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| COMSCINST 4330.21D | COG CODE N10 | DATE 17 NOV 92 |
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DEPARTMENT OF THE NAVY
COMMANDER MILITARY SEALIFT COMMAND
WASHINGTON NAVY YARD BLDG 210
901 M STREET SE
WASHINGTON DC 20398-5540

COMSCINST 4330.21D
N10
17 November 1992

COMSC INSTRUCTION 4330.21D

Subj: CONTRACTING POLICIES AND PROCEDURES FOR USE IN ACQUISITION OF SHIP MAINTENANCE, REPAIR AND ALTERATION

Ref: (a) Federal Acquisition Regulation (FAR)
(b) Department of Defense FAR Supplement (DFARS)
(c) Navy Acquisition Procedures Supplement (NAPS)

1. Purpose. To provide a reference for contracting and engineering personnel concerning various aspects of acquisition of ship repair services and materials. This is a complete revision and should be read in its entirety.

2. Cancellation. COMSC Instruction 4330.21C.

3. Discussion. This instruction is intended to provide guidance in the area of ship maintenance, repair and alteration. It does not contain comprehensive coverage of all issues. This instruction must be used in conjunction with references (a), (b) and (c).

Distribution:

COMSCINST 5000.19

List I (Case A, B)

SNDL 41B (MSC Area Commanders) (LANT & PAC) (15)
41B (MSC Area Commanders) (EUR & FE) (5)
41C (MSC Subarea Commanders) (5)
41F (MSCCENTACT) (5)

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SECTION I -- INTRODUCTION

Part 1 -- General

1-10 SCOPE

Part 1 sets forth information pertaining to the purpose, applicability, arrangement, contents, amendments and implementation of the MSC ship repair and alteration contracting procedures and instructions for requesting exceptions.

1-11 PURPOSE OF MANUAL

It is intended that services and materials for the maintenance, repair and alteration of ships be obtained as economically as possible within the framework of the law and departmental regulations and that procedures be applied throughout MSC as uniformly as practicable. This instruction consolidates in one document policies and procedures to be followed in obtaining those materials and services. It is not the purpose of this instruction to duplicate higher echelon publications, but rather to supplement them and furnish guidance concerning specialized procurement matters upon which those publications are silent. Ordinarily, there is no need to clarify or simplify the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS) or the Navy Acquisition Procedures Supplement (NAPS). However, there are instances in which regulations designed for general procurement when applied to specialized procurement such as ship repair, might reasonably be implemented in more than one way. It is the purpose of this instruction to provide procedures which will result in uniform application of such regulations. This instruction governs internal procedures of MSC with respect to ship repair and alteration and creates no substantive rights of prospective contractors under future ship repair contracts between MSC and such contractors.

1-12 APPLICABILITY

This instruction is applicable to all MSC activities awarding and administering job orders/contracts under Master Agreement for the Repair and Alteration of Vessels (MARAV) to include Master Ship Repair Agreements (MSRA) and Agreements for Boat Repair (ABR) for ship overhauls, conversions, upgrades, voyage/upkeep repairs etc. It is recognized that in certain cases the manner of doing business outside CONUS differs from that in CONUS. When any paragraph or subparagraph does not apply to either of these areas, the exception is specifically stated.

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1-13 ARRANGEMENT

The first number of a paragraph indicates the section under which it falls and the first digit(s) of the number following a dash indicates the part of the section within which the paragraph falls.

1-14 AMENDMENT

This instruction will be supplemented and amended from time to time by issuance of change transmittals enclosing new pages of addition or substitution. Proposals through channels for improvement in procedures are invited and encouraged. Reduction of administrative burden, simplifying and standardizing contract forms and improvement of contract procedures in general shall be the objective.

1-15 LOCAL INSTRUCTIONS

Local implementing instructions shall be the minimum necessary to set forth those procedures peculiar to the Area Command. Such implementation, when appropriate, should be keyed to COMSC instructions, NAPS, DFARS and FAR, etc. by cross reference. Matters of a general nature which are not covered by this instruction shall be brought to the attention of COMSC (N10) so that in the interest of uniformity they may be incorporated.

1-16 EXCEPTIONS FROM INSTRUCTION

Area Commanders shall request from COMSC (N10) exceptions from provisions contained in the instruction when deemed to be in the best interest of the Government, setting forth the reasons therefor in full detail. When special circumstances require an exception and the exigency of the situation will not permit the delay incident to obtaining COMSC authority, the Area Commanders may authorize such exceptions for a single case, provided the exception is not specifically prohibited in the instruction and provided that the exception does not conflict with other Government regulations. Each such exception shall promptly be reported to COMSC (N10) with a complete statement of the details.

SECTION I -- INTRODUCTION

Part 2 -- Procurement Responsibility and Authority

1-20 SCOPE

Part 2 sets forth the responsibility and authority of COMSC and of Area and Subarea Commanders with regard to ship maintenance, repair and alteration as well as the authority and responsibility of Contracting Officers, Engineering Officers, their staffs and supporting personnel.

1-21 RESPONSIBILITY FOR SHIP REPAIRS

a. OPNAVINST 5440.20F places with COMSC the responsibility for maintenance, repair and alteration of all Government-owned ships assigned to MSC. COMSC, as head of a Navy contracting activity, is responsible for the procurement of the supplies and services under the technical cognizance of his activity. Unless otherwise directed, Area Commanders are responsible for the procurement of services required for maintenance, repair and alteration of Government-owned ships assigned to them. Area Commanders shall assign sufficient qualified personnel to discharge these responsibilities.

b. COMSC, MSCCENTACT, COMSCLANT and COMSCPAC (N7 and N10) will jointly review the schedule of CONUS repair availabilities annually and decide which command will accomplish each ship repair.

SECTION I -- INTRODUCTION

Part 3 -- Repair Sources

1-30 SCOPE

Part 3 sets forth the various sources from which ship maintenance, repair and alteration services and materials may be obtained and COMSC policy relative to the use of each source.

1-31 SHIPS' CREWS

a. It is COMSC policy to utilize ships' crews, either naval or civilian, for ship maintenance and repairs within their capabilities, including maintenance and repairs of a limited nature on ships which are undergoing repairs in private repair facilities.

b. Maintenance and repairs by ships' crews to ships undergoing repairs in private repair facilities shall be confined to equipment not included in the commercial repair contract.

c. Ships' crews shall not conduct asbestos removal or ripout operations at the contractor's facility.

d. Care shall be taken to assure that the ship's crew, MILDEPT or sponsor's personnel do not interfere in any way with the contractor's workforce. In the event of a dispute with private shipyards arising out of using ship's force or sponsor personnel, the Contracting Officer shall resolve the dispute.

1-32 REPAIR SOURCES IN THE UNITED STATES

The MARAV is prescribed by DFARS Subpart 217.71 for use with ship repair contractors in the United States. The Master Agreement establishes in advance the terms and conditions under which work will be performed in the event a job order/contract is awarded. All job order/contracts shall include the clauses required by DFARS 217.7104 and other clauses as applicable. Each individual job order/contract shall have a MSC contract number. Failure of a firm to have a Master Agreement will not preclude consideration of its bid or offer; however, the firm must submit a Master Agreement application and be approved before the job order may be awarded. The award of a Master Agreement does not indicate the competence of a firm to perform a specific job order. The Contracting Officer must always determine the responsibility of a prospective contractor before the award of a job order (see FAR 9.1).

1-33 REPAIR SOURCES OUTSIDE THE UNITED STATES

Overseas MSC commanders shall utilize MSRAs issued by Navy Regional Contracting Center (NRCC) or other naval contracting activities and shall obtain a list of MSRA holders from local NRCC. In cases where an overseas MSC commander needs to utilize foreign ship

repair firms who do not hold MSRAs, the MSC commander is authorized to contract for ship repair in accordance with applicable acquisition regulations.

1-34 QUALIFYING FOR AN MSRA AND ABR

a. In order to ensure the Navy receives a satisfactory repair effort and to promote competitive private sector industrial base to repair naval vessels, the two tier vessel repair facility certification process was established. The two agreements utilized are formally titled as follows:

(1) Master Agreement for Repair and Alteration of Vessels (Master Ship Repair Agreement (MSRA))

(2) Master Agreement for Repair and Alteration of Vessels (Agreement for Boat Repair (ABR))

b. An MSRA holder must have the management, production organization and facilities to accomplish overhaul of a naval ship of Mine Sweeper-Ocean (MSO) class size or larger. Specifically, the firm must possess or have committed access to a Navy certified drydock, capable of drydocking, at a minimum, a MSO class size vessel or larger, located within the firm's immediate geographic region, i.e., the contractor's port area. Also, the firm must have the internal structure and capability to accomplish at least 55 the work package within its own facilities and with its own workforce. The latter requirement, when evaluated during an on site survey, is viewed generically as having the appropriate basic mix of capabilities to perform structural, electrical/electronic, machinery and piping work. Some repair firms concentrate their primary capabilities in one or two of these areas. Since the scope of work will vary from work package to work package, an MSRA does not automatically certify that a contractor can accomplish a specific work package at a given time. The Procuring Contracting Officer (PCO) may determine that a complete pre-award survey may be required prior to award of the job order to verify a contractor's managerial capabilities, financial status, production capacity, percentage of work subcontracted and/or facilities capabilities and capacities among other factors.

(Note: Characteristics of MSO; length-173 ft, breadth-35 ft, mean draft-11 ft, displacement-852 tons).

c. An ABR holder must have the management, production organization and facilities to accomplish repair of steel, aluminum, fiberglass or wood hulled vessels. Specifically, the ABR was established for those contractors who can perform boat/craft repair and overhaul work and also perform limited work on naval ships of MSO class size or larger. The scope of work may encompass Voyage Repairs (VR), Post Shakedown Availabilities (PSA), boat/craft overhauls, pierside repairs as well as selective shipboard component repairs. As with an MSRA, the qualification requirements are generic. Therefore, depending upon the specific solicitation requirements, a pre-award survey may be required prior to the award of the job order.

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1-34.1 PROCEDURES FOR AWARD AND REVIEW OF MSRAs AND ABRs

a. Memorandum of Understanding between COMNAVSEASYSKOM and COMSC provides for the following:

(1) The certification of MSRA and ABR contractors and the issuance and control of all MSRAs and ABRs is accomplished by NAVSEA in accordance with NAVSEAINST 4280.2B.

(2) The management of MSRA and ABR Certification Teams is with NAVSEA.

(3) All active MSRA and ABR holders will be recertified by NAVSEA in accordance with NAVSEAINST 4280.2B to ensure that each firm has maintained the organization and facilities which warrant retention of its MSRA and ABR as appropriate.

(4) Criteria for the evaluation and certification of contractors to hold a MARAV is in accordance with NAVSEAINST 4280.2B.

b. COMSC (N10) will provide the command interface with NAVSEA regarding issuance and control of MSRAs and ABRs.

1-35 PERFORMANCE DATA ON HOLDERS OF MSRAs AND ABRs

Any of the following are considered sufficient cause, among others, for reevaluation of holders of MSRAs and ABRs: (a) repeated failure to respond to invitations for bids and requests for proposals; (b) change of firm's name, management or owner; (c) failure to maintain proper insurance when required or to maintain financial responsibility; (d) repeated instances of inferior work and (e) failure to maintain qualified personnel and adequate facilities to accomplish the work. Recommendations for reevaluation should be submitted to NAVSEA by the MSCCENTACT or Area Commander, via COMSC (N10), supported by detailed statement of facts.

1-36 RECORDS AND REPORTS CONCERNING MSRAs AND ABRs IN THE UNITED STATES

COMSC (N10) will obtain current lists from NAVSEA of contractors having MSRAs and ABRs. The list including names of contractors, agreement numbers, addresses and phone numbers shall be furnished to MSCCENTACT and Area Commanders periodically.

SECTION II -- ACQUISITION**Part 1 -- Procurement of Repairs in Overseas Areas****2-10 SCOPE**

Part 1 sets forth COMSC policy governing the procurement of repairs required on ships administratively assigned to CONUS MSC Area Commanders (administrative commanders) to be performed in the area of operation of subordinate overseas MSC Area Commanders. Administrative commanders retain responsibility for maintenance, repair and alteration of assigned ships regardless of where they are operating worldwide.

2-11 RESTRICTIONS ON REPAIR OF VESSELS IN FOREIGN SHIPYARDS

a. 10 USC 7309(c)(1) states that a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy), the homeport of which is the United States may not be overhauled, repaired or maintained in a shipyard outside the United States. However, some MSC ships are forward deployed outside the U.S. and they are permitted to be overhauled, repaired or maintained in a shipyard outside the United States. The listing of these vessels is maintained by COMSC (N7).

b. However, the above restriction is not applicable in case of voyage repairs.

c. The administrative commander establishes the type, scope and location of scheduled availabilities and type, scope and location of voyage and emergency repairs, in consultation with overseas MSC commander and the fleet commander.

SECTION II -- ACQUISITION

Part 2 -- Work Packages

2-20 SCOPE

A critical element of all ship repair contracts is the description of the required service or the work package. This part describes the preparation of the work package phase for Regular Overhaul (ROH), Midterm Availability (MTA), Post Shakedown Availability (PSA), Material Upgrade (MARUP), conversions and large voyage repair periods.

2-21 CATEGORY "A" AND "B" ITEMS

a. Category "A" items are those items of work which the Engineering Officer determines must be accomplished and for which definitive work items will be written.

b. Category "B" items are those which the Engineering Officer determines will likely be required, but for which the location and full extent of work cannot be determined until the ship is undergoing repair. Category "B" items may reduce the need for changes. Work items shall be written for each Category "B" item and the number of units estimated to be required shall be specified. Competitive prices for a measurable unit of work to be accomplished may be obtained through inclusion in a solicitation. If there is high likelihood that the requirement will not materialize, the item should not be included in the work package. Category "B" items shall be included in the work package only to the extent considered necessary by the Engineering Officer to ensure that all work which experience shows is likely to be required is specified. The use of "B" items must be kept to a minimum consistent with this philosophy.

2-22 FORMAT

The work package shall be prepared as set forth below.

2-22.1 ADMINISTRATIVE DATA

Work package shall be typewritten or computer generated and single spaced. The first page of the work package shall identify the preparing activity, state the work package number and date of preparation, the general nature of the work to be performed, the name of the ship and the total number of pages contained in the work package. There shall be a complete index of items, distinguishing Category "A" and Category "B" items, if applicable.

2-22.2 ITEMS

Pages will be numbered consecutively. Each will be identified in the upper portion of the page with the specification number and the name of the ship in accordance with COMSCINST 4700.10A. If Category "B" items are required, each should appear in its logical group together with Category "A" items as applicable.

2-22.3 ADDENDA

Pages of the addendum to the work package shall identify the preparing activity, the work package number and the ship as in the original work package. Also, the addendum number will be included after the title for each item which has been revised, deleted or added, e.g., "Item 211 - Pressure Piping (Addendum 2)." Pages of the addendum will be numbered consecutively following the last numbered page of the original work package, or previous addendum, if any. Revised or deleted items shall be the same as the number of the original item. New items will be numbered consecutively following the last item of the appropriate section of the original work package of the preceding addendum. Each of the items of the addendum will be identified as Category "A" or Category "B" items. The item index shall be revised to reflect all changes.

2-23 OBJECTIVE

Work items shall describe clearly and accurately the requirements of the Government. If offerors do not obtain from the work items a complete understanding of the work required, there can be no common basis for competitive solicitation. Discussion with prospective offerors concerning the meaning of the work items prior to solicitation closing must be controlled by the Contracting Officer. If it becomes apparent before solicitation closing that certain items lack clarity, an amendment to the solicitation clarifying those items shall be issued to all prospective offerors or the solicitation shall be cancelled and a new solicitation issued.

2-24 AVOIDING RESTRICTIVE REQUIREMENTS

Technical personnel and Contracting Officers shall ensure that work items and solicitations are prepared so that competition will not be unduly restricted. Decisions at the pre-award phase that impact the extent of competition and ultimate cost to the Government include:

- a. Work items and contract terms are clearly understood;
- b. Inclusion of data requirements that are appropriate and really necessary;

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c. Technical proposal requirements which are sufficient but not unnecessarily lengthy and detailed.

2-25 REQUIREMENT FOR MANUFACTURER'S REPRESENTATIVE

In the installation and overhaul of critical items of machinery and equipment, requirement for a manufacturer's representative to monitor installation and/or overhaul may be included as Government furnished service(s). In this way, the technical representative reports to the Government port engineer.

2-26 PERFORMANCE PERIOD

The administrative commander establishes the performance period. The performance period shall be based upon the estimated time required for completion of Category "A" items and Category "B" items and shall be stated in the solicitation.

2-27 CUSTODY OF WORK PACKAGES

As the work package and cost estimates are being prepared, they shall be classified "For Official Use Only" and carefully withheld from disclosure to persons other than those employees with a need-to-know. Premature release to a prospective bidder or offeror of information concerning the work package could be prejudicial to other offerors; therefore, this must be carefully avoided. All prospective offerors shall be given an opportunity to pick up solicitations with a work package at a stated time and place. All mailed solicitations shall be posted simultaneously.

2-28 GOVERNMENT ESTIMATE

The engineering directorate shall develop an independent government estimate for each work item (Category A and B items). This estimate shall include labor hours by category (trade/craft), material dollars and subcontract dollars. These estimates by item and a summary of all work items included in the work package shall be provided to the Contracting Officer with the work package. Estimates of hours for additional requirements should not be based on a standard percentage. The number of hours to be included depends on the individual job and how well the work can be defined. The government estimate should include a justification for the number of hours for additional requirements, which will be included in the contract file.

SECTION II -- ACQUISITION

Part 3 -- The Award and Placement of Job Orders/Contracts

2-30 SCOPE

Part 3 describes the general policies and format which must be considered with respect to the preparation of solicitations and the award of job orders. The terms job order and contract are used interchangeably.

2-31 METHOD OF PROCUREMENT

a. Use of Request for Proposals (RFPs) and negotiation is the preferred method of contracting for ship repair, and is mandatory for contracts estimated to exceed \$2 million. When contracting by negotiation, technical proposals are normally required for source selection. Technical proposals assist the Contracting Officer, advised by the engineering officer, in determining the offeror's understanding of and capability to perform the work. In-depth technical proposals are recommended for procurements expected to exceed \$2 million. At a minimum, all procurements must require the Contractor Price Breakdown form included in the model solicitation so that the offeror's proposed labor and materials for each work item may be analyzed.

b. When, in the opinion of the Contracting Officer, exceptions from these procedures are required, requests for such exceptions, setting forth the reasons therefore, shall be submitted in a timely manner to COMSC (N10) for approval.

2-32 SOLICITATION AREA

a. Nationwide Soliciting. When bids or proposals are solicited from holders of a Master Agreement for Repair and Alteration of Vessels on all U.S. coasts, such procedures will be known as "nationwide soliciting." Soliciting on a nationwide basis will not be used except when approved by COMSC.

b. Coastwide Soliciting. When bids or proposals are solicited from all holders of a Master Agreement for Repair and Alteration of Vessels on a specific coast(s), such procedure will be known as "coastwide soliciting." East coastwide area soliciting includes Atlantic and Gulf coasts of the United States. West coastwide area soliciting includes west coast of the U.S. and the Hawaiian Islands. Area Commanders are responsible for determining the solicitation area based on the operational commitment of ship prior to overhaul, availability of competition, nature of work package and influence of adverse weather on the work package and economic considerations. Coastwide soliciting will be used whenever practicable and economical.

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Generally, it is impracticable and uneconomical to utilize coastwide soliciting for the following work: (1) voyage and emergency repairs or (2) repairs performed at a Government-owned facility.

c. Overseas Area Soliciting. When bids or proposals are solicited from ship repair firms in the Far East, Persian Gulf, Mediterranean or Europe, such procedure will be known as "overseas area soliciting." It would be uncommon to solicit in all the areas listed above for a single solicitation due to economic and operational considerations. It is anticipated that the area of solicitation will be restricted to the Far East, Persian Gulf, Mediterranean or Europe based on economic and operational considerations. The solicitation area will be established by the administrative commander based on consultation with the Navy fleet commander and MSC overseas commander. Factors to be considered are available commercial competition, operational deployment of the vessel, capability of firms in the area being considered, etc.

Note: See paragraph 2-11 for restrictions on overseas ship repair.

2-33 UTILIZATION OF MODEL SOLICITATION

a. The model solicitation issued by COMSC (N10) is to be used in preparing solicitations for scheduled repair or alteration of vessels (i.e., ROH, MTA, PSA and conversion/MARUP) in the United States and may be used with appropriate modification of clauses for contracts awarded and performed outside the U.S. The model solicitation is an aid to procurement personnel and it enables MSC to interface with the ship repair industry more effectively.

b. It is recognized that some tailoring will be required for individual procurements based on the work to be performed. The format and content of the model solicitation should be followed except where, for individual cases, it is not applicable to a specific procurement. If a section does not apply, it should be marked reserved. Area Commanders which solicit ship repair work in Europe and the Far East are authorized to modify this model solicitation to suit local industry practices.

c. The model solicitation will be periodically updated to reflect changes in the FAR, DFARS and NAPS and to include initiatives from the field, DOD policy changes and GAO decisions. The COMSC Procurement Plans and Policy Division (N101) is responsible for maintaining and updating the model solicitation with advice and assistance from MSCCENTACT and the Area Commanders. Recommendations for changes and improvements should be forwarded to COMSC (N101) for review and coordination.

SECTION II -- ACQUISITION

Part 4 -- Business Clearance Required in the Placement of Job Orders

2-40 BUSINESS CLEARANCE

The establishment of pre-negotiation objectives is required before the negotiation of any pricing action. See COMSCINST 4310.2C for approval levels and NAPS 5201.690-9 for Business Clearance format.

SECTION II -- ACQUISITION

Part 5 -- Interport Differentials and Liquidated Damages

2-50 INTERPORT DIFFERENTIALS

When the solicitation area is not restricted to one port area, interport differentials representing the probable additional cost to be incurred by the Government by reason of repair in each specific port will be computed. The appropriate differentials will be applied, except when such a practice is prohibited by statute, to the respective offers for the purpose of evaluation, provided the ship's operating port prior to entering and departing the commercial shipyard is reasonably predictable. The differentials to be applied shall be set forth in the solicitation. Cognizant Area Commanders shall establish and apply interport differentials utilizing the various elements of cost determined as set forth below.

Note: PL 102-172, Section 8042 prohibits usage of charges for interport differential as an evaluation factor for award of naval vessels homeported on the west coast.

a. Ship Operating Cost. Ship operating cost will be determined by multiplying the ship per diem rate provided by COMSC (N8) by time-in-transit in days. "Time-in-transit" will be determined by dividing the interport distance as given in the U.S. Coast and Geodetic Survey Manual by the normal cruising speed of the ship. In order that interport differentials are held to a minimum, it is essential that the interport distance as used in this paragraph be that distance the vessel must divert from her normal passage from the point of departure of its last mission to the origin of the next mission in order to enter into the offeror's yard.

b. Dead Ship Tows. Dead ship tow costs shall be computed by multiplying the time in transit by the average cost of the daily hire of a deep-sea or other appropriate tug(s) capable of safely handling the vessel. Commercial tug hire should be computed from the time the tug leaves its station until return to station. To the tug hire cost should be added the daily costs of the riding crew assigned to the ship being towed. If the use of a Navy tug and riding crew can be reasonably contemplated, then these costs will be computed accordingly.

2-51 LIQUIDATED DAMAGES

2-51.1 INCLUSION OF LIQUIDATED DAMAGES CLAUSE

DFARS 252.217-7009 provides that liquidated damages may be assessed for delays resulting from the fault or negligence of the contractor. Liquidated damages should normally be included in the solicitation. The solicitation must contain the per diem rate which will be used in the calculation of liquidated damages. Liquidated damages shall be prorated by the hour; any part of an hour to be considered a full hour. The per diem rate for the ship will be furnished by COMSC (N8).

2-51.2 ASSESSMENT OF LIQUIDATED DAMAGES

a. If the liquidated damages clause is to be enforceable, the delay must be due to the fault of the contractor in accordance with DFARS clause 252.217-7009. Examples of causes which are beyond the control of the contractor are listed in DFARS clause 252.217-7009. They include acts of God or of the enemy, acts of the Government, fires, floods, strikes, freight embargoes and unusually severe weather. It should be noted that the weather must be unusually severe to justify nonassessment of liquidated damages. In some cases, it may be necessary to consult the official records of the U.S. Weather Bureau to determine whether the unusual weather claimed by a contractor was, in fact, abnormal. The circumstances of each case must be considered individually in making the decision to assess liquidated damages.

b. DFARS clause 252.217-7009 applies to delinquencies on the part of subcontractors which affect the completion of work by the prime contractor, and describes the circumstances under which the prime contractor will be relieved of liquidated damages by reason of the delinquencies of the subcontractor.

c. In cases where there is a delay in completion, no progress payments shall be made which will reduce the amount remaining to be paid below the point where funds will not be available for the assessment of liquidated damages.

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SECTION III -- ADMINISTRATION AND PERFORMANCE UNDER JOB ORDER

Part 1 -- Administrative Matters

3-10 BASIC UNDERSTANDING

Many claims can be averted and much can be contributed to a harmonious working relationship with the contractor by making certain aspects of the job clear at the beginning.

3-11 IDENTITY AND AUTHORITY OF CONTRACTING OFFICER'S REPRESENTATIVE (COR)

a. In order to ensure that unauthorized personnel do not order changes or extras and that the contractor understands the functions, responsibility and authority of each of the Contracting Officer's representatives (CORs), the contractor shall be furnished a written list of the CORs at the time the job order is awarded to him. The list shall identify each COR by name and position. It shall clearly state also each COR's responsibility and authority. Contractors shall be cautioned that orders and requests for changes shall not be taken from personnel other than the Contracting Officer and those of his representatives who have been specifically vested with appropriate authority. A representative of a Contracting Officer may be authorized to perform any function set forth in FAR 42.302 that is not assigned to a contract administration office and that would not confer on the COR the authority to make commitments or changes that affect price, quality, quantity, delivery of other terms and conditions of the contract. DFARS clause 252.201-7000 provides information on the COR.

b. Adequate measures shall be taken to ensure preservation of job order files containing documents and correspondence concerning the issuance of solicitations, receipt and evaluation of bids or offers and awards and any other files such as those relating to inspection and administration of job orders.

3-12 IDENTITY AND AUTHORITY OF TECHNICAL REPRESENTATIVE (TR)

DFARS Subpart 242.74 discusses the role of Technical Representative. MSCCENTACT/Area Command Engineering Director designates the Port Engineer as the TR to perform technical duties at or near contractor's facility in writing.

SECTION III -- ADMINISTRATION AND PERFORMANCE UNDER JOB ORDER

Part 2 -- Performance Under Job Order

3-20 SCOPE

Part 2 concerns procedures to be followed in dealing with the contractor as the job progresses and it sets forth records to be maintained.

3-21 CATEGORY "A" AND "B" ITEMS

a. The Category "A" items shall be completed by the contractor in their entirety, including the submission of the required documentation unless deleted by contract modification.

b. The requirement for accomplishment of Category "B" items becomes known usually during performance of the job order. The Contracting Officer orders category B item, when required, by issuance of contract modification. Prompt exercise of category B items can result in considerable savings to the Government due to the fact that prices were obtained through competitive solicitation rather than through the sole source negotiation.

3-22 WORK ITEMS NOT COVERED IN WORK PACKAGES

In administering ship repair work packages, it is almost inevitable that some emergent work will be required. Such work ordinarily must be awarded to the prime contractor, thus depriving the Government of the benefits of competition. It is desirable, therefore, to keep additional work to a minimum. Area Commanders shall maintain records on each assigned ship which will show at all times cumulative data, as well as individual job order data, relative to repair jobs which have been performed during the fiscal year. The data shall include the name of the Contracting Officer, TR(s) assigned to the job, the price of the basic job order and the total amount of additional work under each job order, as well as the percentage of additional work to the original contract price of the job. Properly prepared work packages should normally result in additional work representing a small percentage of the total contract price ("A" items plus "B" items and estimated amount under Additional Requirements Clause). A continued large level of additional work should be reviewed by the Contracting Officer and Engineering Officer to determine methods of improvement. When it is necessary to contract for work not covered by the work package, a bilateral contract modification setting forth negotiated price and performance period shall be executed.

3-22.1 WORK AUTHORIZED UNDER ADDITIONAL REQUIREMENTS CLAUSE

Changes identified after award of contract, either by the government or as a result of a condition report submitted by the contractor, are authorized under the Additional Requirements clause, if included in the contract. These changes can be either revisions to existing work items and/or emergent work items. The Additional Requirements clause provides for a predetermined number of labor hours and it also requires the contractor to absorb repair work without delay in completion date and no disruption (impact) costs. If the labor hours specified in the Additional Requirements clause are fully utilized, then the changes will be negotiated under the provisions of the Changes clause of the contract.

3-22.2 CHANGE ORDERS

"Change Orders" are unilateral changes in the work covered by the job order, as authorized by the "Changes" clause, DFARS 252.217-7003, and are limited to changes within the general scope of the job order. Change Orders should be used to effect changes when the use of bilateral agreements are not possible. Change Orders include revisions to work items issued in writing by the Contracting Officer beyond the labor hours authorized under Additional Requirements clause from emergent work. Whenever it is economically and operationally feasible, a work item requiring change shall be deferred and accomplished at a later date so that competitive offers can be obtained. Change Orders are ordered unilaterally by means of the Modification of Contract form, SF 30. Undefinitized change orders shall be processed under DFARS Subpart 217.74, Undefinitized Contract Actions, in accordance with NAPS 5243.201.

3-22.3 PROCEDURE FOR ORDERING ADDITIONAL WORK

When the need for additional work develops, the need will be investigated by the Port Engineer. When a determination is made that the work is required, a work item shall be prepared and submitted to the Contracting Officer or his authorized representative for procurement action. Each work item submitted by a Port Engineer shall be accompanied by an independent Government estimate.

3-22.4 PREPARATION OF INDEPENDENT GOVERNMENT ESTIMATE

The Port Engineer shall prepare or have prepared a cost estimate for each work item. The estimate will provide a breakdown of labor hours by category of trade/craft, material dollars and subcontract dollars.

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3-22.5 AUTHORITY TO NEGOTIATE

Only the Contracting Officer is authorized to (1) sign change order forms ordering changes and (2) execute supplemental agreements reflecting adjustments in contract prices and completion dates. Personnel involved in negotiations shall observe limitations on their authority and refer the execution of documents exceeding their authority to the proper authority. Government Technical Representatives may be requested to assist the Contracting Officer in negotiations as the Government's technical expert, including providing recommendations and evaluating the contractor's proposal. All MSC representatives must be fully cognizant of their authority when discussing ship repair work with the contractor in order to avoid a situation wherein the contractor may be induced, or later claim to have been induced, to accomplish changes/additional work which was unauthorized. This may later result in a claim.

3-22.6 DOCUMENTING DAILY ACTIVITIES

Resolutions of contractors' claims for additional work, based on interpretation of specifications and oral instructions, are enhanced where there is well prepared evidence as to what transpired during the actual course of the work. In order that there may be available written records of actions taken, Port Engineers shall maintain a notebook for each contract to which they are assigned. This notebook shall contain information of all discussions with the contractor which appear likely to lead to disputes in the future. Notebooks can be manual or on computer. It is important that entries be dated and that the names of the persons involved be noted and when practical, that the entries be initialed by them. Upon completion of the contract, the notebook shall be filed with the contract file. Port Engineers and personnel in the technical departments who have occasion to discuss with contractor personnel matters which may lead to later disputes should make handwritten memoranda for the record of those discussions, indicating the date, the person with whom the discussion was held, the points raised and the decisions made. Copies of these memoranda for the record, signed by the preparer, also shall be included in the contract file.

3-23 CONTRACTOR CLAIMS

a. NAPS 5233.204-90(b) contains instructions for processing contractor claims resulting from alleged constructive changes. The Contracting Officer or his authorized representative shall maintain a "Significant Events" file in accordance with NAPS 5233.9000 for all contracts where a reasonable possibility exists that the contractor may assert a claim. The notebooks and memoranda shall become a part of the Significant Events file.

b. Claims certified under Contracts Disputes Act exceeding \$250,000 will be reported to COMSC (N102) in the report format contained in NAPS 5233.9001. Reports shall be submitted quarterly to arrive at COMSC (N102) by the eighth day after the end of each fiscal quarter. Settlement procedures and review and approval levels in the NAPS shall be adhered to.

SECTION III -- ADMINISTRATION AND PERFORMANCE UNDER JOB ORDER

Part 3 -- Port Engineer Responsibilities

3-30 SCOPE

Part 4 sets forth responsibilities of the port engineer when the ship is undergoing repairs/conversion at a shipyard. A Port Engineer may be designated as the TR by the Engineering Director of MSCCENTACT/Area Command.

3-31 RESPONSIBILITIES

The Port Engineer is responsible for:

- a. Receiving, approving and responding to all reports, procedures, plans, systems and schedules as required by the specifications.
- b. Approving all drawings or drawing changes generated by work item accomplishment.
- c. All communications with regulatory agencies such as ABS, USCG etc.
- d. Approving all technical manuals or technical manual changes generated by work item accomplishment.
- e. Access to ship of all Government personnel.
- f. Determining percent of work completion for progressing.
- g. Acceptance/rejection of all work.
- h. Accepting redelivery of ship.
- i. Attending all tests/trials/inspections, etc. (in accordance with the specifications).
- j. Determining necessity for and technically approving all Government and contractor proposed changes.
- k. Preparation of all change specifications and government estimates for those changes.
- l. Preparation of technical analysis of shipyard proposals including requests for equitable adjustments.
- m. Resolving deficiencies, as reported by ABS, USCG, MSC and other cognizant agencies, prior to delivery and acceptance in accordance with the specifications.

- n. Providing a list of incomplete items to the Contracting Officer.
- o. Providing list of items under the Guarantees clause, DFARS 252.217-7013, to the Contracting Officer.
- p. Preparation of Contractor Post Overhaul Technical Evaluation.
- q. Monitoring contractor compliance with the specifications.
- r. Preparing lessons learned at the end of the ship repair and forwarding to the Engineering Officer and Contracting Officer.