

# DFARS Procedures, Guidance, and Information

## PGI 217—Special Contracting Methods

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(Revised November 8, 2007)

### PGI 217.78—CONTRACTS OR DELIVERY ORDERS ISSUED BY A NON-DOD AGENCY

#### PGI 217.7802 Policy.

(1) *Reporting requirement.* By December 31, 2005, and December 31, 2006, the military departments and defense agencies must prepare a report identifying the service charges imposed on purchase made for an amount greater than the simplified acquisition threshold, during the preceding fiscal year, through a contract entered into by a non-DoD agency.

(i) Submit the report to--

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

(ii) This reporting requirement—

(A) Complies with subsection 854(d) of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375); and

(B) Expires after submission of the report for fiscal year 2006.

(2) *Supplemental information.* The Director, Defense Procurement and Acquisition Policy, maintains a web site at [http://www.acq.osd.mil/dpap/cpic/cp/interagency\\_acquisition.html](http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html), which contains policy memoranda and additional information on the proper use of non-DoD contracts.

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### PGI 225.8--OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

#### PGI 225.802 Procedures.

(b) Information on specific memoranda of understanding and other international agreements is available as follows:

(i) Memoranda of understanding and other international agreements between the United States and the countries listed in DFARS 225.872-1 are maintained in the Office of the Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting) ((703) 697-9351, DSN 227-9351) and are available at [http://www.acq.osd.mil/dpap/cpic/ic/reciprocal\\_procurement\\_memoranda\\_of\\_understanding.html](http://www.acq.osd.mil/dpap/cpic/ic/reciprocal_procurement_memoranda_of_understanding.html).

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and the Middle East are filed with the U.S. European Command.

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command.

#### PGI 225.802-70 Contracts for performance outside the United States and Canada.

When a contracting office anticipates placement of a contract for performance outside the United States and Canada, and the contracting office is not under the jurisdiction of a command for the country involved, the contracting office shall maintain liaison with the cognizant contract administration office (CAO) during preaward negotiations and postaward administration. The cognizant CAO can be found at <http://home.dcms.mil/cassites/district.htm>. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

#### PGI 225.870 Contracting with Canadian contractors.

##### PGI 225.870-1 General.

(d)(i) The Canadian Commercial Corporation uses provisions in contracts with Canadian or U.S. concerns that give DoD the same production rights, data, and information that DoD

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would obtain in contracts with U.S. concerns.

(ii) The Government of Canada will provide the following services under contracts with the Canadian Commercial Corporation without charge to DoD:

(A) Contract administration services, including—

(1) Cost and price analysis;

(2) Industrial security;

(3) Accountability and disposal of Government property;

(4) Production expediting;

(5) Compliance with Canadian labor laws;

(6) Processing of termination claims and disposal of termination inventory;

(7) Customs documentation;

(8) Processing of disputes and appeals; and

(9) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier.

(B) Audits. The Public Works and Government Services Canada performs audits when needed. Route requests for audit on non-Canadian Commercial Corporation contracts through the cognizant contract management office of the Defense Contract Management Agency.

(C) Inspection. The Department of National Defence (Canada) provides inspection personnel, services, and facilities, at no charge to DoD departments and agencies (see DFARS 225.870-7).

### **PGI 225.870-5 Contract administration.**

(1) Assign contract administration in accordance with DFARS Part 242. When the Defense Contract Management Agency will perform contract administration in Canada, name in the contract the following payment office for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-all other DoD components), whether payment is in Canadian or U.S. dollars:

DFAS Columbus Center

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DFAS-CO/North Entitlement Operations  
PO Box 182266  
Columbus, OH 43218-2266.

(2) The following procedures apply to cost-reimbursement type contracts:

(i) The Public Works and Government Services Canada (PWGSC) automatically arranges audits on contracts with the Canadian Commercial Corporation.

(A) Consulting and Audit Canada (CAC) furnishes audit reports to PWGSC.

(B) Upon advice from PWGSC, the Canadian Commercial Corporation certifies the invoice and forwards it with Standard Form (SF) 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing office.

(ii) For contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the CAC, Ottawa, Ontario, Canada. The CAC/PWGSC--

(A) Approves invoices on a provisional basis pending completion of the contract and final audit;

(B) Forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer; and

(C) Furnishes periodic advisory audit reports directly to the administrative contracting officer.

### **PGI 225.870-7 Acceptance of Canadian supplies.**

(1) For contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, the Department of National Defence (Canada) will perform any necessary contract quality assurance and/or acceptance, as applicable.

(2) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

### **PGI 225.871 North Atlantic Treaty Organization (NATO) cooperative projects.**

#### **PGI 225.871-4 Statutory waivers.**

Forward any request for waiver under a cooperative project to the Deputy Secretary of

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Defense, through the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics). The waiver request shall include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

### **PGI 225.871-5 Directed subcontracting.**

The cooperative project agreement is the authority for a contractual provision requiring the contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

### **PGI 225.872 Contracting with qualifying country sources.**

#### **PGI 225.872-4 Individual determinations.**

(1) Obtain signature of the determination and findings—

(i) At a level above the contracting officer, for acquisitions valued at or below the simplified acquisition threshold; or

(ii) By the chief of the contracting office, for acquisitions with a value greater than the simplified acquisition threshold.

(2) Prepare the determination and findings substantially as follows:

#### SERVICE OR AGENCY

Exemption of the Buy American Act and Balance of Payments Program

#### Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.103(a), the acquisition of a qualifying country end product may be made as follows:

#### Findings

1. The (contracting office) proposes to purchase under contract number \_\_\_\_\_, (describe item) mined, produced, or manufactured in (qualifying country of origin). The total estimated cost of this acquisition is \_\_\_\_\_.
2. The United States Government and the Government of \_\_\_\_\_ have agreed to remove barriers to procurement at the prime and

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- subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.
3. The agreement provides that the Department of Defense will evaluate competitive offers of qualifying country end products mined, produced, or manufactured in (qualifying country) without imposing any price differential under the Buy American Act or the Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that such items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of such items shall fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.
  4. To achieve the foregoing objectives, the solicitation contained the clause (title and number of the Buy American Act clause contained in the contract). Offers were solicited from other sources and the offer received from (offeror) is found to be otherwise eligible for award.

#### Determination

I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act or the Balance of Payments Program to the offer described in this determination and findings.

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(Date)

#### **PGI 225.872-5 Contract administration.**

(b)(i) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity listed in the Federal Directory of Contract Administration Services. The cognizant activity also will arrange contract administration services for DoD subcontracts that qualifying country sources place in the United States.

(ii) The contract administration activity receiving a delegation shall determine whether any portions of the delegation are covered by memoranda of understanding annexes and, if so, shall delegate those functions to the appropriate organization in the qualifying country's government.

#### **PGI 225.872-6 Audit.**

(c)(i) Except for the United Kingdom, send requests for audits in qualifying countries to

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the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services. Send a request for audit from the United Kingdom directly to their Ministry of Defence.

(ii) Send an advance copy of the request to the focal point identified by the Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting).

### **PGI 225.873 Waiver of United Kingdom commercial exploitation levies.**

#### **PGI 225.873-2 Procedures.**

(1) The Government of the U.K. shall approve waiver of U.K. levies. When an offeror or contractor identifies a levy included in an offered or contract price, the contracting officer shall provide written notification to the Defense Security Cooperation Agency, ATTN: PSD-PMD, 1111 Jefferson Davis Highway, Arlington, VA 22202-4306, telephone (703) 601-3864. The Defense Security Cooperation Agency will request a waiver of the levy from the Government of the U.K. The notification shall include—

- (i) Name of the U.K. firm;
- (ii) Prime contract number;
- (iii) Description of item for which waiver is being sought;
- (iv) Quantity being acquired; and
- (v) Amount of levy.

(2) Waiver may occur after contract award. If levies are waived before contract award, evaluate the offer without the levy. If levies are identified but not waived before contract award, evaluate the offer inclusive of the levies.

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### **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.dcm.mil/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(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) 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(CPIC)  
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/CPIC 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/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.

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(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/domestic\\_non-availability\\_determinations\\_dnads.html](http://www.acq.osd.mil/dpap/cpic/ic/domestic_non-availability_determinations_dnads.html).

### PGI 225.7002-3 Contract clauses.

(b) *Class Deviation 2006-00004, Restriction on Procurement of Specialty Metals, issued on December 6, 2006.*

(i) *Components and tiers.*

(A) *Components.*

(1) The term “component” is defined in the deviation to apply only to parts and assembled articles that are—

(i) Incorporated directly into the end product, meaning the aircraft, missile or space system, ship, tank or automotive item, weapon system, or ammunition (i.e., first-tier components); or

(ii) Incorporated directly into first-tier components (i.e., second-tier components).

(2) Other parts or assemblies are not components.

(3) Items that are not incorporated into the aircraft, missile or space system, ship, tank or automotive item, weapon system, or ammunition end product, such as factory test equipment and ground support equipment, are not components.

(B) *Tiers.* The term “tier” as used here does not apply to subcontractors in the supply chain. The tiers apply to assemblies of major systems in the six major product categories listed in paragraph (b) of the clause prescription of the deviation, and do not change from contract to contract. A component item may be purchased separately as a spare. In that case, it is an “end product” for that procurement, but its component tier status is determined based on its tier status in relation to the item in the covered six product categories where it will be used as a replacement. When the Government separately buys a first-tier component of an aircraft, the first-tier component is the end product of that procurement, and it is also a first-tier component of the aircraft. For example—

(1) An aircraft is Tier 0. Tier 1 assemblies are the first-level assemblies making up the aircraft. Tier 2 assemblies are the assemblies that go into the tier 1 assemblies. If a contractor is providing an item that the Government is buying at the tier 0, 1, or 2 level, it must be compliant at every sub-tier supplier level.

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(2) If a spare rocket motor were purchased as a contract line item, that spare rocket motor is a first-tier component of the missile and would be covered by the specialty metals restriction, even if purchased separately from the missile system. If the rocket motor contains a power supply (second-tier component), and the power supply was purchased as a separate line item, it would also be covered. If, however, a lower-level assembly or part (e.g., the printed circuit board contained within the rocket motor power supply) is purchased separately from the missile system (i.e., under a separate contract line item or a separate contract), the restriction does not apply.

(C) *Summary.* When the Government purchases—

(1) An aircraft, missile or space system, ship, tank or automotive item, weapon system, or ammunition (the six product categories), components and all parts and assemblies at all tiers must be compliant;

(2) First-tier components or second-tier components separately, such components, including all parts and assemblies at all tiers, must be compliant;

(3) Other parts or assemblies below the second tier separately (either a separate contract or separate line item), those parts and assemblies are not components and need not comply; or

(4) Items that are not incorporated into the end product, such as factory test equipment and ground support equipment, those items are not components and need not comply.

(ii) *Withholding.* Because this restriction now applies to the item containing the specialty metal, not just the specialty metal, the previous practice of withholding payment while conditionally accepting noncompliant items is not permissible for contracts entered into on or after November 16, 2006. The definition of “contract” with respect to this restriction is based on FAR 2.101 and FAR 43.103.

(iii) *Nonavailability.*

(A) *Fair and reasonable prices.* FAR 15.402 requires that contracting officers purchase supplies and services at fair and reasonable prices. Thus, contracting officers are experienced at determining 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 “reasonable” limits should be drawn is a case-by-case decision, keeping in mind that Congress would not have imposed the restriction unless they expected DoD to incur some additional cost.

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(B) *When needed.* 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.

(C) *Required form.* In determining whether specialty metal is available in the required form, consider the phrase “in the required form” to relate to specialty metal that is formed in some fashion into a part. For example, domestic specialty metals can be determined to be nonavailable in the form required if—

(1) Only bar stock is available, when the fastener industry needs wire rod;  
or

(2) A turbine blade made predominantly of specialty metal is not available for an engine as and when needed.

(iv) *Commercially available electronic components.*

*Example:* A contractor is providing an aircraft as an end product, but purchases radio communication equipment for the aircraft from a subcontractor. The subcontractor is the producer of the radio communication equipment, buying some commercially available electronic components to assemble into the radio, as well as other components containing specialty metals. The radio communication equipment is a commercially available electronic component for which the value of the specialty metals melted or produced outside the United States, its outlying areas, or a qualifying country must be less than 10 percent of the value of the radio communication equipment. The individual electronic parts assembled into the radio communication equipment are not the electronic components against which the radio manufacturer calculates the value of the specialty metal, because they are not produced by the radio manufacturer. It is not necessary to know the exact value of the specialty metal, only to reasonably estimate that it is less than 10 percent of the total value of the commercially available off-the-shelf electronic component.

### **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:

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- (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—
    - (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 225.74—DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES

#### PGI 225.7401 Contracts requiring performance or delivery in a foreign country.

(a) If the acquisition requires performance of work in a foreign country by contractor personnel other than host country personnel (i.e., host country nationals or personnel ordinarily resident in the host country), or delivery of items to a Unified Combatant Command designated operational area, the contracting officer shall--

(i) Ensure that the solicitation and contract include any applicable host country and designated operational area performance considerations. Failure to provide such information—

(A) May result in contractor personnel conflicting with theater operations or performing in violation of a theater commander's directives or host country laws; or

(B) May cause contractor personnel to be wrongly subjected to host country laws;

(ii) Refer to the website at <http://www.acq.osd.mil/dpap/pacc/cc/index.html>, which contains required procedures and applicable guidance and information;

(iii) Follow the procedures at [http://www.acq.osd.mil/dpap/pacc/cc/areas\\_of\\_responsibility.html](http://www.acq.osd.mil/dpap/pacc/cc/areas_of_responsibility.html), at the weblink for the Combatant Command for the area in which the contractor will be performing or delivering items;

(iv) To contact the overseas contracting office, access the link for the Combatant Command for the area in which the contractor will be performing or delivering items. From the Combatant Command website, link to the contracting office supporting the Combatant Command to identify the appropriate point of contact; and

(v) Use the following checklist as a guide to document consideration of each listed issue, as applicable, and retain a copy of the completed checklist in the contract file.

#### CHECKLIST

The contracting officer shall verify that the requiring activity has considered the following, as applicable:

\_\_\_\_\_ (1) Whether the contemplated acquisition will duplicate or otherwise conflict with existing work being performed or items already provided in the area, and whether

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economies of scope/schedule can be leveraged if there are already existing contracts in place for similar work or items.

- \_\_\_\_ (2) The applicability of any international agreements to the acquisition. (Some agreements may be classified and must be handled appropriately.)
- \_\_\_\_ (3) Whether there are any security requirements applicable to the area.
- \_\_\_\_ (4) Whether there are any requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies.
- \_\_\_\_ (5) Information on taxes and duties from which the Government may be exempt.
- \_\_\_\_ (6) If the acquisition requires performance of work in the foreign country, whether there are standards of conduct for the prospective contractor and, if so, the consequences for violation of such standards of conduct.
- \_\_\_\_ (7) If applicable, the availability of logistical support for contractor employees.
- \_\_\_\_ (8) If the contractor will employ foreign workers, whether a waiver of the Defense Base Act will be required (see FAR 28.305).
- \_\_\_\_ (9) Whether contractor personnel will need authorization to carry weapons for the performance of the contract.
- \_\_\_\_ (10) If the contract will include the clause at DFARS 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, the Government official authorized to receive DD Form 93, Record of Emergency Data Card, to enable the contracting officer to provide that information to the contractor, as required by paragraph (g) of the clause.
- \_\_\_\_ (11) Any other requirements of the website for the country in which the contract will be performed or the designated operational area to which deliveries will be made.

The contracting officer shall provide the following information to the applicable overseas contracting office (see PGI 225.7401(a)(iv)):

- \_\_\_\_ (1) The solicitation number, the estimated dollar value of the acquisition, and a brief description of the work to be performed or the items to be delivered.
- \_\_\_\_ (2) Notice of contract award, including contract number, dollar value, and a brief description of the work to be performed or the items to be delivered.

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\_\_\_\_(3) Any additional information requested by the applicable contracting office to ensure full compliance with policies, procedures, and objectives of the applicable country or designated operational area.

(c) For work performed in Japan or Korea, U.S.-Japan or U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. U.S. Forces Japan (USFJ) and U.S. Forces Korea (USFK) are sub-unified commands of Pacific Command (PACOM). The PACOM Staff Judge Advocate contact information is available at <http://www.pacom.mil/staff/staff-spec.shtml>. Links to USFJ and USFK websites can be found at the PACOM website at <http://www.pacom.mil> by clicking on “Site Index” and then clicking on “Subordinate Commands”.

(i) For work performed in Japan—

(A) U.S.-Japan bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFJ and component policy, as well as U.S.-Japan bilateral agreements, govern logistic support and base privileges of contractor employees;

(C) The Commander, USFJ, is primarily responsible for interpreting the Status of Forces Agreement (SOFA) and local laws applicable to U.S. Forces in Japan and for requirements in support of USFJ; and

(D) To ensure that the solicitation and resultant contract reflect an accurate description of available logistic support and application of the U.S.-Japan SOFA—

(1) Review the information on Contract Performance in Japan at the USFJ website, <http://www.usfj.mil>; or

(2) Contact the Staff Judge Advocate at (commercial) 011-81-3117-55-7717, or DSN 315-225-7717.

(ii) For work performed in Korea—

(A) U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFK and component policy, as well as U.S.-Korea bilateral agreements, govern logistic support and base privileges of contractor employees;

(C) The Commander, USFK, is primarily responsible for interpreting the SOFA and local laws applicable to U.S. Forces in Korea and for requirements in support of USFK; and

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(D) To ensure that the solicitation and resultant contract reflect an accurate description of available logistic support and application of the U.S.-Korea SOFA, review the SOFA information at the USFK website at <http://www.usfk.mil/org/fkdc-sa/index.html>. Contact information for the Commander is also available at <http://www.usfk.mil/org/leadership/index.html?org/leadership/Contents/cmd.html>.

(E) Additional applicable directives and regulations are available at [http://www-hr.korea.army.mil/Programs\\_Policy](http://www-hr.korea.army.mil/Programs_Policy).

### **PGI 225.7402 Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States.**

(1) DoDI 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces, serves as a comprehensive source of DoD policy and procedures concerning DoD contractor and subcontractor personnel authorized to accompany the U.S. Armed Forces. Such personnel—

(i) May include U.S. citizens, U.S. legal aliens, third country nationals, and local nationals;

(ii) May be employees of external support, systems support, or theater support contractors, as defined in Enclosure 2 of DoDI 3020.41; and

(iii) Are provided with an appropriate identification card under the Geneva Conventions (also see DoDI 1000.1, Identity Cards Required by the Geneva Conventions).

(2) Not all contractor personnel in a designated operational area are authorized to accompany the U.S. Armed Forces. For example, contractor personnel performing reconstruction contracts generally are not authorized to accompany the U.S. Armed Forces.

(3) Also see PGI 207.105(b)(20)(C) for special considerations for acquisition planning for crisis situations outside the United States.

### **PGI 225.7402-3 Government support.**

(a) Support that may be authorized or required when contractor personnel are deployed with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States may include, but are not limited to—

(i) Deployment in-processing centers;

(ii) Training;

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- (iii) Transportation to operation area;
- (iv) Transportation within operation area;
- (v) Physical security;
- (vi) Force protection;
- (vii) Organizational clothing and individual equipment;
- (viii) Emergency medical care;
- (ix) Mess operations;
- (x) Quarters;
- (xi) Postal service;
- (xii) Phone service;
- (xiii) Emergency notification;
- (xiv) Laundry; and
- (xv) Religious services.

(d) *Letter of Authorization.*

(i) A Letter of Authorization (LOA) is necessary to enable a contractor employee to process through a deployment processing center, to travel to, from, and within the theater of operations, and to identify any additional authorizations and privileges. If authorized by the contracting officer, a contracting officer's representative may approve a Letter of Authorization. Contractor travel orders will be prepared by the supporting installation.

(ii) The LOA will state the intended length of assignment in the theater of operations and will identify planned use of Government facilities and privileges in the theater of operations, as authorized by the contract. Authorizations may include such privileges as access to the exchange facilities and the commissary, and use of Government messing and billeting. The LOA must include the name of the approving Government official.

(iii) Sample LOA:

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OFFICE SYMBOL

Date

MEMORANDUM FOR *[insert name and address of military organization with the authority to provide Government-provided support where the contractor employees will be deployed]*

SUBJECT: Contractor Letter of Authorization *[note: much of the information contained within this Memorandum is similar to the information contained in travel orders for Government personnel]*

1. The *[insert appropriate name of Government requiring activity, such as a program management office]*, in its capacity for providing support under Contract Number *[insert contract number]*, *[insert delivery or task order number if applicable]*, awarded *[insert award date]*; authorizes the *[insert company name]* employee identified below to proceed to the locations and for the timeframe indicated below. Travel being performed is necessary and in the public's service.

a. Name: *[insert employee's full name, including middle name. In addition, include the employee's GS grade equivalent].*

b. Home Address: *[insert complete street address, city, state, and zip code. Include a CONUS work e-mail address if available].*

c. Date of Birth: *[insert employee's birth date].*

d. Place of Birth: *[insert employee's birth place].*

e. Passport Number/Expiration Date: *[insert contractor employee's passport number and passport expiration date].*

f. Next of Kin: *[insert full name, along with contact information and individual's relationship].*

g. Job Title: *[insert company job title for employee].*

h. Equivalent GS grade: For purposes of determining what level of Government-provided support should be granted to contractor personnel, and for prisoner-of-war status, the individual named herein is equivalent to a *[for contractor non-supervisory positions insert GS-12. For contractor supervisory/managerial positions insert GS-13].*

i. Level of Clearance: *[insert individual's security clearance; if not applicable, insert N/A].*

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j. Issuing Agency: *[insert complete name and address of Government contracting organization that awarded the contract for which this work is being performed]*.

k. Countries to be visited: *[insert the countries to be visited in support of military operations]*.

l. Purpose: *[provide a brief description of the contractor support being provided. This should not exceed three lines. If known, include what military organizations will be supported at the tactical level]*.

m. Deployed Performance Period: *[provide the estimated deployed performance dates]*.

2. Contractor Privileges: *[Note the following list is provided for sample purposes only. The contracting officer should not state the following list verbatim. Every contracting officer should prepare the LOA in accordance with those specific privileges that may be made available for contractor personnel in performance of the specific contract.]*  
Request that this contractor employee be granted, subject to availability, access to or the privileges defined below while temporarily deployed with *[insert military organization supporting]* on Contract Number *[insert contract number]*:

a. Common Access Card (CAC), Geneva Convention Card (DD Form 489), and ration cards.

b. *[Insert appropriate exchange name]* Exchange service facilities (includes rationed items).

c. Military clothing sales for repair and replacement of issued equipment.

d. Organizational clothing and individual equipment.

e. Military banking facilities and Finance Accounting Office.

f. Government transportation (i.e. aircraft, automobile, bus, train) for official Government business.

g. Commissary (includes rationed items).

h. Morale and welfare recreational facilities (e.g., clubs, movie theaters, gyms).

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- i. Purchase of petroleum and oil products for rental and/or Government vehicles.
- j. Customs exemption.
- k. Emergency medical care.
- l. The following theater-specific immunizations that are not available to the general public: \_\_\_\_\_.
- m. Mess facilities.
- n. Quarters.
- o. Military postal service.
- p. Phone service.
- q. Laundry services.
- r. Religious services.

3. Travel Discount Rates: *[Insert full name of contract employee]*, the bearer of this letter, is an employee of *[insert company name]* which has a contract with this agency under Government contract *[insert contract number]*. During the period of this contract, *[insert performance period relating to deployment]*, and only if the vendor permits, the named bearer is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

4. Special Notice: Employees, including dependents residing with employees, employed by or accompanying the Armed Forces outside the United States, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States. See the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261 et. seq., as amended by Section 1088 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375)).

5. Points of Contacts (POC):

a. POC at *[insert contracting activity information]* is the undersigned. The undersigned can be reached at:

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(1) DSN and Commercial *[insert phone numbers]*.

(2) E-mail *[insert unclassified e-mail address]*.

b. The Government requiring activity POC at *[insert requiring activity information]* is *[insert a requiring activity POC who will be familiar with the work being performed]*. The undersigned can be reached at:

(1) DSN and Commercial *[insert phone numbers]*.

(2) E-mail *[insert unclassified e-mail address]*.

c. Contracting Officer's Representative (COR) POC *[insert primary contract COR information. In addition to the primary COR, there may be a COR in the theater of operations.]*. The COR can be reached at:

(1) DSN and Commercial *[insert phone numbers]*.

(2) E-mail *[insert unclassified e-mail address]*.

6. Upon completion of the mission, the employee should make all attempts to return to the deployment processing center point of origin.

*[The LOA is typically signed by the procuring contracting officer.]*

CF: *[insert applicable addresses (i.e., PM for the individual specified in this order)]*

#### **PGI 225.7402-4 Contract clauses.**

(a) *Class Deviation 2007-00010, Implementation of the Synchronized Predeployment and Operational Tracker (SPOT) to Account for Contractor Personnel Performing in the United States Central Command Area of Responsibility.*

(i) "Performance in the United States Central Command Area of Responsibility (USCENTCOM AOR)" means performance of a service or construction, as required by the contract. For supply contracts, production of the supplies or associated overhead functions are not covered, but services associated with the acquisition of the supplies are covered (e.g., installation or maintenance).

(ii) If a contract requires performance in the USCENTCOM AOR, but some personnel performing the contract are authorized to accompany the U.S. Armed Forces, and other personnel performing the contract are not authorized to accompany the U.S. Armed Forces, include in the solicitation and contract both the clause at DFARS 252.225-7040 and

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the clause provided by Class Deviation 2007-O0010. Paragraph (b)(1) of each clause limits the applicability of the clause to the appropriate personnel. There are differences between the two clauses, primarily in Government support to contractor personnel (e.g., security protection and limited medical treatment) and potential applicability of the Uniform Code of Military Justice to contractor employees that are authorized to accompany the U.S. Armed Forces.

(iii) The requirements of paragraph (g) of the clause in Class Deviation 2007-O0010 are not applicable to subcontracts for which the period of performance of the subcontract is less than 30 days.

(iv) In exceptional circumstances, the head of the agency may authorize deviations from the requirements of Class Deviation 2007-O0010, in accordance with FAR Subpart 1.4 and DFARS Subpart 201.4.

(b) When using the clause at DFARS 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, consider the applicability of the following clauses:

(i) Either the clause at FAR 52.228-3, Workers' Compensation Insurance (Defense Base Act), or the clause at FAR 52.228-4, Workers' Compensation and War-Hazard Insurance Overseas, as prescribed at FAR 28.309(a) and (b).

(ii) The clause at FAR 52.228-7, Insurance—Liability to Third Persons, in cost-reimbursement contracts as prescribed at DFARS 228.311-1.

(iii) The clauses at FAR 52.251-1, Government Supply Sources, as prescribed at FAR 51.107, and DFARS 252.251-7000, Ordering from Government Supply Sources, as prescribed at DFARS 251.107.

(iv) The clause at DFARS 252.237-7019, Training for Contractor Personnel Interacting with Detainees, as prescribed at DFARS 237.171-4.

### **PGI 225.7403 Antiterrorism/force protection.**

#### **PGI 225.7403-1 General.**

Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that require performance or travel outside the United States can be obtained from the following offices:

(1) For Army contracts: HQDA-AT; telephone, DSN 222-9832 or commercial (703) 692-9832.

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(2) For Navy contracts: Naval Criminal Investigative Service (NCIS), Code 21; telephone, DSN 288-9077 or commercial (202) 433-9077.

(3) For Marine Corps contracts: CMC Code POS-10; telephone, DSN 224-4177 or commercial (703) 614-4177.

(4) For Air Force and Combatant Command contracts: The appropriate Antiterrorism Force Protection Office at the Command Headquarters. Also see <https://atep.dtic.mil>.

(5) For defense agency contracts: The appropriate agency security office.

(6) For additional information: Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, ASD(SOLIC); telephone, DSN 227-7205 or commercial (703) 697-7205.

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## PGI 229—Taxes

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*(Revised November 8, 2007)*

### PGI 229.1--GENERAL

#### PGI 229.101 Resolving tax problems.

(a) For the military departments, the Defense Logistics Agency, and the Defense Contract Management Agency, the members of the DFARS Tax Committee are the designated legal counsel for tax matters within their respective departments/agencies. A list of the members of the DFARS Tax Committee is available at [http://www.acq.osd.mil/dpap/dars/dfars\\_committees.html#taxes](http://www.acq.osd.mil/dpap/dars/dfars_committees.html#taxes).

(b) Information on fuel excise taxes, including applicability, exemptions, and refunds, is available as follows:

(i) The Defense Energy Support Center website at [www.desc.dla.mil](http://www.desc.dla.mil) provides information on Federal, State, and local excise taxes.

(ii) Internal Revenue Service Publications 510 and 378, available on the Internal Revenue Service website at [www.irs.gov](http://www.irs.gov), provide information on Federal excise taxes.

(c) The contracting officer may direct the contractor to litigate the applicability of a particular tax if—

(i) The contract is either a cost-reimbursement type or a fixed-price type with a tax escalation clause such as FAR 52.229-4; and

(ii) The direction is coordinated with the DoD Tax Policy and Advisory Group through the agency-designated legal counsel.

(d)(i) Tax relief agreements between the United States and foreign governments in Europe that exempt the United States from payment of specific taxes on purchases made for common defense purposes are maintained by the United States European Command (USEUCOM). For further information, contact HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128; Telephone: DSN 430-8001/7263, Commercial 49-0711-680-8001/7263; facsimile: 49-0711-680-5732.

(ii) Other international treaties may exempt the United States from the payment of specific taxes. The Department of State publishes a list of treaties on its website at [www.state.gov](http://www.state.gov).

(iii) Tax relief also may be available in countries that have not signed tax relief agreements. The potential for such relief should be explored in accordance with paragraph (d)(iv) of this section.

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(iv) DoD Directive 5100.64, DoD Foreign Tax Relief Program, defines DoD tax relief policy and requires designation of a military commander as the single point of contact for investigation and resolution of specific matters related to the foreign tax relief program within the country for which the commander is designated. Those military commanders are the same as the ones designated under DoD Directive 5525.1, Status of Forces Policy and Information, and specified in Appendix C of Army Regulation 27-50/SECNAVINST 5820.4G, Status of Forces Policies, Procedures, and Information.

(A) DoD Directive 5100.64 is available at <http://www.dtic.mil/whs/directives/corres/html/510064.htm>.

(B) DoD Directive 5525.1 is available at <http://www.dtic.mil/whs/directives/corres/html/552501.htm>.

(C) Appendix C of Army Regulation 27-50/SECNAVINST 5820.4G is available at [http://www.army.mil/usapa/epubs/xml\\_pubs/r27\\_50/main.xml#appc](http://www.army.mil/usapa/epubs/xml_pubs/r27_50/main.xml#appc).

(v) Also see PGI 229.70 for special procedures for obtaining tax relief and duty-free import privileges when conducting U.S. Government acquisitions in certain foreign countries.

### **PGI 229.170 Reporting of foreign taxation on U.S. assistance programs.**

#### **PGI 229.170-3 Reports.**

(1) Upon receipt of a notification under the clause at DFARS 252.229-7011, that a foreign tax has been imposed, submit the following information to the applicable office identified in paragraph (2) of this subsection.

- (i) Contractor name.
- (ii) Contract number.
- (iii) Contractor point of contact (Name, phone number, FAX number, and e-mail address).
- (iv) Amount of foreign taxes assessed by each foreign government.
- (v) Amount of any foreign taxes reimbursed by each foreign government.

(2) Submit the information required by paragraph (1) of this subsection to—

- (i) For Army contracts:

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Commander, U.S. Army Security Assistance Command  
ATTN: AMSAC-SR  
5701 21st Street  
Fort Belvoir, VA 22060-5940.

(ii) For Navy contracts:

Navy International Programs Office  
ATTN: IPO 02C2F  
Nebraska Avenue Complex  
4255 Mt. Vernon Dr., Suite 17100  
Washington, DC 20393-5445.

(iii) For Air Force contracts:

Secretary of the Air Force/International Affairs  
ATTN: SAF/IAPC  
1080 Air Force, Pentagon  
Washington, DC 20330-1080.

(iv) For Marine Corps contracts:

Navy International Programs Office  
ATTN: IPO 02C2F  
Nebraska Avenue Complex  
4255 Mt. Vernon Dr., Suite 17100  
Washington, DC 20393-5445.

(v) For all other DoD contracts:

Defense Security Cooperation Agency  
ATTN: DBO-CFD  
201 12th Street South, Suite 203  
Arlington, VA 22202-5408.

# DFARS Procedures, Guidance, and Information

## PGI 230—Cost Accounting Standards Administration

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*(Revised November 8, 2007)*

### PGI 230.2—CAS PROGRAM REQUIREMENTS

#### PGI 230.201-5 Waiver.

(a)(1)(i) Unless otherwise authorized by the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), the military departments must submit each CAS waiver request to the Director of Defense Procurement and Acquisition Policy for review at least 14 days before granting the waiver.

(ii) DoD contracting activities that are not within a military department must submit CAS waiver requests that meet the conditions in FAR 30.201-5(b) to the Director of Defense Procurement and Acquisition Policy for approval at least 30 days before the anticipated contract award date.

(e) The annual report of exceptional case CAS waivers shall include the following:

Title: Waiver of CAS Requirements

- (1) Contract number, including modification number, if applicable, and program name.
- (2) Contractor name.
- (3) Contracting activity.
- (4) Total dollar amount waived.
- (5) Brief description of why the item(s) could not be obtained without a waiver.
- (6) Brief description of the specific steps taken to ensure price reasonableness.
- (7) Brief description of the demonstrated benefits of granting the waiver.