracting officer's findings;
 - (iii) Statement as to the disposition of any contractor rebuttal to the findings;
 - (iv) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;
 - (v) Statement as to the disposition of funds available;
 - (vi) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and
 - (vii) When applicable the following exhibits:
 - (A) Investigator's report.
 - (B) Copy of the contractor's written rebuttal or a summary of the contractor's oral rebuttal of the contracting officer's findings.

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(C) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and the contractor's letter of acceptance or rejection.

(D) Evidence of the contractor's payment of restitution or liquidated damages (copies of receipts, cancelled checks, or supplemental payrolls).

(E) Letter from the contractor requesting relief from the liquidated damage provisions of the Contract Work Hours and Safety Standards Act.

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(Revised April 26, 2007)

PGI 222.8--EQUAL EMPLOYMENT OPPORTUNITY

PGI 222.807 Exemptions.

(c) When seeking an exemption from the requirements of Executive Order 11246, submit the request with a justification through contracting channels to the labor advisor, who will forward the request to the agency head. If the request is submitted under FAR 22.807(a)(1), the agency head shall act on the request. If the exemption is granted, the agency head shall notify the Director, Office of Federal Contract Compliance Programs (OFCCP), of such action within 30 days. If the request is submitted under FAR 22.807(a)(2) or (b)(5), the agency head will forward it to the Director, OFCCP, for action.

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(Revised April 26, 2007)

PGI 222.10--SERVICE CONTRACT ACT OF 1965, AS AMENDED

PGI 222.1008-1 Obtaining wage determinations.

(1) The contracting officer shall secure the assistance of cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and non-Directory) expected to be utilized.

(2) When the statement of work job title, for which there is a Directory equivalent, differs from the Directory job title, provide a cross-reference on the e98.

(3) Include and note as such any classifications and minimum hourly wage rates conformed under any predecessor contract. When a previously conformed classification is not included in the Directory, include the job description on the e98.

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(Revised April 26, 2007)

PGI 222.13--SPECIAL DISABLED AND VIETNAM ERA VETERANS

PGI 222.1305 Waivers.

(c) When seeking a waiver of any of the terms of the clause at FAR 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1305(a); or

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1305(b).

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PGI 225—Foreign Acquisition

(Revised April 26, 2007)

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

PGI 225.7002 Restrictions on food, clothing, fabrics, specialty metals, 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

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under the Berry Amendment as clothing. However, fabrics used in the SAPI plate are 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.

(b) Under Secretary of Defense (Acquisition, Technology, and Logistics) memorandum of June 1, 2006, Subject: Berry Amendment Compliance for Specialty Metals, provides guidance on dealing with specialty metal parts that are noncompliant with the requirements of the Berry Amendment (10 U.S.C. 2533a). Also see the DCMA interim instruction addressing noncompliance with the Preference for Domestic Specialty Metals clause, DFARS 252.225-7014, at <http://guidebook.dcmamil/225/instructions.htm>.

PGI 225.7002-2 Exceptions.

(b) *Domestic nonavailability determinations.*

(3) *Defense agencies.*

(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(PAIC)
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) as appropriate.

(C) If the domestic nonavailability determination is for the acquisition of titanium or a product containing titanium, the submission shall also include the associated congressional notification letters required by DFARS 225.7002-2(b)(4), for concurrent signature by the Under Secretary of Defense (Acquisition, Technology, and Logistics). The defense agency does not need to take any further action with regard to DFARS 225.7002-2(b)(4).

(4) *Army, Navy, and Air Force.*

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Send the copy of the congressional notification and the domestic nonavailability determination for the acquisition of titanium or a product containing titanium to—

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

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

(A) The military departments 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 Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) or the Secretary of a military department may be used by USD(AT&L) or another military department, 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.

(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 DPAP/PAIC at the address provided in paragraph (b)(4) of this section.

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

(i) USD(AT&L): DPAP/PAIC, 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.

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(B) DNADs approved by USD(AT&L) are currently available for reciprocal use as provided below.

(1) Contact DPAP/PAIC for information on the following DNADs:

- (i) 210 denier high tenacity nylon fiber.
- (ii) Continuous filament polyester tow, poromeric material.
- (iii) Dual compression molded ethyl vinyl acetate for midsoles and non-marking solid rubber for outsoles of men's and women's running shoes.
- (iv) Rayon yarn for military clothing and textile items.
- (v) Steel toe caps.
- (vi) Straps for ejection seat restraint.
- (vii) Medical and surgical supplies.
- (viii) Modacrylic fiber.

(2) The following DNADs may be used without contacting DPAP/PAIC (see <http://www.dcmil.com/dnad/>):

- (i) Lids and leads for populated circuit card assemblies.
- (ii) Fasteners, including all items in FSCs 5305, 5306, 5307, 5310, 5320, and 5325, or NAICs code 332722 (excluding cotter pins, dowel pins, hose clamps, spring pins, and turnbuckles).

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—

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- (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—
 - (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.