

## **PART 1 – FEDERAL ACQUISITION REGULATIONS SYSTEM**

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## **PART 1 - FEDERAL ACQUISITION REGULATIONS SYSTEM**

### **SUBPART 1.1 - PURPOSE, AUTHORITY, ISSUANCE**

#### **1.101 Purpose.**

The Defense Commissary Agency Acquisition Regulation Supplement (DeCAARS) implements and supplements the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) to establish uniform policies and procedures for the Defense Commissary Agency (DeCA). The DeCAARS is not a stand-alone document and must be used in conjunction with the FAR and DFARS.

#### **1.103 Authority.**

The DeCAARS is issued under the authority of FAR 1.301 and DFARS 201.304 pursuant to the direction of the Director, Defense Commissary Agency.

#### **1.104 Applicability.**

The FAR, DFARS, and DeCAARS apply to all acquisitions executed by DeCA activities.

#### **1.105 Issuance.**

##### **1.105-2 Arrangement of Regulations.**

(a) *General.* The DeCAARS follows the arrangement, reference, and citation scheme of the FAR and DFARS.

(b) *Numbering.* Numbered divisions (Part, Subpart, Section, Subsection, or Paragraph, etc.) of this Supplement that correspond to FAR and DFARS divisions relate to identical subjects. Areas of this Supplement that are also numbered in the 90 series (e.g., 1.601-90) contain supplemental subject matter related to, but not contained in the FAR or DFARS Part, Subpart, Section, etc. For clause and provision numbering, see 52.101.

(c) *References and citations.* This Supplement may be referred to as the DeCAARS. When making references to any part, subpart, section, etc. of this Supplement, specify "DeCAARS" followed by the applicable citation. References to DeCAARS cited included in this Supplement will include only the citation, without "DeCAARS" prefix. Cross-references to the FAR or DFARS included in this Supplement will cite "FAR" or "DFARS" followed by the appropriate part, subpart, etc. References to FAR or DFARS citations in this Supplement should be read to include the corresponding paragraphs in the FAR, DFARS and this Supplement. For example the words "...when authorized under FAR Part 9...." include the FAR, the DFARS, and this Supplement.

**1.105-3 Copies.**

The DeCAARS is available electronically in Microsoft Outlook under Public Folders/Contracting/Acquisition Policy and Procedures/DeCAARS and at <http://www.commissaries.com/business/DeCAARS.cfm>

**1.107 Certifications.**

In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), a new requirement for certification by a contractor or offeror may not be included in the DeCAARS unless:

- (1) The certification requirement is specifically imposed by statute; or
- (2) Written justification for such certification is provided to the Secretary of Defense by the Director, DeCA, via the Under Secretary of Defense (Acquisition, Technology, and Logistics), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

## **SUBPART 1.2 - ADMINISTRATION**

### **1.201 Maintenance of the FAR.**

#### **1.201-90 Recommendations for changes to FAR, DFARS and DeCAARS.**

Recommendations for changes to the FAR, DFARS or DeCAARS shall be submitted to HQ DeCA, Directorate of Contracting, Contract Policy & Systems Division, Fort Lee, VA. Requests must be submitted in a format consistent with DFARS 201.201-1(d)(i).

#### **1.290 Contracting Channels.**

(a) Unless otherwise specifically prescribed in FAR, DFARS or DeCAARS, submittals to higher authority relating to acquisition matters shall be through contracting channels (see 2.101-90(d)).

(b) Unless FAR, DFARS or DeCAARS specifies otherwise, acquisition related documents addressed to the Head of Contracting Activity (HCA), Senior Procurement Executive, or Agency Head, shall be signed by the Director of Contracting, HQ DeCA.

#### **1.291 Review and Approval Matrix.**

The following matrix provides a summary of the review and/or approval requirements contained in the DeCAARS. This matrix is intended as a reference tool and is not a substitute for the policies and procedures prescribed throughout the DeCAARS. See 1.290 for instructions on submissions through contracting channels.

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CITE	TYPE OF ACTION	FORWARD TO	REVIEW OR APPROVAL BY
1.304(a)	Approval to issue acquisition guidance/instruction other than described in the FAR 1.301(a)(2) and DFARS 201.304	Director of Contracting	Director of Contracting
1.403, & 1.404	Deviations to the FAR, DFARS, DeCAARS	Director of Contracting	Director of Contracting; or Director, Defense Procurement
1.602-3(b)	Ratification of unauthorized commitments	Determined by dollar threshold	Determined by dollar threshold
1.602-3-90(c)(3)	Review ratification actions >\$3,000	General Counsel	General Counsel
1.603-1(S-90)	Appoint contracting officers	Director of Contracting	Director of Contracting
1.691-1(b)	Legal review of solicitations & other documents	General Counsel	General Counsel
1.691-2	Solicitation reviews	Determined by dollar threshold	Determined by dollar threshold
1.691-3	Contract Review Board (CRB) -	CRB members	CRB members
1.691 (S-90)	Acquisition of Services	Decision Authority	Decision Authority
3.104-6(b)&(c)	Procurement Integrity disqualification notice & reinstatement	Director of Contracting	Director of Contracting
3.104-7(a)(1)	Procurement Integrity violation with no impact on pending award	Division Chief	Director of Contracting
3.104-7(a)(2)	Procurement Integrity violation that impacts pending award	Director of Contracting	HCA
3.602	Exception to allow contract with Government employee	Director of Contracting	HCA
5.404-1(a)	Release long-range acquisition estimates	Director, SADB	Director of Contracting

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5.502(a)	Approve paid advertisements on contract opportunities	Director of Contracting	Director of Contracting
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**REVIEW AND/OR APPROVAL MATRIX (Continued)**

<b>CITE</b>	<b>TYPE OF ACTION</b>	<b>FORWARD TO</b>	<b>REVIEW OR APPROVAL BY</b>
6.202(b)(1)	D&F to establish alternative sources	Director of Contracting	Director of Contracting
6.302-7(c)(3)	Determination of public interest	Director of Contracting	Secretary of Defense
6.303-1(b)	Recommendations for other than full & open competition	N/A	Director/Chief of Requiring Activity
6.303-1(S-90) & 6.303-90(b)(1)	Review of J&A for other than full & open competition	Determined by Threshold	Determined by Threshold
6.303-2(a)(8)	Advance approval not to do market research over \$50 mil.	Comp. Advocate	Competition Advocate
6.304(a)(2)	Approve J&A between \$550,000 and \$11.5M	Comp. Advocate	Competition Advocate
6.304(a)(3)	Approve J&A between \$11.5M and \$78.5M.	Comp. Advocate	Director, DeCA
7.103(h)	Approve written acquisition plans required by DFARS 207.103	Director of Contracting	Director of Contracting
8.702(S-91)	Requests for JWOD reservations	Director of Contracting	Director of Contracting
9.405(a)	Determination to contract with firm who is debarred, suspended or proposed for debarment	Director of Contracting	Director, DeCA
11.271(a)&(b)(3)	Authority to specify use of class I ozone-depleting substances	Director of Contracting	Director, DeCA
13.106-1(b)(1)	Sole source justification under SAT	Contracting Officer	Contracting Officer
13.201-90	Approval to use other than purchase card for micro-purchase	Director of Contracting	HCA

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13.301-95(a)	Annual review of purchase card procedures/program & transactions	N/A	Director of Contracting
14.407-3(c)	Allow bid withdrawal due to mistake in bid	Division Chief	Division Chief w/legal review
14.407-3(e)	Mistake in Bid determinations under FAR 14.407-3(a),(b) & (d)	Director of Contracting	Director of Contracting

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**REVIEW AND/OR APPROVAL MATRIX (Continued)**

CITE	TYPE OF ACTION	FORWARD TO	REVIEW OR APPROVAL BY
14.407-3(g)(5)	Mistake in Bid determination under conditions of FAR 14.407	General Counsel	General Counsel
14.407-4	Review of mistakes after award	Policy & Systems Div/GC	Director of Contracting & General Counsel
15.403-1(c)(4)	Waiver of cost or pricing data	Director of Contracting	HCA
15.406-1(b)	Pre-negotiation objectives	Division Chief	Division Chief
15.406-3(a)	Price Negotiation Memorandum (PNM)	Division Chief	Division Chief/CRB
15.606	Unsolicited Proposals	Policy & Systems Division	Director of Contracting
16.404(b)(4)	Approve use of fixed-price-award-fee contracts	Division Chief	Division Chief
16.601(c)	Review/approve D&F for time-and-material contracts	Division Chief	Division Chief
17.291	J&A for addition of option clause/ quantities after award	Based on threshold	Approval based on threshold
17.503(c)	Economy Act determinations & findings (D&F) if the servicing agency is not covered by the FAR	Dir. of Contracting	Director, DeCA
17.7404-1	Undefinitized Contract Actions	Director of Contracting	HCA

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19.201(f)	SDB Price Eval. Adjustment, determination of undue burden on non-SDBs	Small Business Specialist	Director, SADBUs
19.201-90(a)	SF 2579, Small Business Coordination Record	Small Bus. Specialist	Small Business Specialist
19.505(b)	Rejecting SBA recommendations - HCA designee on appeals to contracting officer's rejection	Policy & Systems Division Chief	Decision by Director of Contracting

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**REVIEW AND/OR APPROVAL MATRIX (Continued)**

CITE	TYPE OF ACTION	FORWARD TO	REVIEW OR APPROVAL BY
19.505(d)	SBA appeals to agency head	Director of Contracting	Decision by Director of Contracting
19.705-4(d)	Approve SDB subcontracting goal below 5% - 1 level above the Contracting Officer	Director, SADBUs	Division Chief
19.803(a)(b)&(c)	Sec 8(a) commitments	Director, SADBUs	Director, SADBUs
19.810(b)	SBA appeals on Sec 8(a) awards	Director, SADBUs	Director, DeCA
19.812	Notice of deficiencies/possible default of 8(a) contract	Small Bus. Spec. & SBA	N/A
22.103-4	Approve contractor overtime requests	Division Chief	Director of Contracting
28.103-1(a)	Approval to use bonds for other than construction contract	Division Chief	Director of Contracting
28.106-90	Review of bonds/consent of surety	General Counsel	General Counsel
32.402(e)(1) & 32.409-1	Approval to make advance payments	Director of Contracting	Agency Comptroller
32.803(d)	Assignment of Claims - Approval to exclude no-setoff commitment	Director of Contracting	Director of Contracting
33.103(f)(1)&(3)	Determination to award or permit performance prior to resolution of	Division Chief	Director of Contracting

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	agency protest		
33.103(h)	Legal review of response to agency protest	General Counsel	General Counsel
33.104(a)(3)(i)	GAO Protest - Legal review of Report to GAO	General Counsel	General Counsel

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**REVIEW AND/OR APPROVAL MATRIX (Continued)**

CITE	TYPE OF ACTION	FORWARD TO	REVIEW OR APPROVAL BY
33.104(b)(1)&(2)	GAO Protest before award - determination to award before GAO makes decision	Director of Contracting	HCA
33.104(c)(2)&(3)	GAO Protest after award - determination to continue performance	Director of Contracting	HCA
33.211(a)	Legal review of KO's final decision on claims/disputes	General Counsel	General Counsel
33.212-90(b)	Legal review of ASBCA appeal file	General Counsel	General Counsel
33.212-90(e)	Review of appeal	Division Chief	Director of Contracting
37.104(b)(i)	Personal services of experts & consultants	Director of Contracting	Director of Contracting/ General Counsel
42.7101	Approval to solicit voluntary refunds	Division Chief	Director of Contracting
49.101(S-92)	Notice of intent to terminate a contract	Division Chief	Director of Contracting
49.109-1(S-90)	Legal review of settlement agreement	General Counsel	General Counsel
49.402-3(e)(4)	Approval to default a small business when COC was issued by SBA (prior coordination w/SmBs Spec. & Director, SADBU required)	Director, SADBU	Director of Contracting
52.101(b)	Approval of nonstandard/local	Contract	In accordance

	clauses & provisions	Policy & Systems Division	with DeCA's Clause Control Plan
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**SUBPART 1.3 - AGENCY ACQUISITION REGULATIONS**

**1.301 Policy.**

(a)(2) The Directorate of Contracting, the Resale Contracting Division, and the Equipment & Maintenance Acquisition Division are authorized to issue procedural acquisition guidance/instructions for use within the activities they manage. They may also issue internal Standing Operating Procedures (SOP). Such guidance/instructions shall be consistent with the FAR, DFARS or DeCAARS; shall not have a significant effect beyond the internal operating procedures of DeCA; and shall not have a significant cost or administrative impact on contractors or offerors. A copy of all such documents shall be forwarded to Director of Contracting at time of issuance. See 1.304(a).

**1.304 Agency control and compliance procedures.**

(a) The Directorate of Contracting, HQ DeCA, is the only element within DeCA authorized to issue agency acquisition regulations.

(S-90) Contract Policy & Systems Division is designated as the control point within DeCA for assuring compliance with FAR 1.304 and DFARS 201.304.

(S-91) Policy Alerts: Policy Alerts will be used to provide a summary of recent FAR and DFARS acquisition changes, acquisition policy/guidance, and acquisition information.

(S-92) DeCA Acquisition Circulars (DeCAACS): DeCAACS will be issued to implement changes to the DeCAARS.

**SUBPART 1.4 - DEVIATIONS FROM THE FAR**

**1.403 Individual deviations.**

Approval authority within DeCA for individual (one-time) deviations from the FAR, DFARS, or DeCAARS, is the Director of Contracting. This approval authority does not extend to areas set forth in DFARS 201.402(1); any area that limits approval to a higher level of authority; or any area based on statute or Executive Order unless such authority provides for waivers.

**1.404 Class deviations.**

Approval authority for class deviations other than those listed in DFARS 201.402(1) is the Director of Contracting. Such deviations must comply with the limitations of DFARS 201.404(b)(ii).

**1.490 Control of deviations.**

Deviations will be incorporated into the DeCAARS via normal changes and updates issued in the Defense Commissary Agency Acquisition Circulars (DeCAACs). No additional controls or registers are required or necessary.

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**PART 1.6 - CAREER DEVELOPMENT, CONTRACTING AUTHORITY,  
AND RESPONSIBILITIES.**

**1.601 General.**

As the Head of Contracting Activity (HCA), the Director, DeCA has delegated to the Director of Contracting, with power of redelegation where permitted, the authority to execute the functions of the HCA, except where specifically prohibited from delegation by the FAR, DFARS or other directives.

**1.601-90 Responsibility of Chiefs of Contracting Divisions.**

The Chief of each contracting division shall:

(a) ensure all purchases subject to the provisions of the FAR, DFARS, and DeCAARS are made in accordance with these regulations, and only by contracting officers selected and appointed pursuant to FAR, DFARS and DeCAARS 1.603.

(b) ensure adequacy of staffing and training for the office, and that contracting actions taken reflect credit upon the Agency;

(c) assure opportunities for competition are not lost or foreclosed by restrictive requirements statements, unnecessarily vague or overly detailed specifications or statements of work, or inadequate or untimely procurement planning and preparation;

(d) assure actions taken are not arbitrary; ensure all contracting actions taken are within the established contract mission of the contracting office, and are consistent with commodity and monetary limitations and authorities. Whenever undue pressure is placed on a contracting division to execute a contracting action outside of its established mission or which is inconsistent with commodity or monetary limitations, the Director of Contracting, should be advised.

(e) establish procedures to ensure compliance with FAR 15.207, Handling Proposals and Information.

(f) ensure compliance with procedures for acquisition planning in FAR, DFARS, and DeCAARS Subpart 7.1 and any other issued policy guidance.

**1.602 Contracting Officers.**

**1.602-1 Authority.**

(S-90) Directors, and others having administrative supervision over contracting officers shall bear in mind that acts exceeding the delegated powers of a contracting officer do not bind the Government and accordingly shall not direct contracting officers to take actions which may expose the contracting officer to serious consequences. Contracting officers shall be protected from intra-organizational pressure, which might lead the contracting officer to perform improper acts, exposing him/her to personal risk and the Agency to criticism.

(S-91) Contracting officers shall not be assigned additional duties, which will interfere with performance of their acquisition responsibilities.

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**1.6-1**

(S-92) Technical personnel and others whose duties may require contact and discussions with suppliers and contractors have no authority to obligate or commit the Government contractually and shall not authorize purchases or direct changes which may change the contractual terms or result in claims against the Government.

(S-93) To retain a degree of independence that allows unbiased advice based on the principles of sound business, contracting officer's performance evaluations will be performed or coordinated within the contracting career chain. The only exception will be the performance evaluation of the Director of Contracting (DoDI 5000.66).

### **1.602-2 Responsibilities.**

#### **1.602-2-90 Contracting Officer's Representatives (COR).**

In addition to DFARS 201.602-2, the following shall apply:

(a) A COR may not be authorized to execute procurement actions by use of blanket purchase agreements or other acquisition procedures, nor to place calls or delivery orders under any agreements or indefinite delivery type contracts.

(b) The contracting officer is responsible for providing and/or facilitating the necessary training to ensure that CORs understand the scope and functional requirements and limitations of their authority.

(c) In DeCA, the term Quality Assurance Evaluator (QAE) is synonymous with COR; As a result, QAEs must also be properly trained.

(d) COR designations shall be by name and position title. When one COR is to act for the contracting officer on more than one contract, separate designations shall be issued for each contract. Changes in the scope and limitations of authority may be made either by issuance of a new designation or by an amendment to the existing designation.

(e) A designation of a COR shall remain in effect through the life of the contract concerned unless sooner revoked by the contracting officer or his successor, or terminated by the reassignment of the individual designated. Terminations of designations of CORs shall be in writing and shall set forth the date upon which the termination is effective. If the designation of a COR is revoked for any reason before completion of the contract concerned, the COR shall turn over his records to the

successor COR or forward his records to the contracting officer, as instructed by the contracting officer.

(f) Contracting officers shall instruct CORs as to the type of records they shall maintain and the distribution thereof. When a contract is completed, the COR shall forward all records to the contracting officer for retention in the appropriate contract file.

### **1.602-3 Ratification of Unauthorized Commitments.**

(a) *Definitions.*

The term "Director" as used in 1.602-3-90 shall be interpreted to mean the Directors of the DeCA Regions, and the Directors and Chiefs of HQ DeCA

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#### **1.6-2**

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Directorates and Staff Offices.

(b) *Policy.*

(3) Authority to ratify an unauthorized commitment is delegated to the following, without power of redelegation:

(i) to the Head of Contracting Activity (HCA), for amounts over \$100,000;

(ii) to the Director of Contracting, for amounts of \$25,000 to \$100,000; and

(iii) to the Contracting Division Chiefs for amounts of \$25,000 or less, for actions under their cognizance. If the Division Chief is acting as the contracting officer, the approval authority shall be the Director of Contracting.

### **1.602-3-90 Ratification Procedures.**

(a) The individual who made the unauthorized commitment shall:

(1) Prepare a signed statement, using DeCA Form 10-2, Request for Ratification of Unauthorized commitment, describing the circumstances and events, why normal procurement procedures were not followed, what bona fide Government requirement necessitated the commitment, whether any benefit was received by the Government, its value, and any other pertinent facts.

(2) Attach to the statement all relevant documents such as orders, invoices, or other documentary evidence of the transaction.

(3) Forward the signed statement and accompanying documents through his/her supervisor to the Director having jurisdiction over the individual involved.

(b) If the Director concurs that the commitment should be ratified, he/she shall forward the documentation described in paragraph (a) above to the cognizant division chief with an endorsement that:

(1) verifies the accuracy and completeness of the documentation;

(2) provides a complete purchase description and funding for the ratification action; and

(3) describes the measures taken to prevent a recurrence of unauthorized

commitments, including a description of any disciplinary action taken or why none was considered necessary.

(c) The division chief responsible for processing the action shall ensure compliance with FAR 1.602-3 and these procedures. The Chief will assign a Contracting Officer responsible for:

(1) Reviewing the case and determining the adequacy of all facts, records, and documents furnished, and obtaining any additional material or information/clarifications required.

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**1.6-3**

(2) Preparing a summary statement of facts addressing the circumstances pertaining to the unauthorized commitment, to include a recommendation as to whether the transaction should be ratified and the reasons therefore. The statement must specifically address the limitations listed in FAR 1.602-3(c) and provide the basis for determining whether the prices involved are fair and reasonable. Advice against the ratification should include the rationale/basis and a recommendation as to whether the matter should be processed under FAR and DFARS Part 50 (Public Law 85-804) or as a GAO claim, or other appropriate disposition.

(3) Submitting the summary statement of facts and all supporting documents to legal counsel for an opinion as to form and legality and for any additional pertinent comment or advice. Legal opinion is required only when the dollar value of the unauthorized commitment exceeds the micro purchase limit.

(4) Forwarding all documents, to include the legal review when required, to the applicable ratifying authority for consideration and action.

(d) The ratifying official (see 1.602-3(b)(3)), upon receipt and review of the complete file, may ratify the unauthorized commitment if it is deemed in the best interest of the Government, or direct other disposition as appropriate. If approved for ratification, such approval shall be documented in writing and the file returned to the appropriate contracting officer for issuance of a purchase order or other contract document for payment purposes.

(e) Unauthorized commitments forwarded to the HCA or Director of Contracting for ratification pursuant to the delegations in 1.602-3(b)(3) shall be submitted to the Directorate of Contracting. Submissions shall contain all required documentation, arranged in a comprehensive format so as to facilitate the ratification process.

**1.603 Selection, appointment, and termination of appointment.**

**1.603-1 General.**

(S-90) The Director of Contracting is the designated official for the selection, appointment and termination of appointment of Contracting Officers.

(S-91) The number of Contracting Officers appointed will be kept to the

minimum essential for efficient operation.

(S-92) Prior to making a personnel selection to fill a position which will require performance as a contracting officer, the selecting official shall ensure the individual meets the requirements for a contracting officer appointment.

(S-93) When it is known in advance that an individual selected to fill a position vacancy will be required to perform as a contracting officer, the job opportunity announcement should include a requirement to meet the qualification requirements for a contracting officer appointment.

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**1.603-2 Selection.**

(S-90) Requests for all contracting officer appointments at DeCA shall be initiated by the supervisor and approved by the Chief of the respective division. A certificate designating approval of all contracting officer appointments shall be signed by the Director of Contracting. This approval authority may not be delegated. The requester shall ensure that all candidates possess the requisite knowledge, experience, training, and qualitative performance record appropriate to the dollar value and complexity of the prospective contracting officer responsibilities. The request shall identify the level of contracting authority required; the necessity/ justification for the appointment (include the complexity, dollar value, and workload of acquisitions expected to be assigned); and describe the candidate's qualifications in terms of the selection criteria of FAR 1.603-2, DFARS 201.603-2 and DeCAARS 1.603-2, using the following format:

- (a) Name of candidate.
- (b) Position title, series and grade.
- (c) Office where candidate is assigned.
- (d) Dollar level/type of contracting authority requested.
- (e) Justification for appointment and level of authority.
- (f) Contracting and other relevant work experience.
- (g) Education. Include major field of study at institutions of higher education.
- (h) Contracting related training (See DoD Manual 5000.52M for required contracting courses).
- (i) Other relevant qualifications, certifications or skills.
- (j) Relevant honors, awards or fellowships received.
- (k) Statement as to whether certification under the Defense Acquisition Work Force Improvement Act (DAWIA) has been obtained and the level of such certification.

(S-91) For a contracting officer appointment limited to the simplified acquisition threshold, an individual must meet the following minimum requirements:

- (a) Have one year of purchasing or contracting experience using either

simplified acquisition procedures or formal contracting procedures, and

(b) Completed the following training:

(1) Simplified Acquisition Procedures (CON 237)

(2) All courses required for level II certification in the appropriate career field.

(S-92) All other DeCA contracting officers must meet the DAWIA qualification requirements set forth in DFARS 201.603-2 prior to appointment. The DAWIA requirements are the minimum qualifications for contracting officers and will be evaluated by the appointing official in conjunction with all other qualification requirements.

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**1.6-5**

**1.603-3 Appointment.**

(a) Each SF 1402, Certificate of Appointment, will be serially numbered. The original certificate of appointment shall be displayed at the contracting officer's immediate work area.

**1.603-4 Termination.**

Supervisors/Division Chiefs will provide written requests for termination to the Director of Contracting with the appropriate reason and effective date of termination. A written letter of termination will be signed by the Director of Contracting.

**1.690 Ordering Officers.**

**1.690-1 General.**

The Chief, Resale Contracting Division, or their designated representative, has the authority to appoint ordering officers under the conditions and for the purposes set forth in 1.690-2. Ordering officers act as agents for the government when placing orders.

**1.690-2 Policy.**

(a) It is DeCA policy that the Chief, Resale Contracting Division, be responsible for the execution and efficient performance of his/her assigned contracting missions. The number of ordering officers appointed shall be kept to the minimum essential for efficient operation. Numbers may vary depending on the size of the store and its operations.

(b) The authority appointing the ordering officer may be delegated no lower than the level of the Contracting Officer responsible for the award and administration of the contract/agreement against which the ordering officer will be acting.

(c) Ordering officers may be appointed pursuant to 1.690-1 for the purposes in (e) below.

(d) Acquisition personnel assigned to a contracting office may be authorized to place orders against contracts/agreements without an ordering officer designation.

(e) Ordering officers are appointed to issue, maintain, modify, and terminate call orders against resale Indefinite Delivery Type Contracts (IDC), Resale Ordering Agreements, and Blanket Purchase Agreements.

**1.690-3 Designation.**

(a) Authority. Evidence of the appointment of an ordering officer shall be present within each contract/agreement. For the purpose of ordering resale items, multiple designations, by position title, may be included in a single

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**1.6-6**

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contract/agreement. Each resale contract/agreement issued, that lists the position title(s) of the ordering officer(s) in the terms and conditions, must also include this statement: The authority stated herein shall not be delegated to any other person, title, or position, other than those listed in the contract/agreement.

(b) Limitations. Persons occupying positions designated as an ordering officer shall ensure that funds are available for each transaction. Order placement limitations follow:

(1) Resale Ordering Agreements for resale subsistence items – no monetary limitation.

(2) Indefinite Delivery Contracts (IDC) for resale subsistence items – no monetary limitation.

(3) Blanket Purchase Agreements (BPA) - individual orders for subsistence (edible items) – no monetary limitation.

(4) Blanket Purchase Agreements (BPA) - individual orders for resale items that are not subsistence (non-edible items) shall not exceed \$100,000.00.

(c) Responsibilities. Ordering officers have the responsibility to ensure that IDCs are the primary source used to place calls for non-brand name products. In the case of emergencies, and if calls must be placed against BPAs, ordering officers shall ensure that the guidelines noted below are followed:

(1) BPA call orders of \$3,000 or less for NON BRAND NAME RESALE items may be made without competition if prices are reasonable; however, orders should be distributed equitably among available BPA suppliers. Informal records of competition sought and obtained must be maintained. When competition is required and only one source was solicited, an explanation for the absence of competition must be documented.

(2) BPA call orders exceeding \$3,000 for NON BRAND NAME RESALE items must be competed by soliciting quotations from at least three qualified BPA sources (monthly price quotes, where applicable, may be used for this purpose).

(3) BPA call orders for BRAND NAME RESALE items are not required to be competed unless the brand name items are available from more than one supplier. In those cases, the competition requirements for non-brand items will apply.

(d) Issuance, Administration and Termination of Call Orders. Call orders may be placed orally/telephonically, electronically or in writing and will be administered by the person who placed the order. Contractors shall be cautioned to accept call orders only from the contracting officer, acquisition personnel assigned to the contracting office, or authorized ordering officers.

(e) Standards of Conduct and Reporting Requirements. Ordering officers shall comply with the standards of conduct prescribed in DoD Directive 5500.7, Standards of Conduct, and DoD 5500.7-R, Joint Ethics Regulation, and shall review these documents at least annually.

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**1.690-4 Orientation and Instruction.**

The Chief, Resale Contracting Division, will maintain DeCAH 10-11, entitled Ordering Officers' Guide for Resale Items. Ordering officers can access DeCAH 10-11 at <https://www.deca.mil/forms/index.htm>.

**1.690-5 Surveillance.**

(a) Ordering officers shall be under the technical supervision of the appointing authority.

(b) Ordering Officer activities may be reviewed through examination of purchase documents and records by the appointing authority, his/her designee, or the DeCA Inspector General's office. Reviews may be conducted by using sampling techniques and computer records where available. Review findings shall be written and shall include, as a minimum, specific comments as to whether or not ordering officers are:

- (1) operating within the scope and limitations of their authority;
- (2) maintaining the required standards of conduct;
- (3) splitting purchase transactions to avoid monetary limitations;
- (4) delegating their authority to others; and

(c) Should a designating authority find that an ordering officer is not properly performing his/her duties or fails to take prompt action to correct deficiencies noted in inspections or reviews, the appointing authority may revoke the ordering officer appointment.

**1.690-6 Termination of Appointment.**

The appointment of an ordering officer shall remain in effect until the contract/agreement expires, the ordering officer is reassigned, or their employment with DeCA is terminated. However, the designating authority may revoke the individual's ordering officer appointment at any time. Revocations shall not take effect retroactively.

**1.691 Legal and Board Reviews**

**1.691-1 Participation of General Counsel in the Acquisition Process.**

(a) General Counsel should participate as a member of the contracting officer's team throughout the acquisition process, from acquisition planning through contract completion and closeout. This includes participation in Contract Review Boards to the extent required by 1.691-3.

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(b) In addition to those areas in which existing regulations require their participation, General Counsel shall review the following, inform the contracting officer in writing whether the proposed action is legally sufficient, give the details of any insufficiency, and provide a recommended course of action to overcome the insufficiency:

(1) all solicitations where the total dollar value of the acquisition, including options, is expected to be \$1,000,000 or more or where the base year exceeds \$500,000. (Requests for legal review below this dollar threshold are not precluded.) The contracting officer shall ensure such solicitations are reviewed and any legal insufficiencies resolved prior to issuance of the solicitation. Legal review is not required for the exercise of options evaluated at time of award, or delivery orders issued against existing contracts and awarded on lowest price.

(2) all formal acquisition plans required by FAR/DFARS subpart 7.1.

(3) all J&As or D &Fs required by FAR Part 6 or FAR 13.501.

(4) acquisitions for Advisory and Assistance Service (see FAR subpart 37.2).

(5) proposed terminations for default or convenience.

(6) termination settlement agreements, including no cost settlements.

(7) proposed ratifications of unauthorized commitments exceeding \$3,000.

(8) final decisions by Contracting Officers on claims or disputes.

(9) requests for changes, waivers or deviations to the FAR, DFARS or DeCAARS, to include proposed use of nonstandard clauses and provisions.

**1.691-2 Additional reviews and requirements.**

(a) The contracting division chiefs are responsible for ensuring all solicitations in their respective organizations comply with the FAR, DFARS and DeCAARS; avoid ambiguities; and adequately reflect the Government's requirements.

(b) All solicitations with a total estimated dollar value, including options, between \$100,000 and \$999,999, require written review and approval by the division chief prior to issuance of the solicitation and prior to contract award. If **the base year** exceeds \$500,000 then an additional review by the Contract Policy and Systems

Division, DeCA/AMP, is required as well.

(c) Division Chief reviews shall be completed and any necessary corrections made prior to forwarding the solicitation for legal review, higher-level review, or releasing it to industry. Division chiefs are also responsible for ensuring the establishment and conduct of a Contract Review Board in accordance with 1.691-3.

(d) To the extent technical skills are both available and determined necessary by the contracting officer, solicitations should be reviewed by technical, functional, quality assurance, and other concerned personnel. Early involvement of such personnel during solicitation development is essential to precluding unnecessary delays.

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(e) Solicitations identified below shall be submitted with complete pre-award files to the Chief, Contract Policy & Systems Division for review. Timelines for recurring and/or non-complex solicitation reviews by the Contract Policy and Systems Division will be 5 business days. Any additional time needed for complex and/or new acquisitions will be coordinated between the submitting division chief and the Contract Policy and Systems Division chief. All review timelines **must** be included in the acquisition milestones. Solicitations will not be issued until all review comments are resolved with a mutually agreeable solution. If resolution of comments or concerns cannot be agreed upon by the contracting officer and the assigned procurement analyst, the disagreement will be elevated to the Contract Policy and Systems Division Chief and the Division Chief where the acquisition resides. Acquisitions executed under urgent conditions such as letter contracts and unusual and compelling urgency justification & approvals are not exempt from required reviews; however, reviews will be completed expeditiously.

(1) All solicitations with a total estimated value, including options, of \$1,000,000 or more or where the total estimated dollar value of the base year is \$500,000 or more. (Note: Dollar thresholds notwithstanding, the Director of Contracting has the option to require review of any solicitation at any time.

(2) All solicitations issued for the purpose of conducting a cost comparison under the Commercial Activities procedures of OMB Circular A-76 (see FAR subpart 7.3).

(3) All solicitations for Information Technology exceeding the simplified acquisition threshold.

(f) Solicitations forwarded pursuant to (c) above may be submitted concurrent with submission to General Counsel; however, a copy of the legal review must be provided upon receipt.

(g) Prior to the solicitation of bids or proposals for advisory and assistance services, the contracting officer shall have evidence of the required management approval, for retention in the contract file.

(h) Before issuing a solicitation or awarding a contract, the contracting officer shall obtain a written certification, which includes email certification, that sufficient

funds are available if applicable (see FAR 32.702 and 32.702-90).

(i) Solicitations falling under the Acquisition of Services Policy will be submitted for solicitation review after review and approval of the acquisition strategy by the Decision Authority (see 1.691-3-90).

### **1.691-3 Contract Review Board.**

(a) Review by the Contract Review Board (CRB) is required for all contract actions to be awarded and for modifications to existing contracts valued at \$1,000,000 or more, including options, or where the base years exceeds \$500,000. Excluded are

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competitive delivery orders placed under existing contracts and awarded on lowest price, Resale Ordering Agreements for brand name resale items, and the exercise of options that were evaluated at time of award. In the case of multiple awards from a single solicitation, the combined total of all awards will be used to determine if the acquisition meets the CRB threshold.

(b) Complete pre-award files and proposed award documents shall be submitted for review to the Chief, Contract Policy and Systems Division and submitted under the signature of the Division Chief. Timelines for recurring and/or non-complex solicitation reviews by the Contract Policy and Systems Division will be 5 business days. Any additional time needed for complex and/or new acquisitions will be coordinated between the submitting division chief and the Contract Policy and Systems Division chief. All review timelines **must** be included in the acquisition milestones. Contracts will not be awarded, until all review comments are resolved with a mutually agreeable solution. If resolution of comments or concerns cannot be agreed upon by the contracting officer and the assigned procurement analyst, the disagreement will be elevated to the Contract Policy and Systems Division Chief and the Division Chief where the acquisition resides

(c) Copies of the proposed award document and Decision Summary Document will be provided to all other members participating in the CRB.

(d) The Board shall be composed of:

- (1) Chief of the cognizant contracting division, chair of the CRB and voting member
- (2) Contract Policy and Systems Division Analyst, voting member
- (3) General Counsel, voting member
- (4) Cognizant contracting officer, voting member
- (5) Cognizant contract specialist, non-voting member
- (6) A technical representative and/or a representative from the requiring activity whenever feasible, non-voting member
- (7) Any additional members required by the CRB chairperson, non-voting member.

(e) Higher-level participation (e.g., Director, Contracting) is recommended for

acquisitions that are of a sensitive or complex nature, or have high level Command interest. Such acquisitions may also require an executive level briefing to the agency head before award, as may be jointly determined by the Director of Contracting and the Functional Process Owner/Staff Office Chief in accordance with the Executive Review of Acquisition Strategies for High Visibility Requirements located under Public Folders/Contracting/Acquisition Policy and Procedures/Policy Memoranda.

(f) The contracting officer and contract specialist for the proposed action shall be responsible for presenting the intended contract and applicable supporting documents to the board members for consideration. Prior to requesting a board review, the

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contracting officer shall conduct a thorough review of the proposed action and all documentation to ensure it is accurate, correct, and ready for review.

(g) No information other than information available at openings for sealed bid procurements will be released to industry or other parties not directly involved in the procurement process until the CRB has concurred with the award (e.g., small business notification letters will not be sent until after the CRB has concurred with the award),

(h) As a minimum, the review by the CRB shall ensure that:

(1) The proposed award reflects an appropriate procurement method supported by complete, accurate, and valid documentation;

(2) The proposed award adequately covers the technical requirements, and is consistent with the basis for award or evaluation criteria cited in the solicitation;

(3) The proposed award meets all requirements of law and regulation;

(4) There is sound basis, adequate rationale and authority supporting the award; and

(5) The award represents sound business judgment and is in the best interests of the government.

(i) All voting members must be in agreement and provide concurrence on the proposed contract action before executing the award/modification. The contents of the CRB shall be documented in a review summary and signed by all members (sample located in public folders under contracting/acq. policy and procedures/samples/templates). The contracting officer shall ensure corrective action is taken on any adverse findings or recommendations prior to contract award. If the board members are not in agreement, the CRB chairperson shall forward the matter to the Director of Contracting for resolution. The CRB summary shall be made a part of the contract file.

**1.691-3-90 Acquisition of Services Policy.**

(a) Current USD (AT&L) Acquisition of Services Policy requires the designated Decision Authority to review and approve the acquisition strategy for all service

acquisitions valued at \$10,000,000 or above, including all options. The Acquisition of Services policy covers contract actions for services including contract awards, transfer of funds, or placement of orders under existing contracts (including basic ordering agreements, blanket purchase agreements, IDIQ contracts and similar ordering agreements). A briefing will be provided to the Decision Authority by the Contracting Officer and requirements personnel covering, at a minimum, the items identified in DeCAARS Subpart 7.1. Briefings to the Director of DeCA require coordination by the Director of Contracting. Once the acquisition strategy is approved by the Decision Authority, solicitation development may begin and the acquisition may be synopsised.

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(b) Current USD (AT&L) Acquisition of Services Policy requires, at a minimum, an annual execution review of all service contracts valued at \$10,000,000 or above, including options, to assess progress against approved cost, schedule, and performance metrics. This will be provided through a briefing to the Decision Authority within 60 days after completion of each annual contract period.

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## SUBPART 1.90 - GENERAL POLICIES

### 1.9000 Contracting with Nonappropriated Fund Instrumentalities (NAFI).

(a) Based on a Comptroller General decision (referred to as the "mattress decision", 58 Comp. Gen. 94), appropriated fund activities of the Government are generally restricted from purchasing from NAIs. Circumstances where such purchases may be allowed are:

(1) When only a NAFI can provide the needed goods or services (e.g., in an extremely urgent situation, or other circumstances where a NAFI is the only available source).

(2) Under the authority of 10 U.S.C. 2424, as implemented in DFARS 206.302-5. This provides authority to acquire supplies and services, in an amount not to exceed \$50,000 (unlimited for soft drinks), from military exchange stores outside the United States for use by the armed forces outside the United States.

(3) Under the authority of Section 331 of the FY 1996 Defense Authorization Act, as amended by Section 341 of the FY 1997 Defense Authorization Act (10 U.S.C. 2482(b)(1)). This provides authority to enter into a contract or other agreement with a NAFI to provide services beneficial to the efficient management and operation of the commissary system.

(b) Normal contracting procedures must be used when making authorized purchases from NAIs. Under (a)(1) and (2), appropriate justifications supporting the purchase are required (i.e., sole source justifications, or justification and approval (J&A) when FAR/DFARS Part 6 or FAR 13.501 apply). Competitive contracting procedures apply to purchases under (a)(3), unless otherwise justified.

Change 2, December 12, 2007  
Defense Commissary Agency Acquisition Regulation Supplement

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