



## The NAACS' End-Use Certificate Form 1822 Compliance Guidance Outline (March 2002)

This Compliance Guidance Outline for completing End-Use Certificate ("EUC") Form 1822 is provided by the NAACS as a service to its members. In completing an EUC 1822, members are also advised to refer to the step-by-step instructions for completing the Form which were distributed by the Defense Reutilization and Marketing Service ("DRMS") and which are entitled, Instructions for Completing DLA Form 1822 (12/14/01).

(a) Do not submit a completed EUC 1822 with each bid. Completed EUC's should be submitted only when you are advised that you are the high bidder.

(b) Do not submit a completed EUC for each line item or National Stock Number ("NSN") included in a sale. You need to submit only one EUC per sale or lot.

(c) At the top of the form, write in the sale or IFB number. In the box entitled "Line Item Number/Commodity" near the top of the first page of the form, write in the lot number (and not the NSN number).

(d) Who should sign EUC 1822? An owner, officer or authorized representative of a corporation should sign on behalf of a corporation. A partner or authorized representative should sign on behalf of a partnership. An owner or authorized representative should sign on behalf of a sole proprietor.

(e) Section I, Box 2 requests that you provide the "Nature of End-User's Business." A bidder, however, will not know the identity of the end user if the item is purchased for inventory and possible resale. In that situation, the bidder should simply enter "not applicable" in Box 2. (We are told that when you want to answer "not applicable," DLA insists that you write in the words "not applicable," as opposed to simply writing in "N/A.")

(f) Section I, Box 7 requests that bidders provide information such as addresses, SSNs for "all corporate officers, partners and/or agents" of the bidder. Our understanding is that Box 7 seeks information only with regard to those agents, if any, involved in the purchase of the property that is the subject of the EUC. You should also provide the requested information (i.e., SSN, address, etc.) for the person who signs the EUC for your company.

(g) Section II, Boxes 1A through G: If a bidder is purchasing the property for inventory and subsequent resale (i.e., the identity of the prospective buyer is not yet known), the bidder is required to check only Box 1G. The bidder should write in "not applicable" for all the other Boxes in Section II.

(h) Section II, Block 1G states that "if required by the contract/transfer document, I will obtain prior written approval for the resale of any of the property covered by this contract." DLA advises us that you will need pre-approval only in the rarest of instances and only when the sales documentation pursuant to which you purchased the property, either from DRMS or Government Liquidation, indicated that prior approval was required.

(i) Paragraph 4 of Section III provides, in part, that "when MLI/CCLI property is transferred, the information in this form regarding the above laws and regulations must be passed to the subsequent purchaser/receiver". To comply with this provision, the NAACS suggests that you add the following language in all of your standard invoices, quotes or shipping paperwork:

**"Unless otherwise noted, this sale, order or quote may include Munitions List items (MLI) or Commerce Controlled List items (CCLI). MLI/CCLI property is controlled by the U.S. Government and in many cases cannot be transferred (exported, sold or given) to a foreign country, a non-U.S. Citizen/National or a non-Permanent U.S. Resident without a valid State/Commerce Department export authorization. It is the responsibility of you (the purchaser) to determine what the applicable requirements may be and to obtain all necessary authorizations, licenses or approvals. The use, disposition, export and re-export of the property covered or included in this sale, order or quote is subject to the provisions of law referenced in End-Use Certificate DLA Form 1822, DEC 2001, including, but not limited to, the Arms Export Control Act (22 USC 2751 et seq.); Export Administration Act of 1979 (50 USC App. 2401 et seq.) as contained under Executive Order 12924; International Traffic in Arms Regulations (22 CFR 120 et seq.); Export Administration Regulations (15 CFR 730 et seq.); Foreign Assets Control Regulations (31 CFR 500 et seq.) and the Espionage Act (18 USC 793 et seq.)."**

(j) Paragraph 2 of Section IV advises bidders that MLI items “in many cases cannot be transferred (exported, sold or given) to a foreign country, a non-U.S. Citizen/National or a non-Permanent US Resident without a valid State/Commerce Department export authorization.” To comply with this requirement, the NAACS suggests that you add the following language to all of your standard invoices, quotes or shipping paperwork:

“By accepting delivery of this material, you (i.e., the purchaser) hereby represent and warrant that you are not an embassy or any agency or subdivision of a foreign government. If you are an embassy or agency or subdivision of a foreign government, you must provide to us (i.e., the seller) a copy of the State/Commerce Department export license or license number which allows you to receive and export the material that is the subject of this sale.”

(k) No need to segregate EUC 1822 material from non-EUC 1822 material: It was once feared that EUC 1822 would force you to segregate or separately store material that you purchased prior to EUC 1822’s implementation from material purchased after its implementation. However, if you add the language that we suggest in the above paragraphs (i) and (j) to all of your invoices, quotes and shipping paperwork, including those relating to the sale of pre-1822 property, you will not need to segregate your property. (However, we note that some dealers may still insist on segregating their property because only with regard to post-1822 property will you be required to “cooperate” with Government investigators who may visit your facilities to inquire about the existence or condition of property purchased pursuant to an EUC 1822.)

(l) EUC 1822 does not apply to sales back to the U.S. Government: The NAACS believes that when selling surplus back to DoD, there is no need to advise DoD that the items being sold are MLI or CCLI items that will require an export license prior to selling overseas. In other words, the intent of EUC 1822 is to place all subsequent holders of MLI property on notice that the material is subject to export controls. If the property, however, is sold to the U.S. Government, we see no need to advise the Government of its responsibilities under the ITAR. Therefore, for sales to the U.S. Government, you need not include in your sales paperwork the suggested language in paragraphs (i) and (j) above. (In February 2002, the NAACS asked DLA to confirm our understanding in this regard. DLA has not yet responded to our request.)

(m) EUC 1822 does not apply to sales made pursuant to an export license: If you obtain a valid State Department export license allowing you to export the item, the NAACS believes that the export of that item and subsequent re-transfer by the recipient are matters that are governed by the International Traffic in Arms Regulations and are under the jurisdiction of the State Department. Therefore, once an export license is obtained, EUC 1822 is not applicable and need not be complied with. When shipping an item pursuant to a validly issued export license, you need not include in your sales paperwork the suggested language in paragraphs (i) and (j) above. (In February 2002, the NAACS asked DLA to confirm our understanding in this regard. DLA has not yet responded to our request.)

This Compliance Guidance Outline is distributed by the NAACS as a service to our members for informational purposes only. It is not intended to provide legal advice. Such advice may only be given when it relates to specific fact situations. In providing this Guidance Outline to our members, the NAACS is not suggesting that the steps suggested in this Outline represent the only way to comply with EUC 1822. There may be other steps that you may take in addition or in substitution to what is suggested herein. Members may review EUC 1822 on their own and determine how best to comply.