

**Class Deviations - 2 Dec 2016**

The Director of Defense Procurement and Acquisition Policy issues class deviations when necessary to allow organizations to deviate from the FAR and DFARS. Below are all the current DoD class deviations in effect. All other deviations are archived by year.

**[Class Deviation 2017-O0002 - Enhancing the Effectiveness of the IR&D \(01 December 2016\)](#)**

[Class Deviation 2017-O0001 - Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements \(14 November 2016\)](#)

[Attachment 1, Class Deviation 2017-O0001 - Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements \(DOC\)\(14 November 2016\)](#)

[Attachment 2, Class Deviation 2017-O0001 - Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements \(DOC\)\(14 November 2016\)](#)

[Class Deviation 2016-O0011 - Extension for the Implementation of Uniform Procurement Instrument Identifier \(PIID\) Numbering \(26 September 2016\)](#)

[Class Deviation 2016-O0010 - Competition of Religious-Related Services \(13 October 2016\)](#)

[Attachment, Class Deviation 2016-O0010 - Competition of Religious-Related Services \(DOC\)\(13 October 2016\)](#)

[Class Deviation 2016-O0009 - Subcontract Reporting \(15 August 2016\)](#)

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[Class Deviation 2016-O0008 - Contractor Personnel Performing in United States Africa Command Area of Responsibility \(10 June 2016\)](#)

[Attachment, Class Deviation 2016-O0008 - Contractor Personnel Performing in United States Africa Command Area of Responsibility \(DOC\)\(10 June 2016\)](#)

[Class Deviation 2016-O0005 - Enhanced Authority to Acquire Products and Services of Djibouti \(9 February 2016\)](#)

[Attachment 1, Class Deviation 2016-O0005 - Enhanced Authority to Acquire Products and Services of Djibouti \(DOC\)\(9 February 2016\)](#)

[Attachment 2, Class Deviation 2016-O0005 - Enhanced Authority to Acquire Products and Services of Djibouti \(DOC\)\(9 February 2016\)](#)

[Attachment 3, Class Deviation 2016-O0005 - Enhanced Authority to Acquire Products and Services of Djibouti \(DOC\)\(9 February 2016\)](#)

[Class Deviation 2016-O0004 - Authority to Acquire Products and Services Produced in Afghanistan or in Countries Along a Major Route of Supply to Afghanistan \(29 December 2015\)](#)

[Attachment, Class Deviation 2016-O0004 - Authority to Acquire Products and Services Produced in Afghanistan or in Countries Along a Major Route of Supply to Afghanistan \(DOC\)\(29 December 2015\)](#)

[Class Deviation 2016-O0003 - Prohibition on Contracting with Entities that Require Certain Internal Confidentiality](#)

**Yellow highlight indicates changes since the 15 Nov 2016 DPAP Website Update**

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 [Class Deviation 2012-O0007 - Prohibition Against Contracting with Corporations that Have a Felony Conviction \(DOC\)](#)(9 March 2012)

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 [Class Deviation 2011-O0006 -- Utilities Privatization-Class Deviation from FAR Part 31](#)  
(31 March 2011)

 [Class Deviation 2011-O0002 -- Congressional Notification on Significant Contract Termination](#)  
(8 October 2010)

**This page last updated: December 2, 2016**

## DoD Class Deviations Summaries and Expiration Dates

[Added by the Defense Acquisition University]

**2017-O0002**: *Enhancing the Effectiveness of Independent Research and Development* (1 Dec 2016)  
Expiration Date: until incorporated in the DFARS or otherwise rescinded

Affects: DFARS 231.205-18(c)(iii)(C)(4)

Contracting officers shall apply the following cost principle in order for annual independent research and development (IR&D) costs to be allowable:

(4) For IR&D projects initiated in the contractor's fiscal year 2017, as a prerequisite for the subsequent determination or allowability, the contractor shall-

(i) Engage in a technical interchange with a technical or operational DoD Government employee sometime during the contractor's fiscal year 2017 so that contractor plans and goals for IR&D projects benefit from the awareness of and feedback by a DoD Government employee who is informed of related ongoing and future potential interest opportunities.

(ii) Use the online input form for IR&D projects reported to DTIC to document the technical interchange which includes the name of the DoD Government employee and the date the technical interchange occurred.

This class deviation alleviates the requirement that the technical interchanges occur before costs are generated for IR&D projects initiated in the contractor's fiscal year 2017 to afford contractors a phase-in period to develop processes and procedures.

**2017-O0001**: *Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements* (14 Nov 2016) [FY17]  
Expiration Date: until incorporated in the FAR or otherwise rescinded

Adds: the following solicitation provision and contract clause and the prescriptions for their use:

- DFARS 252.203-7994, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (DEVIATION 2017-O0001) (NOV 2016)
- DFARS 252.203-7995, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (DEVIATION 2017-O0001) (NOV 2016)

When using funds made available by the Continuing Appropriations Act, 2017 (Pub. L. 114-223) or any other Act that extends to FY 2017 funds the same prohibitions as contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2016, contracting officers shall include the above provision and clause in all solicitations and contracts, including solicitations and contracts for the acquisition of commercial items under FAR part 12; and modify existing contracts awarded on or after October 1, 2016, to the maximum extent practicable, to include the clause at 252.203-7995.

**2016-O0011**: *Extension for the Implementation of Uniform Procurement Instrument Identifier (PIID) Numbering* (26 Sep 2016)  
Expiration Date: until incorporated in the DFARS or otherwise rescinded

Affects: FAR subpart 4.16, DFARS subpart 204.16, DFARS 204.1601(b)

Effective immediately, the date at DFARS 204.1601(b) by which all DoD components are required to comply with the PIID numbering requirements of FAR subpart 4.16 and DFARS subpart 204.16 is extended from October 1, 2016, to March 31, 2017. This action will provide DoD components additional time to upgrade the capabilities of their systems, which are anticipated to be functional in the next six months, to meet the requirements of the regulations.

## Summary (Cont'd)

**2016-O0010:** *Competition for Religious-Related Services (13 Oct 2016)*  
[Rescinds and supersedes Class Deviation 2016-O0007 dated 3 May 2016]  
Expiration Date: until incorporated in the DFARS or otherwise rescinded

Affects: FAR 6.302-5(b)(4) through (7), FAR 19.000(a)(3)

Adds: the following solicitation provision in full text and the prescription for its use:

- DFARS 252.219-7998, Competition for Religious-Related Services (DEVIATION 2016-O0010) (OCT 2016)

Effective immediately, contracting officers shall not preclude a nonprofit organization from competing for a contract for religious-related services on a U.S. military installation. Contracting officers shall not use any of the authorities for other than full and open competition at FAR 6.302-5(b)(4) through (7) when acquiring religious-related services to be performed on a U.S. military installation. Also, when such acquisitions are set aside for any of the small business concerns identified in FAR 19.000(a)(3), the contracting officer shall include the above provision in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items.

**2016-O0009:** *Subcontract Reporting (15 Aug 2016)*  
[Supersedes Class Deviations 2008-O0008, 2009-O0006, and 2013-O0014]  
Expiration Date: when incorporated in the FAR and DFARS or otherwise rescinded

Affects: FAR 52.219-9 (or any of its alternates) and DFARS 252.219-7003 (or its alternate).

Adds: the following contract clauses in full text and the prescriptions for their use:

- FAR 52.219-9, Small Business Subcontracting Plan (DEVIATION 2016-O0009) (AUG 2016)
- FAR 52.219-9, Small Business Subcontracting Plan Alternate I (DEVIATION 2016-O0009) (AUG 2016)
- FAR 52.219-9, Small Business Subcontracting Plan Alternate II (DEVIATION 2016-O0009) (AUG 2016)
- FAR 52.219-9, Small Business Subcontracting Plan Alternate III (DEVIATION 2016-O0009) (AUG 2016)
- DFARS 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) – Basic (DEVIATION 2016-O0009) (AUG 2016)
- DFARS 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) – Alternate I (DEVIATION 2016-O0009) (AUG 2016)

FAR 52.219-9 (DEVIATION 2016-O0009) reduces the frequency of Summary Subcontract Report (SSR) submissions under an Individual Subcontracting Plan from biannual to annual. It also eliminates the requirement for multiple SSRs under an Individual Subcontracting Plan (ISP) for construction and related maintenance and repair contracts, so that only one consolidated SSR encompassing all contracts is necessary.

DFARS 252.219-7003 (DEVIATION 2016-00009) changes the entity to which the contractor submits the SSR in the Electronic Subcontracting Reporting System (eSRS) for an ISP from the military department or defense agency to DoD.

FAR 52.219-9 Alternate III (DEVIATION 2016-O0009) and DFARS 252.219-7003 Alternate I (DEVIATION 2016-O0009) for orders placed against BOAs and BPAs allows DoD to capture that subcontracting data. These clauses instruct contractors to submit the Standard Form (SF) 294, Subcontracting Report for Individual Contracts, instead of an Individual Subcontracting Report (ISR) in eSRS because that system does not support the submission of an ISR for orders placed against BOAs and BPAs.

## Summary (Cont'd)

**2016-O0008:** *Contractor Personnel Performing in the USAFRICOM Command Area of Responsibility* (10 Jun 2016) [Supersedes CD 2016-O0006, same subject]  
Expiration Date: until incorporated in the DFARS or otherwise rescinded

Affects: DFARS 252.225-7040

Adds: the following contract clause in full text and the prescription for its use:

- 252.225-7980 Contractor Personnel Performing in the United States Africa Command Area of Responsibility. (DEVIATION 2016-O0008)(Jun 2016)

Effective immediately, contracting officers shall incorporate the attached clause 252.225-7980, Contractor Personnel Performing in the United States Africa Command Area of Responsibility, in lieu of the clause at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require contractor personnel to perform in the United States Africa Command (USAFRICOM) area of responsibility. In addition, to the extent practicable, contracting officers shall modify current, active contracts with performance in the USAFRICOM area of responsibility to include the attached clause 252.225-7980.

**2016-O0005:** *Enhanced Authority to Acquire Products and Services of Djibouti* (4 Feb 2016)  
Expiration Date: until **September 30, 2018**, unless incorporated in the DFARS or otherwise rescinded.

Affects: DFARS subparts 206.3, 225.4, 225.5, 225.75, and 225.77

Adds: DFARS 206.303-71, 225.401(a)(2)(S-70), 225.502(c)(v), 225.7501(a)(8), 225.7798, 225.7798-1, 225.7798-2, 225.7798-3, 225.7798-4, 225.7798-5, 225.7798-6

Adds: the following solicitation provision and contract clauses:

- DFARS 252.225-7982 Preference for Products or Services of Djibouti (FEB 2016) (DEVIATION 2016-O0005)
- DFARS 252.225-7983 Requirement for Products or Services of Djibouti (FEB 2016) (DEVIATION 2016-O0005)
- DFARS 252.225-7984 Acquisition Restricted to Products or Services of Djibouti (FEB 2016) (DEVIATION 2016-O0005)

Contracting officers shall use this class deviation to limit competition to, or provide a preference for, products or services of Djibouti before considering other sourcing options for procurements in support of DoD operations in the Republic of Djibouti (Djibouti). However, this authority is not available for the procurement of any product on the AbilityOne Procurement List if such a product can be delivered by a qualified nonprofit agency in a timely fashion to support mission requirements. This class deviation requires a properly executed written determination, the evaluation of offers pursuant to specified requirements and the use of certain applicable solicitation provision and contract clauses.

**2016-O0004:** *Authority to Acquire Products and Services Produced in Afghanistan or in Countries Along a Major Route of Supply to Afghanistan* (29 Dec 2015)  
Expiration Date: **December 31, 2016**, unless incorporated in the DFARS or otherwise rescinded.

This class deviation supersedes class deviation 2014-O0014 (now moved to the Archives).

Affects: DFARS 225.401-71, DFARS 225.7501, DFARS 225.7700, DFARS 225.7701, DFARS 225.7703, DFARS 252.225-7023, DFARS 252.225-7024, and DFARS 252.225-7026.

## Summary (Cont'd)

Revises the following rules added by previous class deviations: DFARS 225.7799, DFARS 225.7799-1, DFARS 225.7799-2, DFARS 225.7799-3, and DFARS 225.7799-4.

Deletes the following solicitation provisions and contract clauses issued by class deviation 2014-O0014: DFARS 252.225-7990(APR 2014)(Deviation 2014-O0014), DFARS 252.225-7991(APR 2014)(Deviation 2014-O0014), and DFARS 252.225-7992(APR 2014)(Deviation 2014-O0014).

Revises the following solicitation provisions and contract clauses issued by previous class deviations:

- DFARS 252.225-7996, Acquisition Restricted to Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (Dec 2015) (Deviation 2016-O0004)
- DFARS 252.225-7998, Preference for Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (Dec 2015) (Deviation 2016-O0004)
- DFARS 252.225-7999, Requirement for Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (Dec 2015) (Deviation 2016-O0004)

This class deviation implements Section 801 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010, as most recently amended by sections 886 and 1214 of the NDAA for FY 2016; and Section 886 of the NDAA for FY 2008, as most recently amended by section 886 of the NDAA for FY 2016. If the acquisition is in support of operations in Afghanistan, unless the exception for AbilityOne products applies: Prepare and execute a written determination in accordance with DFARS 225.7799-1 and 225.7799-2; Evaluate offers in accordance with DFARS 225.7799-3; and Include the appropriate provision and/or clause in the solicitation and contract in accordance with DFARS 225.7799-4

**2016-O0003**: *Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements* (29 Oct 2015) [FY16]

Expiration Date: until incorporated in the FAR or otherwise rescinded

Adds: the following solicitation provision and contract clause and the prescriptions for their use:

- DFARS 252.203-7996, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (DEVIATION 2016-O0003) (OCT 2015)
- DFARS 252.203-7997, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (DEVIATION 2016-O0003) (OCT 2015)

When using funds made available by the Continuing Appropriations Act, 20 16 (Pub. L. 114-53) or any other Act that extends to FY 2016 funds the same prohibitions as contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, contracting officers shall include the above provision and clause in all solicitations and contracts, including solicitations and contracts for the acquisition of commercial items under FAR part 12; and modify existing contracts awarded on or after October 1, 2015, to the maximum extent practicable, to include the clause at 252.203-7997.

**2015-O0017**: *Earned Value Management System Threshold* (28 Sep 2015)

Expiration Date: until incorporated in the DFARS or otherwise rescinded.

Affects: DFARS 234.201(1)(ii), DFARS 234.203, DFARS 252.234-7001, and DFARS 252.234-7002

The Earned Value Management System (EVMS) compliance review threshold at DFARS 234.201(1)(ii), DFARS provision 252.234-7001, and DFARS clause 252.234-7002 is raised from \$50 million to \$100 million, resulting in the use of the following revised solicitation provision and contract clause in lieu of the provision at DFARS 252.234-7001 and the clause at DFARS 252.234-7002:

- DFARS 252.234-7001 Notice of Earned Value Management System (DEVIATION 2015-O0017) (Sep 2015)
- DFARS 252.234-7002 Earned Value Management System (DEVIATION 2015-O0017)(Sep 2015)

## Summary (Cont'd)

This \$100 million threshold applies to cost or incentive contracts and subcontracts for which the contractor is required to have an Earned Value Management System that has been determined by the Cognizant Federal Agency to be in compliance with the EVM guidelines in EIA-748. For cost or incentive contracts and subcontracts valued greater than \$20 million, the contractor is required to utilize an EVMS that complies with the guidelines in the EIA-748 to provide EVM reporting to the program management office. No EVMS compliance surveillance activities will be *rouinely* conducted by DCMA on such contracts and subcontracts valued from \$20 million to \$100 million, but can be conducted on an exception basis regarding suspect EVM contract data or in case of noncompliance with one or more of the 32 EIA-748 guidelines.

**2015-00016**: *Prohibition on Providing Funds to the Enemy and Authorization of Additional Access to Records* (15 Sep 2015)

Expiration Date: until incorporated in the DFARS or otherwise rescinded.

Adds: the following contract clauses and the prescriptions for their use:

- DFARS 252.225-7993, Prohibition on Providing Funds to the Enemy (DEVIATION 2015-00016) (Sep 2015)
- DFARS 252.225-7981, Additional Access to Contractor and Subcontractor Records (Other than USCENTCOM) (DEVIATION 2015-00016)(Sep 2015),

Contracting officers shall include clause DFARS 252.225-7993 in solicitations and contracts awarded on or before December 31, 2019, with an estimated value in excess of \$50,000, that are being, or will be, performed outside the United States and its outlying areas, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. To the maximum extent practicable, existing contracts subject to the criteria in the clause prescription shall be modified bilaterally, in accordance with FAR 1.108(d), to include this clause.

Contracting officers shall include clause DFARS 252.225-7981 in all solicitations and contracts with an estimated value in excess of \$50,000 that are to be performed outside the United States and its outlying areas, in support of a contingency operation in which members of the armed forces are actively engaged in hostilities, except for contracts that will be performed in the United States Central Command theater of operations (see Class Deviation 2015-0013).

This class deviation implements sections 841 and 842 of the FY15 NDIA. Section 841 grants authority to the heads of contracting activities to terminate or void contracts and to restrict future awards directly or indirectly to any person that is actively opposing United States or coalition forces involved in a contingency operation in which members of the armed forces are actively engaged in hostilities. Section 842 grants the authority for additional access to contractor and subcontractor records to the extent necessary to ensure that funds available under covered contracts are not provided directly or indirectly to the enemy.

**2015-00013**: *Additional Access to Contractor and Subcontractor Records* (23 Mar 2015)

Expiration Date: until **December 19, 2017** or otherwise rescinded.

Adds: the following contract clause and the prescription for its use:

- DFARS 252.225-7994 Additional Access to Contractor and Subcontractor Records in the United States Central Command Theater of Operations (DEVIATION [2015-00013])

Contracting officers shall incorporate the above clause in solicitations and contracts awarded on or before December 19, 2017, with an estimated value in excess of \$100,000, that will be performed in the USCENTCOM theater of operation. This clause shall be used in lieu of any FAR clause on this subject. To the maximum extent practicable, existing contracts being performed in this theater of operation that do not include the clause shall be bilaterally modified in accordance with FAR 1.108(d), to include the clause.

The authority to examine records pursuant to this clause may be exercised only upon a written determination by the contracting officer, upon a finding by the USCENTCOM commander that there is

## Summary (Cont'd)

reason to believe that funds available under the contract may have been subject to extortion or corruption or may have been provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

**2015-O0010**: *Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements* (5 Feb 2015)

Expiration Date: until incorporated in the FAR or DFARS or otherwise rescinded

Adds: the following solicitation provision and contract clause and the prescriptions for their use:

- DFARS 252.203-7998, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (DEVIATION 2015-O0010) (FEB 2015)
- DFARS 252.203-7999, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (DEVIATION 2015-O0010) (FEB 2015)

Effective immediately, none of the funds made available by the Financial Services and General Government Appropriations Act, 2015 (Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235), or any other Act, to include the Department of Defense Appropriations Act, 2015, may be made available for a contract with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

**2015-O0009**: *Contractor Personnel Performing in the United States Central Command Area of Responsibility* (12 Jan 2015)

Expiration Date: until incorporated in the DFARS or otherwise rescinded

Affects: DFARS 252.225-7040 (MAY 2014)

Adds: the following updated contract clause and the prescription for its use:

- DFARS 252.225-7995, Contractor Personnel Performing in the United States Central Command Area of Responsibility (DEVIATION 2015-O0009) (JAN 2015)

This class deviation (CD) supersedes CD 2014-O0018 dated 27 Jun 2014. Contracting officers issuing contracts that require performance in the United States Central Command (USCENTCOM) area of responsibility shall use the above clause in lieu of DFARS 252.225.7040 (MAY 2014). This class deviation includes one change at subparagraphs (g)(2)(i) and (ii) of the clause to clarify that contractors shall use the Synchronized Predeployment and Operational Tracker to enter and maintain data on contractors authorized to accompany the Force in all circumstances.

**2015-O0006**: *Temporary Extension of the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans* (24 Dec 2014)

Expiration Date: until incorporated in the DFARS or otherwise rescinded.

Affects: DFARS subpart 219.7 and DFARS 219.702(3)

Effective immediately, Contracting Officers shall continue to follow the requirements of DFARS subpart 219.7 with regard to implementation of the test program for negotiation of comprehensive small business subcontracting plans, with the exception that at 219.702(3), the expiration date of "December 31, 2014" is revised by this deviation to read "December 31, 2017". This class deviation partially implements section 821 of the FY2015 National Defense Authorization Act (NDAA).

## Summary (Cont'd)

**2014-O0019**: *Providing Accelerated Payment to Small Business Subcontractors* (14 Jul 2014)  
Expiration Date: December 31, 2016, per OMB Memorandum M-14-10 (10 Jul 2014)

Affects: FAR 52.232-40

Effective August 1, 2014, DoD has re-instated the temporary practice of providing accelerated payments to all prime contractors (see OMB Memorandum M-14-10, dated July 10, 2014). DoD contracting officers shall continue to use the clause at FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors, which requires contractors, upon receipt of accelerated payments from the Government, to make accelerated payments to small business subcontractors.

**2014-O0016**: *Contractor Personnel Performing in the United States Southern Command Area of Responsibility* (6 Oct 2014) Expiration Date: until incorporated in the DFARS or if rescinded

Affects: DFARS 252.225-7040 (MAY 2014)

Adds: the following contract clause and the prescription for its use:

- DFARS 252.225-7987, Contractor Personnel Performing in USSOUTHCOM Area of Responsibility (DEVIATION 2014-O0016) (OCT 2014)

Contracting officers shall insert the above clause in solicitations and contracts for performance in the USSOUTHCOM area of responsibility, unless clause DFARS 252.225.7040 applies.

**2014-O0015**: *Update to Accelerated Payments to Small Businesses* (15 Apr 2014)  
Expiration Date: when superseded or rescinded

Affects: DFARS 232.903 and DFARS 232.906

Permits DoD Component systems to phase-in the capability to perform the accelerated payment process to small business. This Class Deviation lists the following DoD payment systems as being compliant with DFARS 232.903 and DFARS 232.906: EBS, FABS, TFMS, CEFMS, AVEDS, FAS, SAVES, MOCAS, OnePay, IAPS, CAPSW and *DAI [added by this class deviation]*.

**2014-O0013**: *Prohibition Against Using Fiscal Year 2014 Funds to Contract with Entities Convicted of Fraud Against the Federal Government* (20 Mar 2014)  
Expiration Date: until incorporated in the FAR or DFARS or is otherwise rescinded.

Effective immediately, funds made available by the FY 2014 DoD Appropriations Act (Division C of Public Law 113-76) may not be used to enter into a contract with any person or other entity that is listed in the Excluded Parties List System (EPLS)/System for Award Management (SAM) Exclusion as having been convicted of fraud against the Federal Government.

The contracting officer shall review the exclusion information in SAM and note the application of the Cause and Treatment (CT) Code associated with the exclusion. Contractors may be debarred, suspended, or proposed for debarment for a conviction of, or civil judgment for, commission of fraud or a criminal offense (see FAR 9.406-2).

## Summary (Cont'd)

**2014-O0011**: *Determination of Fair and Reasonable Prices When Using Federal Supply Schedule Contracts* (13 Mar 2014)  
Expiration Date: until incorporated in the DFARS or is otherwise rescinded.

Affects: FAR 8.404(d)

Effective immediately, ordering activity contracting officers shall comply with the following policy, in lieu of FAR 8.404(d), *Pricing*, when are responsible for making a determination of fair and reasonable pricing for individual orders when using Federal Supply Schedules.

FAR 8.404(d) *Pricing*. (DEVIATION)

Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a specific task (e.g., installation, maintenance, and repair). GSA has determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, to be fair and reasonable for the purpose of establishing the schedule contract. GSA's determination does not relieve the ordering activity contracting officer from the responsibility of making a determination of fair and reasonable pricing for individual orders, BPAs, and orders under BPAs, using the proposal analysis techniques at 15.404-1. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

**2014-O0009**: *Prohibition Against Using Fiscal Year 2014 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law [P.L. 113-76]* (21 Feb 2014)  
Expiration Date: until incorporated in the FAR or DFARS or is otherwise rescinded.

Adds: the following solicitation provision and the prescription for its use:

- DFARS 252.209-7993 -- Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law – Fiscal Year 2014 DoD Appropriations (Deviation 2014-O0009) (FEB 2014)

Contracting officers shall include DFARS 252.209-7993 in all solicitations using funds appropriated by the Department of Defense Appropriations Act, 2014, and the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Public Law 113-76, Divisions C and J), including solicitations for the acquisition of commercial items under FAR part 12, and shall apply the following restrictions:

- The contracting officer shall not award a contract to any corporation that provides an affirmative response to either of the representations in the provision at 252.209-7993 regarding any unpaid Federal tax liability or a conviction of a felony criminal violation of Federal law within the preceding 24 months, unless the agency debaring and suspending official has considered suspension or debarment of the corporation and has made a written determination that this further action is not necessary to protect the interests of the Government. Upon receipt of an affirmative response to the representation, contracting officers shall consult with the agency debaring and suspending official.

**2014-O0007**: *Prohibition on the Use of the 8(a) Business Development Program for Acquisition of Military Simulation and Military Simulation Training* (14 Mar 2014)  
Expiration Date: remains in effect until further notice.

Affects: FAR subpart 19.8

Effective January 30, 2014, contracting officers are prohibited from awarding prime contracts under the Section 8(a) program (competitive and sole source) for the purchase of military simulation and military simulation training contracts. "Military simulation" and "military simulation training" contracts are contracts for (i) the provision or sale of devices where the primary purpose of the device or devices is instruction for the use, operation and/or maintenance of military equipment of any nature or kind (including, but not limited to, aircraft, ships, tanks, etc.), and (ii) the training in the use, operation or maintenance with all

## Summary (Cont'd)

military simulator equipment. Accordingly, contracting officers shall not use FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), in the case of such procurements.

**2014-O0004**: *Prohibition Against Using Fiscal Year 2014 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law [P.L. 113-46]* (22 Oct 2013)

Expiration Date: until incorporated in the FAR or DFARS or is otherwise rescinded.

Adds: the following solicitation provision and the prescription for its use:

- DFARS 252.209-7994 -- Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law – Fiscal Year 2014 DoD Appropriations (Deviation 2014-O0004) (October 2013)

Contracting officers shall include the above provision in all solicitations that will use funds made available by the Continuing Appropriations Act, 2014 (Pub. L. 113-46), including solicitations for the acquisition of construction and of commercial items under FAR part 12, and shall apply the following restriction:

- The contracting officer shall not award a contract to any corporation that provides an affirmative response to either of the representations in the provision at 252.209-7994 regarding any unpaid Federal tax liability or a conviction of a felony criminal violation of Federal law within the preceding 24 months, unless the agency debarring and suspending official has considered suspension or debarment of the corporation and has made a written determination that this further action is not necessary to protect the interests of the Government. Upon receipt of an affirmative response to the representation, contracting officers shall consult with the agency debarring and suspending official.

**2013-O0021**: *Contract Consolidation* (1 Oct 2013)

Expiration Date: until incorporated in the FAR and/or DFARS, or otherwise rescinded

Affects: DFARS 207.170-3(a) ["Policy and procedures" for Consolidation of contract requirements]

Contracting Officers shall use **\$2 million** in lieu of \$6 million for the dollar threshold set forth at DFARS 207.170-3(a). Agencies are prohibited from consolidating contract requirements exceeding **this threshold** unless the acquisition strategy includes the results of market research, identification of any alternative approaches that would involve a lesser degree of contract consolidation, and a determination by the senior procurement executive that the contract consolidation is necessary and justified.

**2013-O0019**: *Commercial Item Omnibus Clause for Acquisitions Using the Standard Procurement System* (25 Sep 2013)

Expiration Date: remains in effect for five years (**25 Sep 2018**) or until otherwise rescinded

Affects: FAR 12.301(b)(4). Replaces clause FAR 52.212-5 with FAR 52.212-5 (DEVIATION 2013-O0019)

Clause FAR 52.212-5 requires the Contracting Officer to "check a box" to identify the clauses that are applicable to the specific acquisition of commercial items. Under this class deviation, Contracting Officers may use the SPS clause logic capability to automatically select the clauses that are applicable to the specific solicitation and contract. When using this SPS clause logic capability, this class deviation also requires that a revised clause FAR 52.212-5 (DEVIATION 2013-O0019) attached to the class deviation be incorporated into such solicitations and contracts because this revised clause fulfills the statutory requirements on auditing and subcontract clauses applicable to commercial items.

## Summary (Cont'd)

**2013-00018:** *Past Performance Evaluation Thresholds and Reporting Requirements* (24 Sep 2013)  
Expiration Date: when incorporated in the FAR or DFARS or otherwise rescinded

Affects: FAR subpart 8.4, FAR subpart 8.7 FAR 15.304(c)(3)(i), FAR 42.1502(b); DFARS subpart 208.6, DFARS subpart 208.7, DFARS 215.304, and DFARS 242.1502

1. Revises past performance thresholds to be used in lieu of the thresholds at FAR 15.304(c)(3)(i) and at FAR 42.1502(b) as follows:

- DFARS 215.304 – Evaluation factors and significant subfactors (DEVIATION)  
(c)(3)(i) In lieu of the threshold specified at FAR 15.304(c)(3)(iii), evaluate past performance in source selections for negotiated competitive acquisitions as follows:

| <b>For:</b>  | <b>Expected to exceed:</b>                               |
|--|--|
| Systems and operations support acquisitions                    | \$5,000,000  |
| Services and information technology acquisitions               | \$1,000,000  |
| Ship repair and overhaul acquisitions                          | \$500,000  |
| <i>Other acquisitions per FAR 15.304(c)(3)(1) <sup>1</sup></i> | <i>The Simplified Acquisition Threshold <sup>1</sup></i> |

- DFARS 242.1502 Policy (DEVIATION)  
(b) In lieu of the threshold specified at FAR 42.1502(b), FAR 42.1502(c) and FAR 42.1502(d), except as provided at FAR 42.1502(e), (f) and (h), prepare an evaluation of contractor performance as follows:

| <b>For:</b>   | <b>Expected to exceed:</b>                               |
|---|--|
| Systems and operations support acquisitions                           | \$5,000,000  |
| Services and information technology acquisitions                      | \$1,000,000  |
| Ship repair and overhaul acquisitions                                 | \$500,000  |
| <i>Other acquisitions per FAR 42.1502(b),(c)&amp;(d) <sup>1</sup></i> | <i>The Simplified Acquisition Threshold <sup>1</sup></i> |

<sup>1</sup>DAU Editor's Note #1 The CPARS guidance lists various business sectors. DoD includes health care under the services business sector and fuels under the operations support business sector.

DAU Editor's Note #2: as indicated above, per FAR 42.1502(e) past performance evaluations shall be prepared for each construction contract of \$650,000 or more (optional for <\$650,000), and per FAR 42.1502(f) past performance evaluations shall be prepared for each architect-engineer services contract of \$30,000 or more (optional for <\$30,000), and for each architect-engineer services contract that is terminated for default regardless of contract value.

2. This class deviation requires past performance reporting for contracts awarded under FAR subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who are Blind or Severely Handicapped, when the thresholds in this class deviation are exceeded, and it applies these thresholds to reporting requirements for FAR subpart 8.6, Acquisition from Federal Prison Industries, Inc.

**2013-00017:** *Contractor Demobilization* (30 Aug 2013)  
Expiration Date: until incorporated in the DFARS or is otherwise rescinded.

Adds: the following contract clause and the prescription for its use:

- DFARS 252.225-7998 – Contractor Demobilization (DEVIATION 2013-00017) (AUGUST 2013)

Effective immediately, contracting officers shall use the above clause in all solicitations and contracts with performance in Afghanistan, except solicitations and contracts for commodities. Under the terms of this clause, the Contractor is responsible for demobilizing all of its personnel and equipment from the Afghanistan Combined Joint Operations Area (CJOA) in accordance with an approved demobilization plan.

## Summary (Cont'd)

**2013-00012:** *Authorization for Contractors to Use Government Supply Sources in Support of Operation Enduring Freedom* (24 Apr 2013)  
Expiration Date: when incorporated in the DFARS or otherwise rescinded

Affects: FAR 51.101, FAR 51.102; DFARS 251.102

Contracting Officers are now encouraged to authorize contractors (including contractors with fixed-price contracts) to utilize appropriate Government sources of supply in performance of contracts in support of Operation Enduring Freedom. Appropriate Government sources of supply include-

- The GSA Central Asia and South Caucasus Supply Catalog under the GSA Global Supply Program (<http://www.gsa.gov/portal/content/18171>); or
- The Defense Logistics Agency (DLA) (for construction material).

This policy constitutes a deviation from the policy at FAR 51.101, which restricts the use of Government supply sources in other than cost-reimbursement contracts. Contracting officers may modify existing contracts to include FAR 52.251-1 and DFARS 252.251-7000, in order to permit the use of Government supply sources, provided they comply with the requirements of FAR 51.102 and DFARS 251.102.

**2013-00010:** *Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law* [**P.L. 113-6**] (8 Apr 2013)  
Expiration Date: until incorporated in the FAR or DFARS or is otherwise rescinded.

Adds: the following solicitation provision and the prescription for its use:

- DFARS 252.209-799X Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law—Fiscal Year 2013 Appropriations (Deviation 2013-00010) (DATE)

Contracting officers shall include the above provision in all solicitations that will use funds made available by the Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113-6), including solicitations for the acquisition of commercial items under FAR part 12, and shall apply the following restriction:

- The contracting officer shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 252.209-799X regarding any unpaid Federal tax liability or a felony criminal violation of Federal law within the preceding 24 months.

These prohibitions apply to all Fiscal Year 2013 DoD funds appropriated by Pub. L. 113-6, including those for military construction. Class Deviation 2013-00006, dated January 22, 2013, remains in effect for funds appropriated by the Continuing Appropriations Resolution, 2013 (Pub. L. 112-175), that made appropriations for Fiscal Year 2013 through March 27, 2013.

**2013-00006:** *Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law* [**P.L. 112-175**] (22 Jan 2013)  
Expiration Date: until incorporated in the FAR or DFARS or is otherwise rescinded.

Adds: the following solicitation provisions and the prescriptions for their use:

- DFARS 252.209-7997 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law—DoD Appropriations (Deviation 2013-00006) (DATE)
- DFARS 252.209-7996 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law—DoD Military Construction Appropriations (Deviation 2013-00006) (DATE)

## Summary (Cont'd)

Contracting officers shall include one of the above provisions in all solicitations that will use funds made available by the Continuing Appropriations Resolution, 2013 (Pub. L. 112-175), including solicitations for the acquisition of commercial items under FAR part 12, and shall apply the following restrictions:

- The contracting officer shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 252.209-7997 regarding any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability or with regard to conviction of a felony criminal violation of Federal law within the preceding 24 months.
- The contracting officer shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 252.209-7996 regarding conviction of a felony criminal violation of Federal law within the preceding 24 months.

However, contracting officers may make an award despite these restrictions if the agency debarring and suspending official has considered suspension or debarment of the corporation and has made a written determination that this further action is not necessary to protect the interests of the Government. Upon receipt of an affirmative response to the representation, contracting officers shall consult with the agency debarring and suspending official.

**2012-O0013**: *DCAA Policy and Procedure for Sampling Low-Risk Incurred Cost Proposals* (24 Jul 2012)  
Expiration Date: until incorporated in the DFARS or otherwise rescinded.

Affects: FAR 4.804-5(a)(12), FAR 42.705-1(b)(1)(iii), FAR 42.705-1(b)(2), and FAR 42.705-2(b)(2)(i)

Department of Defense contracting officers shall continue to rely on either a DCAA audit report or a DCAA memorandum documenting that, based on a risk assessment and a proposal adequacy evaluation pursuant to FAR 42.705-1(b)(1)(iii), DCAA deemed the incurred cost proposal to be low-risk and did not select it for further audit in accordance with DCAA Policy dated July 6, 2012 [*attached to this class deviation*].

**2012-O0010**: *Prohibition on Collection of Political Information* (6 Jul 2012)  
Expiration Date: until incorporated in the FAR or the DFARS or otherwise rescinded.

Effective immediately, Contracting Officers may not require any entity to submit political information as part of a solicitation or any contract action nor may they use fiscal year 2012 funds to require or recommend the submission of political information.

This deviation implements 10 U.S.C 2335, as added by section 823 of the National Defense Authorization Act of 2012 (Pub. L. 112-81), and it also implements section 743 of the Consolidated Appropriations Act of 2012 (Pub. L. 112-74).

**2012-O0007**: *Prohibition Against Contracting With Corporations That Have a Felony Conviction under Federal or State Law* (9 Mar 2012)  
Expiration Date: until incorporated in the FAR or the DFARS or otherwise rescinded.

Adds: the following provision for use in all solicitations that will use funds made available by Division H of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), including solicitations for acquisition of commercial items under FAR part 12:

- DFARS 252.209-7998, Representation Regarding Conviction of a Felony Criminal Violation under any Federal or State Law

None of the funds made available by section 514 of Division H of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74) may be used to enter into a contract with any corporation that was convicted of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment

## Summary (Cont'd)

of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

**2012-O0004**: *Prohibition Against Contracting With Corporations That Have An Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law (23 Jan 2012)*  
Expiration Date: until incorporated in the FAR or the DFARS or otherwise rescinded.

Adds: solicitation provision DFARS 252.209-7999

Requires that provision DFARS 252.209-7999, "Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law" be included in all solicitations that will use funds made available by Division A of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), including solicitations for acquisition of commercial items under FAR part 12.

Furthermore, unless certain exceptions apply, this Class Deviation prohibits the award a contract to any corporation that provides an affirmative response to the representation in provision 252.209-7999 with regard to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability or with regard to conviction of a felony criminal violation of Federal law within the preceding 24 months.

**2011-O0006**: *Utilities Privatization - Class Deviation from FAR Part 31 (31 Mar 2011)*  
Expiration Date: when incorporated in the DFARS or rescinded

Affects: FAR Part 31; mainly, compliance with FAR 31.205-20 - Interest and Other Financial Costs and FAR 31.205-4 - Taxes

Applies to Government contracts awarded in conjunction with the conveyance of a utility system.

**2011-O0002**: *Congressional Notification on Significant Contract Terminations (8 Oct 2010)*  
Expiration Date: when incorporated in the DFARS or rescinded

Affects: DFARS 249.7001

Contracting Officers are not required to provide congressional notification prior to executing any contract termination involving a reduction in employment of 100 or more contractor employees for contracts with entities that are other than United States firms, which are performed in Iraq and Afghanistan.



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

DEC 01 2016

In reply refer to  
DARS Tracking Number: 2017-O0002

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation— Enhancing the Effectiveness of Independent Research and  
Development

Effective immediately, in lieu of the requirements at Defense Federal Acquisition  
Regulation Supplement (DFARS) 231.205-18(c)(iii)(C)(4), contracting officers shall apply the  
following cost principle in order for annual independent research and development (IR&D) costs  
to be allowable:

(4) For IR&D projects initiated in the contractor's fiscal year 2017, as a  
prerequisite for the subsequent determination of allowability, the contractor shall—

(i) Engage in a technical interchange with a technical or operational DoD  
Government employee sometime during the contractor's fiscal year 2017 so that contractor plans  
and goals for IR&D projects benefit from the awareness of and feedback by a DoD Government  
employee who is informed of related ongoing and future potential interest opportunities. If the  
contractor does not have a point of contact for the technical interchange, the contractor may  
contact the Office of the Assistant Secretary of Defense for Research and Engineering (OASD  
R&E). Contact information for OASD R&E can be found at  
<http://www.acq.osd.mil/rd/contacts/>; and

(ii) Use the online input form for IR&D projects reported to DTIC to  
document the technical interchange, which includes the name of the DoD Government employee  
and the date the technical interchange occurred.

DARS Tracking Number 2017-00002  
Enhancing the Effectiveness of Independent Research and Development

This class deviation alleviates the requirement that the technical interchanges occur before costs are generated for IR&D projects initiated in the contractor's fiscal year 2017 to afford contractors a phase-in period to develop processes and procedures.

This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded. My point of contact is Mr. Mark Gomersall, who may be reached at 571-372-6099, or at [mark.r.gomersall.civ@mail.mil](mailto:mark.r.gomersall.civ@mail.mil).



Claire M. Grady  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated



ACQUISITION,  
TECHNOLOGY,  
AND LOGISTICS

## THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

JAN - 4 2017

MEMORANDUM FOR: SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES  
AT&L DIRECT REPORTS

Subject: Implementation of Defense Federal Acquisition Regulation Supplement Final Rule  
2016-D002, Enhancing the Effectiveness of Independent Research and Development

The Independent Research and Development (IR&D) initiative outlined in Better Buying Power 3.0 is intended to improve the effectiveness of IR&D investments by the defense industrial base that are reimbursed as allowable costs. After considering public comments, the Department of Defense (DoD) published a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) on November 4, 2016, to implement this IR&D initiative (DFARS Case 2016-D002, "Enhancing the Effectiveness of Independent Research and Development"). Subsequently, on December 1, 2016, DoD issued a Class Deviation to address industry concerns that the required technical exchanges occur before costs are generated for IR&D projects (Enclosure 1). This Class Deviation alleviates the requirement that the technical interchanges occur before costs are generated for IR&D projects initiated in a contractor's Fiscal Year 2017 so as to afford contractors a phase-in period to develop processes and procedures.

This new IR&D rule requires "major" defense contractors to engage in a technical interchange with a technical or operational DoD Government employee prior to initiation of an IR&D project. Any contractor not meeting the threshold of a "major" contractor are encouraged to use the Defense Technical Information Center (DTIC) online input form to report IR&D projects to provide DoD with visibility into the technical content of the contractor's IR&D activities. The dollar threshold to identify contractors designated as "major" is prescribed at DFARS 231.205. By law and DoD policy, contractor IR&D investments are not directed by the Government. The intent of this rule is to promote transparency, communication, and dialogue between IR&D participants and DoD, ensuring that both IR&D performers and their potential DoD customers have sufficient awareness of each other's efforts and to provide industry with some feedback on the relevance of proposed IR&D work. To fulfill the technical interchange requirement, contractors should communicate with a knowledgeable DoD Government employee who is cognizant of related ongoing and potential future opportunities in the area of interest. Appropriate DoD Government employees include, but are not limited to, scientists/engineers or other subject matter experts working similar science and technology projects, acquisition officials working similar projects, and/or operators who might use the technology in a future fight, such as a Combatant Command official.

I would like to stress this new IR&D rule merely codifies a long-standing practice that many Services and DoD agencies already use to engage industry on IR&D projects, to include presentations at official forums, industry visits to Government offices, and Government official visits to contractor offices, laboratories, and manufacturing facilities. The rule has two requirements: that a knowledgeable DoD Government employee be informed of future IR&D plans or projects, and that industry document the name of the DoD Government employee and the date the technical interchange occurred in the DTIC database. The DoD Government employee may provide feedback on relevance to DoD missions, but in no case has the authority to stop the project. The DoD Government employee will not issue any official declaration stating whether any project should or should not be pursued and/or whether project costs are reimbursable or that they should be declined. Face-to-face discussions to allow an opportunity for informed questions and answers about planned IR&D projects are the preferred approach to conduct the technical interchange; however, the DFARS rule does not require face-to-face discussions, as the interchange may be accomplished via alternate means.

For those companies or researchers who may not have access to an informed DoD Government official with which to discuss their project, we are developing an additional approach using the existing IR&D database hosted in the Defense Innovation Marketplace (<http://www.defenseinnovationmarketplace.mil/>). By no later than January 31, 2017, DoD will implement an electronic process to facilitate this approach. Once activated, a future IR&D opportunity may be submitted through the Defense Innovation Marketplace, which will then be directed to the appropriate Service/Agency/Command for awareness of the IR&D project. The targeted organization will respond to the submitter with a written statement with the date of receipt and name of the DoD Government employee who was made aware of the project. This website will maintain the necessary security to ensure protection of proprietary information and facilitate compliance with the DFARS requirement.

I want to emphasize that this is a requirement on industry to communicate its IR&D plans to some relevant Government individual and record that this has been done. There is no Government approval required or expected. The simplest approach for industry is to use existing well established relationships to meet this requirement as part of the internal corporate IR&D approval process.

Please provide your Service/Agency/Command IRAD POC information and/or any questions on the implementation of this rule to Lisa Hilton at [lisa.a.hilton2.civ@mail.mil](mailto:lisa.a.hilton2.civ@mail.mil). Please do not send proposals to this address.



Frank Kendall

Enclosure:  
As stated



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

NOV 14 2016

In reply refer to  
DARS Tracking Number: 2017-O0001

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Prohibition on Contracting with Entities that Require Certain  
Internal Confidentiality Agreements

Effective immediately, none of the funds appropriated (or otherwise made available) by the Continuing Appropriations Act, 2017 (Pub. L. 114-223), or any other Act that extends to fiscal year (FY) 2017 funds the same prohibitions as contained in section 743, division E, title VII, of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113), may be made available for a contract with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. Section 103 of the Continuing Appropriations Act, 2017 subjects the funding provided by that Act for FY 2017 to the same conditions set forth in section 743.

When using funds made available by the Continuing Appropriations Act, 2017 (Pub. L. 114-223), or any other Act that extends to FY 2017 funds the same prohibitions as contained in section 743, division E, title VII, of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113), contracting officers shall—

- Include the attached provision at 252.203-7994, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (DEVIATION 2017-O0001)(NOV 2016), in all solicitations, including solicitations for the acquisition of commercial items under FAR part 12;
- Include the attached clause at 252.203-7995, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (DEVIATION 2017-O0001)(NOV 2016), in all solicitations and contracts, including solicitations and contracts for the acquisition of commercial items under FAR part 12; and
- Modify existing contracts awarded on or after October 1, 2016, to the maximum extent practicable, to include the attached clause at 252.203-7995.

This class deviation remains in effect until incorporated in the FAR or otherwise rescinded. My point of contact is Lorena Malcolm, who may be reached at 571-372-6176 or Lorena.Malcolm.civ@mail.mil.



Claire M. Grady  
Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

Class Deviation—Prohibition on Contracting with Entities  
that Require Certain Internal Confidentiality Agreements

**252.203-7994 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation.**

Include the following provision in all solicitations, including solicitations for the acquisition of commercial items under FAR part 12, that will use funds made available by the Continuing Appropriations Act, 2017 (Pub. L. 114-223) or any other Act that extends to fiscal year 2017 funds the same prohibitions as contained in section 743, division E, title VII, of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113). Section 103 of the Continuing Appropriations Act, 2017 subjects the funding by that Act for FY 2017 to the same conditions set forth in section 743:

PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN  
INTERNAL CONFIDENTIALITY AGREEMENTS—REPRESENTATION (DEVIATION  
2017-O0001)(NOV 2016)

(a) In accordance with Continuing Appropriations Act, 2017 (Pub. L. 114-223), or any other Act that extends to fiscal year 2017 funds the same prohibitions as contained in section 743, division E, title VII, of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113), none of the funds appropriated (or otherwise made available) by this or any other Act may be used for a contract with an entity that requires employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The prohibition in paragraph (a) of this provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(c) *Representation.* By submission of its offer, the Offeror represents that it does not require employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(End of provision)

**252.203-7995 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements.**

Include the following clause in all solicitations and contracts, including solicitations and contracts for the acquisition of commercial items under FAR part 12, that will use funds made available by the Continuing Appropriations Act, 2017 (Pub. L. 114-223) or any other Act that extends to fiscal year 2017 funds the same prohibitions as contained in section 743, division E, title VII, of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113). Section 103 of the Continuing Appropriations Act, 2017 subjects the funding by that Act for FY 2017 to the same conditions set forth in section 743:

PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN  
INTERNAL CONFIDENTIALITY AGREEMENTS  
(DEVIATION 2017-O0001)(NOV 2016)

(a) The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The Contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.

(c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d)(1) Use of funds appropriated (or otherwise made available) by the Continuing Appropriations Act, 2017 (Pub. L. 114-223), or any other Act that extends to fiscal year 2017 funds the same prohibitions as contained in section 743, division E, title VII, of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113) may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(2) The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(End of clause)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

SEP 26 2016

In reply refer to  
DARS Tracking Number: 2016-O0011

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Extension for the Implementation of Uniform Procurement  
Instrument Identifier (PIID) Numbering

Effective immediately, the date at Defense Federal Acquisition Regulation Supplement (DFARS) 204.1601(b) by which all DoD components are required to comply with the PIID numbering requirements of Federal Acquisition Regulation (FAR) subpart 4.16 and DFARS subpart 204.16 is extended from October 1, 2016, to March 31, 2017. This action will provide DoD components additional time to upgrade the capabilities of their systems, which are anticipated to be functional in the next six months, to meet the requirements of the regulations.

This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded. My point of contact is Mr. Dustin Pitsch, who may be reached at 571-372-6090, or at [dustin.n.pitsch.civ@mail.mil](mailto:dustin.n.pitsch.civ@mail.mil).

Claire M. Grady  
Director, Defense Procurement  
and Acquisition Policy



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

OCT 13 2016

In reply refer to  
DARS Tracking Number: 2016-O0010

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Competition for Religious-Related Services

**This class deviation rescinds and supersedes Class Deviation 2016-O0007.** Effective immediately, contracting officers shall not preclude a nonprofit organization from competing for a contract for religious-related services on a U.S. military installation, in accordance with section 898 of the National Defense Authorization Act for Fiscal Year 2016.

Contracting officers shall not use any of the authorities for other than full and open competition at FAR 6.302-5(b)(4) through (7), when acquiring religious-related services to be performed on a U.S. military installation. In addition, when such acquisitions are set aside for any of the small business concerns identified in FAR 19.000(a)(3), the contracting officer shall include the attached provision at 252.219-7998, Inclusion of Nonprofit Organizations (DEVIATION 2016-O0010), in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items.

This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded. My point of contact is Ms. Lee Renna, who may be reached at 571-372-6095, or at marylee.renna.civ@mail.mil.

Claire M. Grady  
Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

**252.219-7998 Competition for Religious-Related Services. (DEVIATION 2016-O0010)**

Use the following provision in solicitations for the acquisition of religious-related services to be performed on a U.S. military installation, including solicitations for the acquisition of commercial items under FAR part 12, when the solicitation is set aside for any of the small business concerns identified in FAR 19.000(a)(3):

**Competition for Religious-Related Services  
(DEVIATION 2016-O0010)(OCT 2016)**

(a) Definition. “Nonprofit organization,” as used in this provision, means any organization that is—

- (1) Described in section 501(c) of the Internal Revenue Code of 1986; and
- (2) Exempt from tax under section 501(a) of that Code.

(b) A nonprofit organization is not precluded from competing for a contract for religious-related services to be performed on a United States military installation, notwithstanding that a nonprofit organization is not a small business concern as identified in FAR 19.000(a)(3).

(c) If the apparently successful offeror has not represented in its offer or quotation that it is one of the small business concerns identified in FAR 19.000(a)(3), as appropriate to the solicitation, the Contracting Officer will verify that the offeror is registered in the System for Award Management (SAM) database as a nonprofit organization.

(End of provision)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

AUG 15 2016

In reply refer to  
DARS Tracking Number: 2016-O0009

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Subcontract Reporting

This class deviation rescinds and supersedes Class Deviations 2008-O0008, 2009-O0006, and 2013-O0014. Effective immediately, in lieu of the clause at FAR 52.219-9, Small Business Subcontracting Plan, or any of its alternates, and the clause at DFARS 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), or its alternate, contracting officers shall—

- In orders placed against basic ordering agreements (BOAs) and blanket purchase agreements (BPAs), use the attached 52.219-9, Small Business Subcontracting Plan (DEVIATION 2016-O0009) and its Alternate III and the attached 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (DEVIATION 2016-O0009) and its Alternate I; and
- In all other orders and contracts, use the attached 52.219-9 (DEVIATION 2016-O0009) and, if applicable, its Alternate I, II, or III and the attached 252.219-7003 (DEVIATION 2016-O0009) and, if applicable, its Alternate I.

The attached 52.219-9 (DEVIATION 2016-O0009) reduces the frequency of Summary Subcontract Report (SSR) submissions under an Individual Subcontracting Plan from biannual to annual. It also eliminates the requirement for multiple SSRs under an Individual Subcontracting Plan (ISP) for construction and related maintenance and repair contracts, so that only one consolidated SSR encompassing all contracts is necessary.

The attached 252.219-7003 (DEVIATION 2016-O0009) changes the entity to which the contractor submits the SSR in the Electronic Subcontracting Reporting System (eSRS) for an ISP from the military department or defense agency to DoD.

Use of the attached 52.219-9 Alternate III (DEVIATION 2016-O0009) and 252.219-7003 Alternate I (DEVIATION 2016-O0009) in orders placed against BOAs and BPAs allows DoD to capture that subcontracting data. These clauses instruct contractors to submit the Standard Form (SF) 294, Subcontracting Report for Individual Contracts, instead of an Individual Subcontracting Report (ISR) in eSRS because that system does not support the submission of an ISR for orders placed against BOAs and BPAs.

This class deviation is effective until it is incorporated in the FAR and DFARS or otherwise rescinded. My point of contact is Ms. Jennifer Johnson, who may be reached at 571-372-6100 or [jennifer.d.johnson1.civ@mail.mil](mailto:jennifer.d.johnson1.civ@mail.mil).



Ms. Claire M. Grady  
Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

**52.219-9 Small Business Subcontracting Plan (DEVIATION 2016-O0009).**

As prescribed in [19.708\(b\)](#), insert the following clause:

**SMALL BUSINESS SUBCONTRACTING PLAN (DEVIATION 2016-O0009) (AUG 2016)**

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial item” means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause;
- (iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

- (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through—
  - (A) Workshops, seminars, training, etc.; and
  - (B) Monitoring performance to evaluate compliance with the program’s requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
  - (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
  - (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.
  - (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
  - (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.
  - (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor’s subcontracting plan.
  - (6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at [52.244-6](#), Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier

subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian Tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the *ISR* resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR*.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$700,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors.

(D) The consolidated *SSR* shall be submitted annually for the twelve month period ending September 30. The report is due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of clause)

Alternate I (**DEVIATION 2016-O0009**) (**AUG 2016**). As prescribed in 19.708(b)(1)(i), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

Alternate II (**DEVIATION 2016-O0009**) (**AUG 2016**). As prescribed in [19.708](#)(b)(1)(ii), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract

plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

Alternate III (**DEVIATION 2016-O0009**) (**AUG 2016**). In orders against basic ordering agreements and blanket purchase agreements, and as prescribed in [19.708\(b\)\(1\)\(iii\)](#), substitute the following paragraphs (d)(10) and (l) for paragraphs (d)(10) and (l) in the basic clause:

(d)(10) Assurances that the offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (l) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), and women-owned small business concerns. Reporting shall be in accordance with this clause; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (l) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (l) of this clause using the eSRS.

(l) The Contractor shall submit a SF 294. The Contractor shall submit SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports.

(1) SF 294. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan. For prime contractors the report shall be submitted to the contracting officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(2) SSR.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$700,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors.

(D) The consolidated SSR shall be submitted annually for the twelve-month period ending September 30. The report is due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

**252.219-7003 Small Business Subcontracting Plan (DoD Contracts).  
(DEVIATION 2016-O0009)**

*Basic.* As prescribed in [219.708](#)(b)(1)(A)(1) and (b)(1)(A)(I), use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)—BASIC  
(DEVIATION 2016-O0009) (AUG 2016)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions.* “Summary Subcontract Report (SSR) Coordinator,” as used in this clause, means the individual who is registered in the Electronic Subcontracting Reporting System (eSRS) at the Department of Defense (9700) and is responsible for acknowledging receipt or rejecting SSRs in eSRS for the Department of Defense.

(b) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 8502-8504), may be counted toward the Contractor’s small business subcontracting goal.

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to—

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101-510.

(d) The master plan is approved by the Contractor's cognizant contract administration activity.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Individual Subcontract Report (ISR) shall be submitted to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) To submit the consolidated SSR for an individual subcontracting plan in eSRS, the contractor shall identify the Government agency in Block 7 (“Agency to which the report is being submitted”) by selecting “Department of Defense (DoD) (9700)” from the top of the second dropdown menu. The contractor shall not select anything lower.

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the contracting officer who receives it, as described in paragraph (f)(1)(i) of this clause.

(ii) The authority to acknowledge receipt or reject SSRs resides with the SSR Coordinator.

(End of clause)

*Alternate I.* In orders against basic ordering agreements and blanket purchase agreements, and as prescribed in [219.708](#)(b)(1)(A) and (b)(1)(A)(2), use the following clause, which uses a different paragraph (f) than the basic clause.

SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) —  
ALTERNATE I (DEVIATION 2016-O0009) (AUG 2016)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions.* “Summary Subcontract Report (SSR) Coordinator,” as used in this clause, means the individual who is registered in the Electronic Subcontracting Reporting System (eSRS) at the Department of Defense (9700) and is responsible for acknowledging receipt or rejecting SSRs in eSRS for the Department of Defense.

(b) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 8502-8504), may be counted toward the Contractor’s small business subcontracting goal.

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to—

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101-510.

(d) The master plan is approved by the Contractor's cognizant contract administration activity.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Standard Form 294, Subcontracting Report for Individual Contracts, shall be submitted in accordance with the instructions on that form.

(ii) To submit the consolidated SSR for an individual subcontracting plan in eSRS, the Contractor shall identify the Government agency in Block 7 (“Agency to which the report is being submitted”) by selecting “Department of Defense (DoD) (9700)” from the top of the second dropdown menu. The Contractor shall not select anything lower.

(2) For DoD, the authority to acknowledge receipt or reject SSRs in eSRS resides with the SSR Coordinator.

(End of clause)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JUN 10 2016

In reply refer to  
DARS Tracking Number: 2016-O0008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation–Contractor Personnel Performing in the United States Africa  
Command Area of Responsibility

Effective immediately, this class deviation rescinds and supersedes Class Deviation 2016-O0006. Contracting officers shall incorporate the attached clause 252.225-7980, Contractor Personnel Performing in the United States Africa Command Area of Responsibility (DEVIATION 2016-O0008), in lieu of the clause at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require contractor personnel to perform in the United States Africa Command (USAFRICOM) area of responsibility (AOR). In addition, to the extent practicable, contracting officers shall modify current, active contracts with performance in the USAFRICOM AOR to incorporate the attached clause 252.225-7980.

The USAFRICOM Commander has identified a need to utilize the Synchronized Predeployment and Operational Tracker to identify contractors employed under all contracts performed in their area of responsibility, regardless of the length of performance or contract value, during all operational phases (including Phase 0), and not limited to contracts in support of declared contingency operations. This clause facilitates enforcement of the USAFRICOM Commander's requirement.

This class deviation remains in effect until incorporated in the DFARS, or otherwise rescinded. My point of contact is Mr. Scott Calisti, DPAP/PACC, at 571-256-7011, or [scott.r.calisti.civ@mail.mil](mailto:scott.r.calisti.civ@mail.mil).



Claire M. Grady  
Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

**252.225-7980 Contractor Personnel Performing in the United States Africa Command Area of Responsibility. (DEVIATION 2016-000008)**

Use this clause, in lieu of the clause at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require contractor personnel to perform in the United States Africa Command (USAFRICOM) area of responsibility.

**CONTRACTOR PERSONNEL PERFORMING IN THE UNITED STATES  
AFRICA COMMAND AREA OF RESPONSIBILITY  
(DEVIATION 2016-00008)(JUN 2016)**

(a) *Definitions.* As used in this clause—

“Combatant Commander” means the Commander of the United States Africa Command (USAFRICOM).

“Contractors authorized to accompany the Force,” or “CAAF,” means contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany U.S. Armed Forces in applicable operations and have been afforded CAAF status through a letter of authorization. CAAF generally include all U.S. citizen and third-country national employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. Armed Forces and who routinely are collocated with the U.S. Armed Forces (especially in non-permissive environments). Personnel collocated with U.S. Armed Forces in applicable operations shall be afforded CAAF status through a letter of authorization. In some cases, Combatant Commander or subordinate joint force commanders may designate mission-essential host nation or local national contractor employees (e.g., interpreters) as CAAF. CAAF includes contractors previously identified as contractors deploying with the U.S. Armed Forces. CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

“Designated reception site” means the designated place for the reception, staging, integration, and onward movement of contractors deploying to the USAFRICOM area of responsibility. The designated reception site includes assigned joint reception centers and other Service or private reception sites.

“Law of war” means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses the international law related to the conduct of hostilities that is binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

“Non-CAAF” means personnel in applicable operations who are not designated as CAAF, such as local national employees and non-local national employees who are permanent residents in the operational area or third-country nationals not routinely residing with U.S. Armed Forces (and third-country national expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, the U.S. Armed

Forces. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of U.S. Armed Forces. Non-CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

“Subordinate joint force commander” means a sub-unified commander or joint task force commander.

“U.S. Africa Command (USAFRICOM) area of responsibility,” as used in this clause, means—

- (1) The entire continent of Africa, excluding Egypt;
- (2) The Atlantic Ocean east and south of the line from Antarctica at 024°W, north to 4°N/024°W, west to 30°W, then north to 21°N/030°W, then east to the African continent; and
- (3) The Indian Ocean west and south of the line from Antarctica at 68°E, north to 01°40’S/068°E, and west to the African coast at 01°40’S.

(b) *General.*

- (1) This clause applies to all contractor personnel when performing in the USAFRICOM area of responsibility.
- (2) Certain requirements in paragraphs (c)(3), (e)(1), and (f) must be specified in the statement of work to be applied to non-CAAF personnel.
- (3) Contract performance in the USAFRICOM area of responsibility may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.
- (4) When authorized in accordance with paragraph (j) of this clause to carry arms for personal protection, contractor personnel are only authorized to use force for individual self-defense.
- (5) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).
- (6) Service performed by contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.*

- (1)(i) The Combatant Commander will develop a security plan for protection of

contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—

- (A) The Contractor cannot obtain effective security services;
- (B) Effective security services are unavailable at a reasonable cost; or
- (C) Threat conditions necessitate security through military means.

(ii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, CAAF will be afforded emergency medical and dental care if injured while supporting applicable operations. Additionally, all non-CAAF who are injured while in the vicinity of U. S. Armed Forces will normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized.

(3)(i) A Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization signed by the Contracting Officer is required for certain contractor personnel to process through a deployment center or to travel to, from, or within the USAFRICOM area of responsibility. The requirement applies to CAAF and, as specified in the statement of work, non-CAAF personnel.

(ii) The letter of authorization will identify any additional authorizations, privileges, or Government support that contractor personnel are entitled to under this contract. USAFRICOM has limited capability to provide Government-furnished life-support services to contractors in the USAFRICOM area of responsibility. In instances where Government-furnished life support services are neither available nor authorized in the contract, the SPOT-generated letter of authorization, signed by the Contracting Officer, shall be annotated with "None" checked for Government-furnished life-support services.

(iii) Contractor personnel who are issued a letter of authorization shall carry it with them at all times while deployed.

(4) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the USAFRICOM area of

responsibility under this contract.

(d) *Compliance with laws and regulations.*

(1) The Contractor shall comply with, and shall ensure that its personnel performing in the USAFRICOM area of responsibility are familiar with and comply with, all applicable—

(i) United States, host country, and third country national laws;

(ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;

(iii) United States regulations, directives, instructions, policies, and procedures; and

(iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(3) The Contractor shall ensure that all contractor personnel are aware—

(i) Of the DoD definition of “sexual assault” in DoDD 6495.01, Sexual Assault Prevention and Response Program;

(ii) That the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause). Other sexual misconduct may constitute offenses under the Uniform Code of Military Justice, Federal law, such as the Military Extraterritorial Jurisdiction Act, or host nation laws; and

(iii) That the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences for the contractor employees (see paragraph (h)(1) of this clause).

(4) The Contractor shall report to the appropriate investigative authorities, identified in paragraph (d)(6) of this clause, any alleged offenses under—

(i) The Uniform Code of Military Justice (chapter 47 of title 10, United States Code) (applicable to contractors serving with or accompanying an armed force in the field during a declared war or contingency operations); or

(ii) The Military Extraterritorial Jurisdiction Act (chapter 212 of title 18, United States Code).

(5) The Contractor shall provide to all contractor personnel who will perform work on a contract in the deployed area, before beginning such work, information on the following:

(i) How and where to report an alleged crime described in paragraph (d)(4) of this clause.

(ii) Where to seek victim and witness protection and assistance available to contractor personnel in connection with an alleged offense described in paragraph (d)(4) of this clause.

(iii) This section does not create any rights or privileges that are not authorized by law or DoD policy.

(6) The appropriate investigative authorities to which suspected crimes shall be reported include the following—

(i) US Army Criminal Investigation Command at <http://www.cid.army.mil/reportacrime.html>;

(ii) Air Force Office of Special Investigations at <http://www.osi.af.mil>;

(iii) Navy Criminal Investigative Service at <http://www.ncis.navy.mil/Pages/publicdefault.aspx>;

(iv) Defense Criminal Investigative Service at <http://www.dodig.mil/HOTLINE/index.html>; and

(v) To any command of any supported military element or the command of any base.

(7) Personnel seeking whistleblower protection from reprisals for reporting criminal acts shall seek guidance through the DoD Inspector General hotline at 800-424-9098 or [www.dodig.mil/HOTLINE/index.html](http://www.dodig.mil/HOTLINE/index.html). Personnel seeking other forms of victim or witness protections should contact the nearest military law enforcement office.

(8) The Contractor shall ensure that Contractor employees supporting the U.S. Armed Forces deployed outside the United States are aware of their rights to—

(i) Hold their own identity or immigration documents, such as passport or driver's license;

(ii) Receive agreed upon wages on time;

(iii) Take lunch and work-breaks;

(iv) Elect to terminate employment at any time;

(v) Identify grievances without fear of reprisal;

(vi) Have a copy of their employment contract in a language they understand;

(vii) Receive wages that are not below the legal in-country minimum wage;

(viii) Be notified of their rights, wages, and prohibited activities prior to signing their employment contract; and

(ix) If housing is provided, live in housing that meets host-country housing and safety standards.

(e) *Preliminary personnel requirements.*

(1) The Contractor shall ensure that the following requirements are met prior to deploying CAAF and, as specified in the statement of work, non-CAAF (specific requirements for each category will be specified in the statement of work or elsewhere in the contract):

(i) All required security and background checks are complete and acceptable.

(ii) All such personnel deploying in support of an applicable operation—

(A) Are medically, dentally, and psychologically fit for deployment and performance of their contracted duties;

(B) Meet the minimum medical screening requirements, including theater-specific medical qualifications as established by the Geographic Combatant Commander (as posted to the Geographic Combatant Commander's website or other venue); and

(C) Have received all required immunizations as specified in the contract.

(1) During predeployment processing, the Government will provide, at no cost to the Contractor, any military-specific immunizations and/or medications not available to the general public.

(2) All other immunizations shall be obtained prior to arrival at the deployment center.

(3) All such personnel, as specified in the statement of work, shall bring to the USAFRICOM area of responsibility a copy of the U.S. Centers for Disease Control and Prevention (CDC) Form 731, International Certificate of Vaccination or Prophylaxis as approved by the World Health Organization, (also known as "shot record" or "Yellow Card") that shows vaccinations are current.

(iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit the USAFRICOM area of responsibility and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center.

(iv) Special area, country, and theater clearance is obtained for all personnel deploying. Clearance requirements are in DoD Directive 4500.54E, DoD Foreign Clearance Program. For this purpose, CAAF are considered non-DoD personnel traveling under DoD sponsorship.

(v) All deploying personnel have received personal security training. At a minimum, the training shall—

- (A) Cover safety and security issues facing employees overseas;
- (B) Identify safety and security contingency planning activities; and
- (C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all such personnel. The basic training will be provided through—

- (1) A military-run training center; or
- (2) A web-based source, if specified in the contract or approved by the Contracting Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that—

(i) Such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, et seq.);

(ii) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States;

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9));

(iv) In time of declared war or a contingency operation, CAAF and selected non-CAAF are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10);

(v) Such employees are required to report offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities;

and,

(vi) Such employees will be provided victim and witness protection and assistance.

(f) *Processing and departure points.* CAAF and, as specified in the statement of work, non-CAAF personnel shall—

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a designated reception site upon arrival at the deployed location. The designated reception site will validate personnel accountability, ensure that specific USAFRICOM area of responsibility entrance requirements are met, and brief contractor personnel on theater-specific policies and procedures.

(g) *Personnel data.* The Contractor shall—

(1) Use the SPOT web-based system, or its successor, to account for—

(i) Data for all CAAF supporting the U.S. Armed Forces deployed outside the United States.

(ii) All contractor personnel who are United States citizens and third-country nationals, when the personnel will be performing in the USAFRICOM area of responsibility regardless of the length of performance or contract value; and

(iii) All private security contractor personnel and their equipment, and all other contractor personnel authorized to carry weapons, when the personnel are performing in the USAFRICOM area of responsibility regardless of the length of performance or contract value.

(2) Enter the required information about their Contractor personnel and their equipment prior to deployment and shall continue to use the SPOT web-based system at <https://spot.dmdc.mil> to maintain accurate, up-to-date information throughout the deployment for all Contractor personnel. Changes to status of individual Contractor personnel relating to their in-theater arrival date and their duty location, including closing out the deployment with their proper status (e.g., mission complete, killed, wounded) shall be annotated within the SPOT database in accordance with the timelines established in the SPOT Business Rules at [http://www.acq.osd.mil/log/PS/ctr\\_mgt\\_accountability.html](http://www.acq.osd.mil/log/PS/ctr_mgt_accountability.html).

(3) The Contractor shall submit to the Contracting Officer for SPOT reporting, not later than the 10th day of each month, an aggregate count of all local national employees performing in the USAFRICOM area of responsibility, by country of performance, for 30 days or longer under a contract valued at or above \$150,000

annually. Contractors using local national day laborers shall count each individual hired during the 30-day period only once.

(4) For classified contracts, users shall access SPOT at <https://spot.dmdc.osd.smil.mil>. To obtain access, contact the SPOT Customer Support Team via email: [dodhra.beau-alex.dmdc.mbx.spot-helpdesk@mail.mil](mailto:dodhra.beau-alex.dmdc.mbx.spot-helpdesk@mail.mil).

(h) *Contractor personnel.*

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall identify all personnel who occupy a position designated as mission essential and ensure the continuity of essential Contractor services during designated operations, unless, after consultation with the Contracting Officer, Contracting Officer's Representative, or local commander, the Contracting Officer directs withdrawal due to security conditions.

(3) The Contractor shall ensure that contractor personnel follow the guidance at paragraph (e)(2)(v) of this clause and any specific Combatant Commander guidance on reporting offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

(4) Contractor personnel shall return all U.S. Government-issued identification, including the Common Access Card, to appropriate U.S. Government authorities at the end of their deployment (or, for non-CAAF, at the end of their employment under this contract).

(i) *Military clothing and protective equipment.*

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander or subordinate joint force commanders. If authorized to wear military clothing, contractor personnel must—

(i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and

(ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue organizational clothing and individual equipment and shall provide training, if necessary, to ensure the safety and security of contractor personnel.

(4) The Contractor shall ensure that all issued organizational clothing is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) *Weapons.*

(1) If the Contractor requests that its personnel performing in the USAFRICOM area of responsibility be authorized to carry weapons for individual self-defense, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41. The Combatant Commander will determine whether to authorize in-theater contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If contractor personnel are authorized to carry weapons in accordance with paragraph (j)(1) of this clause, the Contracting Officer will notify the Contractor what weapons and ammunition are authorized.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922;

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition;

(iv) Comply with applicable Combatant Commander, subordinate joint force commander, and local commander force-protection policies; and

(v) Understand that the inappropriate use of force could subject them to U.S. or host-nation prosecution and civil liability.

(4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(5) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the

USAFRICOM area of responsibility.

(l) Purchase of scarce goods and services. If the Combatant Commander has established an organization for the USAFRICOM area of responsibility whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.

(m) *Evacuation.*

(1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to contractor personnel who are U.S. citizens and third country nationals.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(n) *Next of kin notification and personnel recovery.*

(1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.

(2) The Government will assist in personnel recovery actions in accordance with DoD Directive 3002.01E, Personnel Recovery in the Department of Defense.

(o) *Mortuary affairs.* Contractor personnel who die while in support of the U.S. Armed Forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22, Mortuary Affairs Policy, and DoD Instruction 3020.41, Operational Contract Support.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to perform in the USAFRICOM area of responsibility.

(End of clause)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

FEB 04 2016

In reply refer to  
DARS Tracking Number: 2016-O0005

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Enhanced Authority to Acquire Products and Services of Djibouti

Effective immediately, contracting officers shall use the attached deviation to limit competition to, or provide a preference for, products or services of Djibouti for procurements in support of DoD operations in the Republic of Djibouti (Djibouti). This class deviation supersedes class deviation 2015-O0012. This class deviation implements section 1263 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291), as amended by section 886(c) of the NDAA for FY 2016 (Pub. L. 114-92).

The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)) signed a Class Determination and Findings on February 19, 2015, authorizing use of the enhanced authority provided in section 1263 when acquiring products and services in support of DoD operations in Djibouti. As provided in section 886(c), however, this authority is not available for the procurement of any product on the AbilityOne Procurement List, if such a product can be delivered by a qualified nonprofit agency in a timely fashion to support mission requirements. When utilizing this authority, the contracting officer shall—

- Ensure a written determination is properly executed in accordance with DFARS 225.7798-3 and 225.7798-4 (DEVIATION 2016-O0005), using a format substantially the same as those provided at attachments 2 and 3 to this deviation;
- Evaluate offers in accordance with DFARS 225.7798-5 (DEVIATION 2016-O0005); and
- Include the appropriate provision and/or clause in the solicitation and contract in accordance with DFARS 225.7798-6 (DEVIATION 2016-O0005).

This class deviation remains in effect until September 30, 2018, unless incorporated in the DFARS or otherwise rescinded. My point of contact is Mr. Jeff Grover, DPAP/CPIC, at 703-697-9352 or [Jeffrey.c.grover.civ@mail.mil](mailto:Jeffrey.c.grover.civ@mail.mil).

Claire M. Grady  
Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

**PART 206—COMPETITION REQUIREMENTS**

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**SUBPART 206.3—OTHER THAN FULL AND OPEN COMPETITION**

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**206.303 Justifications.**

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**206.303-71 Acquisitions in support of operations in Djibouti. (DEVIATION 2016-O0005)**

The justification and approval addressed in FAR 6.303 is not required for acquisitions conducted using a procedure specified in 225.7798-3(a) (DEVIATION 2016-O0005).

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**PART 225—FOREIGN ACQUISITION**

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**SUBPART 225.4—TRADE AGREEMENTS**

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**225.401 Exceptions. (DEVIATION 2016-O0005)**

(a)(2) \*\*\*

(S-70) If using a procedure specified in 225.7798-3(a)(2) (DEVIATION 2016-O0005) to acquire products or services of Djibouti in support of DoD operations in the Republic of Djibouti, the procedures of FAR subpart 25.4 are not applicable.

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**SUBPART 225.5—EVALUATING FOREIGN OFFERS—SUPPLY CONTRACTS**

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**225.502 Application. (DEVIATION 2016-O0005)**

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(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American statute or the Balance of Payments Program:

\*\*\*\*\*

(v) If the solicitation includes the provision at 252.225-7982, Preference for Products or Services of Djibouti (DEVIATION 2016-O0005), use the evaluation procedures at 225.7798-5 (DEVIATION 2016-O0005).

\*\*\*\*\*

**SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM**

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**225.7501 Policy. (DEVIATION 2016-O0005)**

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

(a) Before issuing the solicitation—

\*\*\*\*\*

(8) Use of a procedure specified in 225.7798-3(a) (DEVIATION 2016-O0005) is authorized for an acquisition in support of DoD operations in Djibouti.

\*\*\*\*\*

**SUBPART 225.77— ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN OR DJIBOUTI (DEVIATION 2016-O0005)**

\*\*\*\*\*

**225.7798 Enhanced authority to acquire products or services of Djibouti in support of DoD operations in Djibouti. (DEVIATION 2016-O0005)**

**225.7798-1 Scope.**

This subpart implements—

(a) Section 1263 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), Enhanced Authority to Acquire Goods and Services of Djibouti in Support of DoD Activities in the United States Africa Command Area of Responsibility, as amended by section 886(c) of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92); and

(b) The Under Secretary of Defense for Acquisition, Technology, and Logistics Class Determination and Findings regarding the application of section 1263 of the National Defense Authorization Act for Fiscal Year 2015, dated February 19, 2015.

**225.7798-2 Definitions.**

As used in this subpart—

“Product of Djibouti” means a product (including a commercial item) that is wholly grown, produced or manufactured in Djibouti. This term does not include construction

material brought to a construction site by a contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

“Service of Djibouti” means a service (including construction) that is performed by a person that is—

(a) Operating primarily in Djibouti or is making a significant contribution to the economy of Djibouti through payment of taxes or use of products, materials, or labor of Djibouti, as determined by the Secretary of State; and

(b) Properly licensed or registered by authorities of the Government of Djibouti, as determined by the Secretary of State.

### **225.7798-3 Acquisition procedures.**

(a) Subject to the requirements of 225.7798-4 and except as provided in paragraph (c) of this section, a product or service of Djibouti may be acquired in support of DoD operations in Djibouti by—

(1) Providing a preference for products or services of Djibouti, in accordance with the evaluation procedures at 225.7798-5; or

(2) Limiting competition to products or services of Djibouti.

(b) For acquisitions conducted using a procedure specified in paragraph (a) of this subsection—

(1) The justification and approval addressed in FAR subpart 6.3 is not required; and

(2) The Balance of Payments Program (see 225.7501) does not apply with regard to acquisition of products or services of Djibouti, but construction material brought to the construction site by the contractor or subcontractor for incorporation into the work may be subject to trade agreements and Balance of Payments Program (see 225.7503).

(c) The authority under paragraph (a) of this section is not available for the procurement of any product that is contained in the Procurement List described in 41 U.S.C. 8503(a) (see FAR subpart 8.7), if such product can be produced and delivered by a qualified nonprofit agency for the blind or a nonprofit agency for other severely disabled in a timely fashion to support mission requirements.

### **225.7798-4 Determination requirements.**

Before using a procedure specified in 225.7798-3(a), a written determination must be prepared and executed as follows:

(a) The appropriate official authorized to make the determination, as specified in paragraph (b)(1) of this subsection, must determine in writing that—

(1) The product or service of Djibouti is to be used or performed only in support of DoD operations in Djibouti;

(2) The product or service of Djibouti is of equivalent quality of a product or service that would have otherwise been acquired; or

(3) It is vital to the national security interests of the United States to provide a preference or limit competition as described in 225.7798-3(a), because—

(i) The procedure is necessary to—

(A) Reduce United States transportation costs;

(B) Reduce delivery times in support of DoD operations in Djibouti; or

(C) Promote the regional security, stability, and economic prosperity of Africa; and

(ii) Use of the procedure will not adversely affect—

(A) United States military operations or stability operations in Djibouti;

or

(B) The United States industrial base. The approving official may contact the following officials in order to obtain factual information to meet this statutory element of the determination:

(1) For Army: SAAL-PA, Army Industrial Base Policy, telephone 703-695-2488.

(2) For DLA: DLA J-74, Acquisition Programs and Industrial Capabilities Division, telephone 703-767-1427.

(3) For Navy: Ship Programs, DASN Ships, telephone 703-697-1710.

(4) For Air Force: Air Force Research Laboratory, Materials Manufacturing Directorate, telephone 703-588-7777.

(5) For Other Defense Agencies: Personnel at defense agencies without industrial base expertise on staff should contact the Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, telephone 703-697-0051, or email [osd.mibp.inquiries@mail.mil](mailto:osd.mibp.inquiries@mail.mil).

(b)(1) Determinations may be made for an individual acquisition or a class of acquisitions meeting the criteria in paragraph (a) of this subsection as follows:

(i) The contracting officer is authorized to make a determination that applies to an individual acquisition with a value of less than \$93 million.

(ii) The head of the contracting activity, without power of re-delegation, is authorized to make a determination that applies to an individual acquisition with a value of \$93 million or more or to a class of acquisitions.

(2) The contracting officer shall—

(i) Include the applicable written determination in the contract file; and

(ii) Ensure that each contract action taken pursuant to the authority of a class determination is within the scope of the class determination, and shall document the contract file for each action accordingly.

**225.7798-5 Evaluating offers.**

Evaluate offers submitted in response to solicitations that include the provision at 252.225-7982, Preference for Products or Services of Djibouti (DEVIATION 2016-O0005) as follows:

(a) For supplies, when comparing offers, consider the total price of the products, including any transportation costs that would be incurred if shipped via the Defense Transportation System, and compare this total price to the price of the local items plus any transportation costs, if separately broken out by contract line item.

(b) If the solicitation specifies award on the basis of non-price factors in addition to cost or price, apply the evaluation percentage specified in the solicitation (see 252.225-7982(d)(DEVIATION 2016-O0005)) and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(c) If the solicitation does not specify non-price factors in addition to cost or price, apply the evaluation percentage specified in the solicitation, if applicable, and then award to the lowest evaluated offer.

**225.7798-6 Solicitation provisions and contract clauses.**

Use the following provisions and clauses in solicitations and contracts that meet the specified criteria, including solicitations and contracts for the acquisition of commercial items using FAR Part 12 procedures:

(a) Use the provision at 252.225-7982, Preference for Products or Services of Djibouti (DEVIATION 2016-O0005), in solicitations that include the clause at 252.225-7983, Requirement for Products or Services of Djibouti (DEVIATION 2016-O0005).

(b) Use the clause at 252.225-7983, Requirement for Products or Services of Djibouti (DEVIATION 2016-O0005) in solicitations and contracts that provide a preference for products or services of Djibouti in accordance with 225.7798-3(a)(1).

(c) Use the clause at 252.225-7984, Acquisition Restricted to Products or Services of Djibouti (DEVIATION 2016-O0005) in solicitations and contracts that limit competition to products or services of Djibouti in accordance with 225.7798-3(a)(2).

(d) Except as provided in paragraph (e)(2) of this section, when the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at 225.1101(5) and (6) or 225.7503(b).

(e)(1) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at 252.225-7982 (DEVIATION 2016-O0005) or the clause at 252.225-7983 (DEVIATION 2016-O0005) or 252.225-7984 (DEVIATION 2016-O0005):

- (i) 252.225-7000, Buy American Act—Balance of Payments Program Certificate.
- (ii) 252.225-7001, Buy American Act and Balance of Payments Program.
- (iii) 252.225-7002, Qualifying Country Sources as Subcontractors.
- (iv) 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.
- (v) 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(2) Do not use any of the following provisions or clauses in solicitations or contracts for the acquisition of supplies that include the clause at 252.225-7984 (DEVIATION 2016-O0005):

- (i) 252.225-7020, Trade Agreement Certificate.
- (ii) 252.225-7021, Trade Agreements.

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## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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### **252.225-7982 Preference for Products or Services of Djibouti. (DEVIATION 2016-O0005)**

As prescribed in 225.7798-6(a), use the following provision:

#### PREFERENCE FOR PRODUCTS OR SERVICES OF DJIBOUTI (FEB 2016) (DEVIATION 2016-O0005)

(a) *Definitions.* “Product of Djibouti” and “service of Djibouti” as used in this provision, are defined in the clause of this solicitation entitled “Requirement for Products or Services of Djibouti” (252.225-7983 (DEVIATION 2016-O0005)).

(b) *Representation.* The Offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products of Djibouti or services of Djibouti, except those listed in paragraph (c) of this provision.

(c) *Other products or services.* The following offered products or services are not products of Djibouti or services of Djibouti:

(Line Item Number)

(Country of Origin)

(d) *Evaluation.* For the purpose of evaluating competitive offers, the Contracting Officer will increase by [*Contracting Officer to specify percent in accordance with the USAFRICOM Commander’s policy and contracting activity procedures*] percent the

prices of offers of products or services that are not products of Djibouti or services of Djibouti.

(End of provision)

**252.225-7983 Requirement for Products or Services of Djibouti. (DEVIATION 2016-O0005)**

As prescribed in 225.7798-6(b), use the following clause:

**REQUIREMENT FOR PRODUCTS OR SERVICES OF DJIBOUTI (FEB 2016)  
(DEVIATION 2016-O0005)**

(a) *Definitions.* As used in this clause—

(1) “Product of Djibouti” means a product (including a commercial item) that is wholly grown, produced or manufactured in Djibouti. This term does not include construction material brought to a construction site by a contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

(2) “Service of Djibouti” means a service (including construction) that is performed by a person that is—

(i) Operating primarily in Djibouti or is making a significant contribution to the economy of Djibouti through payment of taxes or use of products, materials, or labor of Djibouti, as determined by the Secretary of State; and

(ii) Is properly licensed or registered by authorities of the Government of Djibouti, as determined by the Secretary of State.

(b) The Contractor shall provide only products of Djibouti or services of Djibouti, unless, in its offer, it specified that it would provide products or services other than products of Djibouti or services of Djibouti.

(End of clause)

**252.225-7984 Acquisition Restricted to Products or Services of Djibouti. (DEVIATION 2016-O0005)**

As prescribed in 225.7798-6(c), use the following clause:

**ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES OF DJIBOUTI (FEB 2016) (DEVIATION 2016-O0005)**

(a) *Definitions.* As used in this clause—

(1) “Product of Djibouti” means a product (including a commercial item) that is wholly grown, produced or manufactured in Djibouti. This term does not include construction material brought to a construction site by a contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

(2) “Service of Djibouti” means a service (including construction) that is performed by a person that is—

(i) Operating primarily in Djibouti or is making a significant contribution to the economy of Djibouti through payment of taxes or use of products, materials, or labor of Djibouti, as determined by the Secretary of State; and

(ii) Properly licensed or registered by authorities of the Government of Djibouti, as determined by the Secretary of State.

(b) The Contractor shall provide only products of Djibouti or services of Djibouti.

(End of clause)

\* \* \* \* \*

**DEPARTMENT OR AGENCY**

**Authority to Acquire Products or Services of Djibouti  
Individual Determination and Findings**

Upon the basis of the following findings and determination, which I hereby make in accordance with the provisions of DFARS 225.7798 (DEVIATION 2016-O0005), the acquisition of products or services of Djibouti in support of DoD operations in Djibouti may be made as follows:

**FINDINGS**

1. The *[contracting office]* proposes to purchase under solicitation number *[provide solicitation number]*, *[describe the types of products or services]*. The total estimated cost of this acquisition is *[provide total estimated value]*.
2. The product or service is to be used in support of the following DoD operations in Djibouti: *[Describe the DoD activities being supported.]* The products or services to be acquired under the contemplated contracts are to be used by *[describe the entity(ies) intended to use the products or services]*.
3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by section 1263 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), as amended by section 886 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92): *[Select one of the following: Provide a preference for products or services of Djibouti OR Limit competition to products or services of Djibouti]*.
4. To implement the recommended procedure, the solicitation will contain: *[Select one of the following: DFARS 252.225-7982, Preference for Products or Services of Djibouti (DEVIATION 2016-O0005) and 252.225-7983, Requirement for Products or Services of Djibouti (DEVIATION 2016-O0005) OR DFARS 252.225-7984, Acquisition Restricted to Products or Services of Djibouti (DEVIATION 2016-O0005)]*.
5. *[For paragraph 5, select one of the following:*

*The product or service to be acquired is to be used or performed only in support of the DoD operations identified in paragraph 2.*

**OR**

*The product or service to be acquired is of equivalent quality of a product or service that would have otherwise been acquired. (Provide a description of market research.)*

**OR**

*Use of this procedure is—*

- a. *Vital to the national security interests of the United States, because use of the procedure (Select one of the following: reduces United States transportation costs and/or reduces delivery times in*

*support of DoD operations in Djibouti OR promotes the regional security, stability, and economic prosperity of Africa); and*

- b. Will not adversely affect United States military operations or stability operations in Djibouti or the United States industrial base.]*
6. Acquisitions conducted using the procedures specified in DFARS 225.7798-3(a) (DEVIATION 2016-O0005) (see paragraph 3 above) are authorized to use other than full and open competition procedures and do not require the justification and approval addressed in FAR Subpart 6.3. **[Include a description of efforts made to ensure offers are solicited from as many potential sources as is practicable.]**
7. **[Identify whether a notice was or will be publicized as required by FAR subpart 5.2 and, if not, which exception in FAR 5.202 applies.]**

\_\_\_\_\_ Date: \_\_\_\_\_  
CONTRACTING OFFICER  
Name: \_\_\_\_\_  
Office Symbol: \_\_\_\_\_

#### DETERMINATION

In accordance with the authorization outlined in DFARS 225.7798-3(b)(1)[(i) or (ii)] (DEVIATION 2016-O0005) and under the authority of section 1263 of the National Defense Authorization Act for Fiscal Year 2015, as amended by section 886 of the National Defense Authorization Act for Fiscal Year 2016, I hereby determine **[Select one of the following:**

*The product or service to be acquired is to be used or performed only in support of DoD operations in Djibouti.*

**OR**

*The product or service to be acquired is of equivalent quality of the product or service that would have otherwise been acquired.*

**OR**

*Use of the acquisition procedure described above to acquire product or services of Djibouti is vital to the national security interests of the United States. This procedure will not adversely affect military or stability operations in Djibouti or the United States industrial base.]*

\_\_\_\_\_ Date: \_\_\_\_\_  
CONTRACTING OFFICER (*For individual acquisitions valued at less than \$93 million*)  
Name: \_\_\_\_\_  
Office Symbol: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_  
HEAD OF CONTRACTING ACTIVITY (*For individual acquisitions valued at \$93 million or more*)  
Name: \_\_\_\_\_  
Contracting Activity: \_\_\_\_\_

**DEPARTMENT OR AGENCY**

**Authority to Acquire Products or Services of Djibouti  
Class Determination and Findings**

Upon the basis of the following findings and determination, which I hereby make in accordance with the provisions of DFARS 225.7798 (DEVIATION 2016-O0005), the acquisition of products or services of Djibouti in support of DoD operations in Djibouti may be made as follows:

**FINDINGS**

1. It is anticipated that [*applicable departments/agencies/components*] will need to award contracts during the period from [*start date*] to [*end date*] in order to acquire [*describe the types of products or services*].
2. The products or services to be acquired under the contemplated contracts are to be used in support of the following DoD operations in Djibouti: [*Describe the DoD activities being supported.*] The products or services to be acquired under the contemplated contracts are to be used by [*describe the entity(ies) intended to use the products or services*].
3. This class of acquisition should be conducted using the following procedure, which, given this determination, is authorized by section 1263 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), as amended by section 886 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92): [*Select one of the following: Provide a preference for products or services of Djibouti OR Limit competition to products or services of Djibouti*].
4. To implement the recommended procedure, solicitations will contain: [*Select one of the following: DFARS 252.225-7982, Preference for Products or Services of Djibouti (DEVIATION 2016-O0005) and 252.225-7983, Requirement for Products or Services of Djibouti (DEVIATION 2016-O0005) OR DFARS 252.225-7984, Acquisition Restricted to Products or Services of Djibouti (DEVIATION 2016-O0005)*].
5. [*For paragraph 5, select one of the following:*

*The products or services to be acquired are to be used or performed only in support of the DoD activities identified in paragraph 2.*

**OR**

*The product or service to be acquired is of equivalent quality of a product or service that would have otherwise been acquired. (Provide a description of market research.)*

**OR**

*Use of this procedure is—*

- a. *Vital to the national security interests of the United States, because use of the procedure (Select one of the following: will reduce United States transportation costs and/or reduce delivery times*

*in support of operations in Djibouti OR will promote the regional security, stability, and economic prosperity of Africa); and*

- b. Will not adversely affect United States military operations or stability operations in Djibouti or the United States industrial base.]*
6. Acquisitions conducted using the procedures specified in DFARS 225.7798-3(a) (DEVIATION 2016-O0005) (see paragraph 3 above) are authorized to use other than full and open competition procedures and do not require the justification and approval addressed in FAR Subpart 6.3. **[Include a description of efforts made to ensure offers are solicited from as many potential sources as is practicable.]**
7. **[Identify whether a notice was or will be publicized as required by FAR subpart 5.2 and, if not, which exception in FAR 5.202 applies.]**

\_\_\_\_\_ Date: \_\_\_\_\_  
CONTRACTING OFFICER  
Name: \_\_\_\_\_  
Office Symbol: \_\_\_\_\_

#### DETERMINATION

In accordance with the authorization outlined in DFARS 225.7798-3(b)(1)(ii) (DEVIATION 2016-OZZZZ) and under the authority of section 1263 of the National Defense Authorization Act for Fiscal Year 2015, as amended by section 886 of the National Defense Authorization Act for Fiscal Year 2016, I hereby determine **[Select one of the following:**

***The products or services to be acquired are to be used or performed only in support of DoD operations in Djibouti.***

**OR**

***The product or service to be acquired is of equivalent quality of the product or service that would have otherwise been acquired.***

**OR**

***Use of the acquisition procedure described above to acquire product or services of Djibouti is vital to the national security interests of the United States. This procedure will not adversely affect military or stability operations in Djibouti or the United States industrial base.]***

\_\_\_\_\_ Date: \_\_\_\_\_  
HEAD OF CONTRACTING ACTIVITY  
Name: \_\_\_\_\_  
Contracting Activity: \_\_\_\_\_



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

DEC 29 2015

In reply refer to  
DARS Tracking Number: 2016-O0004

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Authority to Acquire Products and Services Produced in  
Afghanistan or in Countries Along a Major Route of Supply to Afghanistan

Effective immediately, contracting officers shall use the following procedures and the  
attached class deviation to the extent feasible, in lieu of DFARS 225.7703, 252.225-7023,  
252.225-7024, and 252.225-7026, when acquiring products or services in support of military or  
stability operations in Afghanistan. This class deviation supersedes class deviation 2014-O0014.  
It implements—

- Section 801 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY)  
2010, as most recently amended by sections 886 and 1214 of the NDAA for FY 2016;  
and
- Section 886 of the NDAA for FY 2008, as most recently amended by section 886 of the  
NDAA for FY 2016.

If the acquisition is in support of operations in Afghanistan, unless the exception for  
AbilityOne products applies,—

- Prepare and execute a written determination in accordance with DFARS 225.7799-1 and  
225.7799-2 (DEVIATION 2016-O0004);
- Evaluate offers in accordance with DFARS 225.7799-3 (DEVIATION 2016-O0004); and
- Include the appropriate provision and/or clause in the solicitation and contract in  
accordance with DFARS 225.7799-4 (DEVIATION 2016-O0004).

This class deviation remains in effect until December 31, 2016, unless incorporated in the  
DFARS or otherwise rescinded. My point of contact is Col James DeLong, DPAP/CC, at  
571-256-7009 or [james.m.delong4.mil@mail.mil](mailto:james.m.delong4.mil@mail.mil).

Claire M. Grady  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

**PART 225—FOREIGN ACQUISITION**

\*\*\*\*\*

**225.401-71 Products or services in support of operations in Afghanistan.  
(DEVIATION 2016-O0004)**

When acquiring products or services, other than small arms, in support of operations in Afghanistan—

\*\*\*\*\*

(c)(1) If using the procedures specified in 225.7799-1(a)(1) (DEVIATION 2016-O0004), the purchase restriction at FAR 25.403(c) does not apply if products or services are from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus.

(2) If using a procedure specified in 225.7799-1(a)(2) (DEVIATION 2016-O0004) to acquire products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus, the procedures of FAR subpart 25.4 are not applicable (but see 225.7503(b)(3) and (b)(4)) for applicability of trade agreements to construction material under construction contracts in support of operations in Afghanistan).

\*\*\*\*\*

**SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM**

\*\*\*\*\*

**225.7501 Policy. (DEVIATION 2016-O0004)**

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

(a) Before issuing the solicitation—

\*\*\*\*\*

(5) Use of a procedure specified in 225.7799-1(a) (DEVIATION 2016-O0004) is authorized for an acquisition in support of military or stability operations in Afghanistan;

\*\*\*\*\*

**SUBPART 225.77—ACQUISITIONS IN SUPPORT OF OPERATIONS IN  
AFGHANISTAN**

**225.7700 Scope. (DEVIATION 2016-O0004)**

This subpart implements—

\* \* \* \* \*

(b)(1) Section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), as amended by section 842 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and section 886 of the National Defense Authorization Act for Fiscal year 2016 (Pub. L. 114-92);

(2) Section 801 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84), as most recently amended by sections 886 and 1214 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

**225.7701 Definitions. (DEVIATION 2016-O0004)**

As used in this subpart—

“Central Asian state” means the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan, or the Republic of Uzbekistan.

\* \* \* \* \*

“Product from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a product (including a commercial item) that is mined, produced, or manufactured in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus. This term does not include construction material brought to the construction site by the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

\* \* \* \* \*

“Service from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a service (including construction) that is performed in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus by citizens or permanent resident aliens of these countries.

\* \* \* \* \*

“South Caucasus” means the Republic of Armenia, the Republic of Azerbaijan, or Georgia.

\* \* \* \* \*

**225.7799 Authority to acquire products and services (including construction) from Afghanistan or from countries along a major route of supply to Afghanistan. (DEVIATION 2016-O0004)**

**225.7799-1 Acquisition procedures.**

(a) Subject to the requirements of 225.7799-2 and except as provided in paragraph (c) of this section, a product or service (including construction) from Afghanistan or from a country along a major route of supply to Afghanistan, other than small arms, in support of operations in Afghanistan, may be acquired by—

(1) Providing a preference for products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus, in accordance with the evaluation procedures at 225.7799-3; or

(2) Limiting competition to products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus.

(b) For acquisitions conducted using a procedure specified in paragraph (a) of this subsection—

(1) The justification and approval addressed in FAR subpart 6.3 is not required; and

(2) The trade agreements purchase restrictions at FAR 25.403(c) and the Balance of Payments Program (see 225.7501) do not apply with regard to acquisition of products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus, but construction material brought to the construction site by the contractor or subcontractor for incorporation into the work may be subject to trade agreements and Balance of Payments Program (see 225.7503).

(c) The authority under paragraph (a) of this section is not available for the procurement of any product that is contained in the Procurement List described in 41 U.S.C. 8503(a) (see FAR subpart 8.7), if such product can be produced and delivered by a qualified nonprofit agency for the blind or a nonprofit agency for other severely disabled in a timely fashion to support mission requirements.

#### **225.7799-2 Determination requirements.**

Before use of a procedure specified in 225.7799-1(a), a written determination must be prepared and executed as follows:

(a) The appropriate official authorized to make the determination, as specified in paragraph (b)(1) of this subsection, must determine in writing that—

(1) The product or service concerned is to be—

(i) Used or performed in the country that is the source of the product or service;

(ii) Used in the course of efforts by the United States and the North Atlantic Treaty Organization Forces to ship goods to or from Afghanistan in support of military or stability operations in Afghanistan;

(iii) Used by the military forces, police, or other security personnel of Afghanistan; or

(iv) Used by the United States or coalition forces in Afghanistan; and

(2)(i) For products or services from a Central Asian state, Pakistan, or the South Caucasus, it is in the national security interest of the United States to use a procedure specified in 225.7799-1(a), because—

(A) The procedure is necessary to—

(1) Reduce overall United States transportation costs and risks in shipping goods in support of operations in Afghanistan;

(2) Encourage Central Asian states, Pakistan, and the South Caucasus to cooperate in expanding supply routes through their territory in support of operations in Afghanistan; or

(3) Help develop more robust and enduring routes of supply to Afghanistan; and

(B) Use of the procedure will not adversely affect—

(1) Operations in Afghanistan; or

(2) The U.S. industrial base.

(ii) The authorizing official generally may presume that there will not be an adverse effect on the U.S. industrial base. However, when in doubt, the authorizing official should coordinate with the applicable subject matter expert specified in PGI 225.7703-2(b).

(b)(1) Determinations may be made for an individual acquisition or a class of acquisitions meeting the criteria in paragraph (a) of this subsection as follows:

(i) The contracting officer is authorized to make a determination that applies to an individual acquisition with a value of less than \$93 million.

(ii) The head of the contracting activity, without power of re-delegation, is authorized to make a determination that applies to an individual acquisition with a value of \$93 million or more or to a class of acquisitions.

(2) The contracting officer shall—

(i) Include the applicable written determination in the contract file; and

(ii) Ensure that each contract action taken pursuant to the authority of a class determination is within the scope of the class determination, and shall document the contract file for each action accordingly.

(c) See PGI 225.7703-2(c) for formats for use in preparation of the determinations required by this subsection.

### **225.7799-3 Evaluating offers.**

Evaluate offers submitted in response to solicitations that include the provision at 252.225-7998, Preference for Products or Services From Afghanistan, a Central Asian State, Pakistan, or the South Caucasus (DEVIATION 2016-O0004), as follows:

(a) For supplies, when comparing offers, consider the total price of the supplies, including any transportation costs that would be incurred if shipped via the Defense

Transportation System and compare this total price to the price of the local item plus any transportation costs, if separately broken out by contract line item.

(b)(1) If the solicitation specifies award on the basis of non-price factors in addition to cost or price, apply the evaluation percentage specified in the solicitation (252.225-7998(d)) and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(2) If the solicitation does not specify non-price factors in addition to cost or price, apply the evaluation percentage specified in the solicitation, if applicable, and then award to the lowest evaluated offer.

#### **225.7799-4 Solicitation provisions and contract clauses.**

Use the following provisions and clauses in solicitations that meet the specified criteria, including solicitations and contracts for the acquisition of commercial items using part 12 procedures.

(a) Use the clause at 252.225-7996, Acquisition Restricted to Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (DEVIATION 2016-O0004), in solicitations and contracts that limit competition to products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus in accordance with 225.7799-1(a)(2).

(b) Use the provision at 252.225-7998, Preference for Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (DEVIATION 2016-O0004), in solicitations that include the clause at 252.225-7999, Requirements for Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (DEVIATION 2016-O0004).

(c) Use the clause at 252.225-7999, Requirement for Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus (DEVIATION 2016-O0004), in solicitations and contracts that provide a preference for products or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus in accordance with 225.7799-1(a)(1).

(d) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at 225.1101(5) and (6) or 225.7503(b)(3) or (b)(4).

(e)(1) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at 252.225-7998 (DEVIATION 2016-O0004) or the clauses at 252.225-7996 (DEVIATION 2016-O0004), or 252.225-7999 (DEVIATION 2016-O0004):

(i) 252.225-7000, Buy American Act—Balance of Payments Program Certificate.

(ii) 252.225-7001, Buy American Act and Balance of Payments Program.

(iii) 252.225-7002, Qualifying Country Sources as Subcontractors.

(iv) 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(v) 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(2) Do not use any of the following provisions or clauses in solicitations or contracts for the acquisition of supplies that include the clause at 252.225-7996 (DEVIATION 2016-O0004):

(i) 252.225-7020, Trade Agreement Certificate.

(ii) 252.225-7021, Trade Agreements.

\* \* \* \* \*

## **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

\* \* \* \* \*

**252.225-7996 Acquisition Restricted to Products or Services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus. (DEVIATION 2016-O0004)** As prescribed in 225.7799-4(a), use the following clause:

### **ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM AFGHANISTAN, A CENTRAL ASIAN STATE, PAKISTAN, OR THE SOUTH CAUCASUS (DEC 2015)(DEVIATION 2016-O0004)**

(a) *Definitions.* As used in this clause—

“Central Asian state” means the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan, or the Republic of Uzbekistan,

“Product from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a product (including a commercial item) that is mined, produced, or manufactured in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus. This term does not include construction material brought to the construction site by the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

“Service from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a service (including construction) that is performed in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus by citizens or permanent resident aliens of these countries.

“South Caucasus” means the Republic of Armenia, the Republic of Azerbaijan, or Georgia.

(b)(1) The Contractor shall provide only products from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus.

(2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from Afghanistan, a Central Asian state, Pakistan, or the

South Caucasus. (The use of construction material from other than Afghanistan, a Central Asian state, Pakistan, or the South Caucasus may also be subject to Balance of Payments Program or trade agreements restrictions, if the contract includes the clause 252.225-7044, Balance of Payments Program—Construction Material, used with its Alternate I; or 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, used with its Alternate II or Alternate III.)

(End of clause)

**252.225-7998 Preference for Products or Services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus. (DEVIATION 2016-O0004)** As prescribed in 225.7799-4(b), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM  
AFGHANISTAN, A CENTRAL ASIAN STATE, PAKISTAN, OR THE SOUTH  
CAUCASUS (DEC 2015)(DEVIATION 2016-O0004)

(a) *Definitions.* “Product from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” and “service from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” as used in this provision, are defined in the clause of this solicitation entitled “Requirement for Products or Services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” (252.225-7999. (DEVIATION 2016-O0004) ).

(b) *Representation.* The Offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus, except those listed in paragraph (c) of this provision;

(c) *Other products or services.* The following offered products or services are not products from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus:

(Line Item Number)

(Country of Origin)

---

(d) *Evaluation.* For the purpose of evaluating competitive offers, the Contracting Officer will increase by 100 percent the prices of offers of products or services that are not products from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus.

(End of provision)

**252.225-7999 Requirement for Products or Services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus.**

As prescribed in 225.7799-4(c), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM AFGHANISTAN, A  
CENTRAL ASIAN STATE, PAKISTAN, OR THE SOUTH CAUCASUS  
(DEC 2015)(DEVIATION 2016-O0004)

(a) *Definitions.* As used in this clause—

“Central Asian state” means the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan, or the Republic of Uzbekistan,

“Product from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a product (including a commercial item) that is mined, produced, or manufactured in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus. This term does not include construction material brought to the construction site by the contractor or subcontractor for incorporation into the building or work, but does cover material separately purchased by the Government to be incorporated into the building or work.

“Service from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus” means a service (including construction) that is performed in Afghanistan, a Central Asian state, Pakistan, or the South Caucasus by citizens or permanent resident aliens of these countries.

“South Caucasus” means the Republic of Armenia, the Republic of Azerbaijan, or Georgia.

(b)(1) The Contractor shall provide only products from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus or services from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus under this contract, unless, in its offer, it specified that it would provide products or services other than products from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus or services from Afghanistan a Central Asian state, Pakistan, or the South Caucasus.

(2) For construction contracts, the Contractor is encouraged, but not required, to use construction material from Afghanistan, a Central Asian state, Pakistan, or the South Caucasus. (The use of construction material from other than Afghanistan, a Central Asian state, Pakistan, or the South Caucasus may also be subject to Balance of Payments Program or trade agreements restrictions, if the contract includes the clause 252.225-7044, Balance of Payments Program—Construction Material, used with its Alternate I; or 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, used with its Alternate II or Alternate III.)

(End of clause)

\* \* \* \* \*



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

OCT 29 2015

In reply refer to  
DARS Tracking Number: 2016-O0003

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

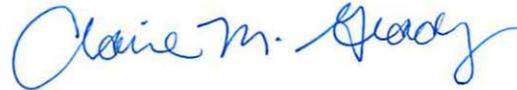
SUBJECT: Class Deviation—Prohibition on Contracting with Entities that Require Certain  
Internal Confidentiality Agreements

Effective immediately, none of the funds appropriated (or otherwise made available) by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other Act that extends to FY 2016 funds the same prohibitions as contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, may be made available for a contract with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

When using funds made available by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other Act that extends to FY 2016 funds the same prohibitions as contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, contracting officers shall—

- Include the attached provision at 252.203-7996, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (DEVIATION 2016-O0003)(OCT 2015), in all solicitations, including solicitations for the acquisition of commercial items under FAR part 12;
- Include the attached clause at 252.203-7997, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (DEVIATION 2016-O0003)(OCT 2015), in all solicitations and contracts, including solicitations and contracts for the acquisition of commercial items under FAR part 12; and
- Modify existing contracts awarded on or after October 1, 2015, to the maximum extent practicable, to include the attached clause at 252.203-7997.

This class deviation remains in effect until incorporated in the FAR or otherwise rescinded. My point of contact is Ms. Sandra Ross, who may be reached at 703-695-9774, or Sandra.k.ross28.civ@mail.mil.



Claire M. Grady  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

Class Deviation—Prohibition on Contracting with Entities  
that Require Certain Internal Confidentiality Agreements

**252.203-7996 Prohibition on Contracting with Entities that Require  
Certain Internal Confidentiality Agreements—Representation.**

Include the following provision in all solicitations, including solicitations for the acquisition of commercial items under FAR part 12, that will use funds made available by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other FY 2016 appropriations act that extends to FY 2016 funds the same prohibitions as contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235).

**PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN  
INTERNAL CONFIDENTIALITY AGREEMENTS—REPRESENTATION  
(DEVIATION 2016-00003)(OCT 2015)**

(a) In accordance with section 101(a) of the Continuing Appropriations Act, 2016 (Pub. L. 114-53) and any subsequent FY 2016 appropriations act that extends to FY 2016 funds the same restrictions as are contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), none of the funds appropriated (or otherwise made available) by this or any other Act may be used for a contract with an entity that requires employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contactors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The prohibition in paragraph (a) of this provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(c) *Representation.* By submission of its offer, the Offeror represents that it does not require employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contactors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(End of provision)

**252.203-7997 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements.**

Include the following clause in all solicitations and contracts, including solicitations and contracts for the acquisition of commercial items under FAR part 12, that will use funds made available by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other FY 2016 appropriations act that extends to FY 2016 funds the same prohibitions as contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235).

**PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE  
CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS  
(DEVIATION 2016-O0003)(OCT 2015)**

(a) The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The Contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.

(c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d)(1) Use of funds appropriated (or otherwise made available) by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other FY 2016 appropriations act that extends to FY 2016 funds the same prohibitions as contained in sections 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(2) The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(End of clause)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

SEP 28 2015

In reply refer to  
DARS Tracking Number: 2015-O0017

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation— Earned Value Management System Threshold

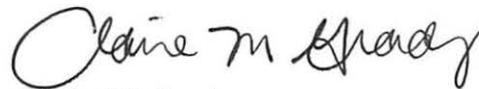
This class deviation rescinds and supersedes Class Deviation 2015-O0015. Effective immediately, the Earned Value Management System (EVMS) compliance review threshold at DFARS 234.201(1)(ii), DFARS provision 252.234-7001, and DFARS clause 252.234-7002 is raised from \$50 million to \$100 million. In lieu of DFARS provision 252.234-7001, Notice of Earned Value Management System (APR 2008), and DFARS clause 252.234-7002, Earned Value Management System (MAY 2011), contracting officers shall use the attached DFARS provision 252.234-7001, Notice of Earned Value Management System (DEVIATION 2015-O0017)(SEP 2015), and DFARS Clause 252.234-7002, Earned Value Management System (DEVIATION 2015-O0017)(SEP 2015), in accordance with the current solicitation provision and contract clause prescriptions at DFARS 234.203.

This \$100 million threshold applies to cost or incentive contracts and subcontracts for which the contractor is required to have an Earned Value Management System that has been determined by the Cognizant Federal Agency (CFA) to be in compliance with the guidelines in the Electronic Industries Alliance Standard 748, Earned Value Management Systems (EIA-748). For cost or incentive contracts and subcontracts valued greater than \$20 million, the contractor is required to utilize an EVMS that complies with the guidelines in the EIA-748 to provide Earned Value Management (EVM) reporting to the program management office. However, no EVMS compliance surveillance activities will be routinely conducted by the Defense Contract Management Agency (DCMA) on cost or incentive contracts and subcontracts valued from \$20 million to \$100 million.

Nevertheless, the Government reserves the right to review the EVMS if the EVM reporting data quality appears suspect, e.g., when a contracting officer, program office, buying

command, or higher headquarters asks for DCMA assistance due to a concern about the quality of EVM data reported on a given contract, or when the EVM data is not in compliance with one or more of the 32 EIA-748 guidelines.

This class deviation is effective until it is incorporated in the DFARS or is otherwise rescinded. My point of contact is Mr. Mark Gomersall, who may be reached at 571-372-6099, or [mark.r.gomersall.civ@mail.mil](mailto:mark.r.gomersall.civ@mail.mil).



Claire M. Grady  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

**252.234-7001 Notice of Earned Value System.**

As prescribed in [234.203](#)(1), use the following provision:

**NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (DEVIATION 2015-00017)(SEP 2015)**

(a) If the offeror submits a proposal in the amount of \$100,000,000 or more—

(1) The offeror shall provide documentation that the Cognizant Federal Agency (CFA) has determined that the proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748) (current version at time of solicitation). The Government reserves the right to perform reviews of the EVMS when deemed necessary to verify compliance.

(2) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a)(1) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines in ANSI/EIA-748.

(i) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract, and how the proposed EVMS complies with the EVMS guidelines in ANSI/EIA-748;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines;

(C) Describe the management system and its application in terms of the EVMS guidelines;

(D) Describe the proposed procedure for administration of the EVMS guidelines as applied to subcontractors; and

(E) Describe the process the offeror will use to determine subcontractor compliance with ANSI/EIA-748.

(ii) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(iii) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVMS will be compliant with the guidelines in ANSI/EIA-748.

(b) If the offeror submits a proposal in an amount less than \$100,000,000—

(1) The offeror shall submit a written description of the management procedures it will use and maintain in the performance of any resultant contract to comply with the requirements

of the Earned Value Management System clause of the contract. The description shall include—

(i) A matrix that correlates each guideline in ANSI/EIA-748 (current version at time of solicitation) to the corresponding process in the offeror's written management procedures; and

(ii) The process the offeror will use to determine subcontractor compliance with ANSI/EIA-748.

(2) If the offeror proposes to use an EVMS that has been determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748, the offeror may submit a copy of the documentation of such determination instead of the written description required by paragraph (b)(1) of this provision.

(c) The offeror shall identify the subcontractors (or the subcontracted effort if subcontractors have not been selected) to whom the EVMS requirements will apply. The offeror and the Government shall agree to the subcontractors or the subcontracted effort selected for application of the EVMS requirements. The offeror shall be responsible for ensuring that the selected subcontractors comply with the requirements of the Earned Value Management System clause of the contract.

(End of provision)

**252.234-7002 Earned Value Management System.**

As prescribed in [234.203\(2\)](#), use the following clause:

**EARNED VALUE MANAGEMENT SYSTEM (DEVIATION 2015-O0017)(SEP 2015)**

(a) *Definitions.* As used in this clause—

“Acceptable earned value management system” means an earned value management system that generally complies with system criteria in paragraph (b) of this clause.

“Earned value management system” means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA-748.

“Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *System criteria.* In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748); and

(2) Management procedures that provide for generation of timely, reliable, and verifiable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the CPR and IMS data items of this contract.

(c) If this contract has a value of \$100 million or more, the Contractor shall use an EVMS that has been determined to be acceptable by the Cognizant Federal Agency (CFA). If, at the time of award, the Contractor's EVMS has not been determined by the CFA to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(d) If this contract has a value of less than \$100 million, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts. The Government will allow the use of a Contractor's EVMS that has been formally reviewed and determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748.

(e) The Contractor shall submit notification of any proposed substantive changes to the EVMS procedures and the impact of those changes to the CFA. If this contract has a value of \$100 million or more, unless a waiver is granted by the CFA, any EVMS changes proposed by the Contractor require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If the CFA waives the advance approval requirements, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Government will schedule integrated baseline reviews as early as practicable, and the review process will be conducted not later than 180 calendar days after—

- (1) Contract award;
- (2) The exercise of significant contract options; and
- (3) The incorporation of major modifications.

During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate

resourcing, and identification of inherent risks.

(g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

(h) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(i) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's EVMS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action;

(iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA-748; and

(iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or if the Contracting Officer determines that the Contractor's earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16

guidelines in ANSI/EIA-748 standards, the Contracting Officer will use discretion to disapprove the system based on input received from functional specialists and the auditor.

(4) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(j) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's EVMS, and the contract includes the clause at [252.242-7005](#), Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(k) With the exception of paragraphs (i) and (j) of this clause, the Contractor shall require its subcontractors to comply with EVMS requirements as follows:

(1) For subcontracts valued at \$100 million-or more, the following subcontractors shall comply with the requirements of this clause:

*[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]*

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(2) For subcontracts valued at less than \$100 million, the following subcontractors shall comply with the requirements of this clause, excluding the requirements of paragraph (c) of this clause:

*[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]*

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(End of clause)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

SEP 15 2015

In reply refer to  
DARS Tracking Number: 2015-O0016

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Prohibition on Providing Funds to the Enemy and Authorization  
of Additional Access to Records

Effective September 15, 2015, this class deviation supersedes Class Deviation 2014-  
O0020, dated September 17, 2014. Contracting officers shall include the attached clauses in  
solicitations and contracts, including solicitations and contracts using FAR part 12 procedures  
for the acquisition of commercial items, as prescribed below:

- Include the clause at 252.225-7993, Prohibition on Providing Funds to the Enemy (DEVIATION 2015-O0016)(SEP 2015), (see Attachment 1) in solicitations and contracts to be awarded on or before December 31, 2019, with an estimated value in excess of \$50,000 that are being, or will be, performed outside the United States and its outlying areas, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. To the maximum extent practicable, existing contracts subject to the criteria in the clause prescription shall be modified bilaterally, in accordance with FAR 1.108(d), to include the deviation clause 252.225-7993.
- Include the clause 252.225-7981, Additional Access to Contractor and Subcontractor Records (Other than USCENCOM) (DEVIATION 2015-O0016)(SEP 2015), (see Attachment 2) in all solicitations and contracts with an estimated value in excess of \$50,000 that are to be performed outside the United States and its outlying areas, in support of a contingency operation in which members of the armed forces are actively engaged in hostilities, except for contracts that will be performed in the United States Central Command theater of operations (see Class Deviation 2015-O013).

This class deviation implements sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2015. Section 841 grants authority to the heads of contracting activities (HCAs) to terminate or void contracts and to restrict future awards directly or indirectly to any person that is actively opposing United States or coalition forces involved in a contingency operation in which members of the armed forces are actively engaged in hostilities. Section 842 grants the authority for additional access to contractor and subcontractor records to the extent necessary to ensure that funds available under covered contracts are not provided directly or indirectly to the enemy.

HCAs shall follow the procedures in Attachment 3 when exercising the authorities provided by this class deviation, which may be exercised only upon written notification from a combatant commander identifying persons or entities within the combatant commander's area of responsibility that are believed to have—

- Provided funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency directly or indirectly to any person that is actively opposing United States or coalition forces involved in a contingency operation in which members of the armed forces are actively engaged in hostilities; or
- Failed to exercise due diligence to ensure that none of the funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency are provided directly or indirectly to any person that is actively opposing United States or coalition forces involved in a contingency operation in which members of the armed forces are actively engaged in hostilities.

This class deviation remains in effect until incorporated in the Federal Acquisition Regulation, or otherwise rescinded. My point of contact is Col James DeLong, USAF, who may be reached at 571-256-7009, or at [james.m.delong4.mil@mail.mil](mailto:james.m.delong4.mil@mail.mil).



Claire M. Grady  
Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

**252.225-7993 Prohibition on Providing Funds to the Enemy (DEVIATION 2015-O0016)**

Incorporate the following clause in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, to be awarded on or before December 31, 2019, with an estimated value in excess of \$50,000, that are being, or will be, performed outside the United States and its outlying areas, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

**PROHIBITION ON PROVIDING FUNDS TO THE ENEMY  
(DEVIATION 2015-O0016) (SEP 2015)**

**(a) The Contractor shall—**

(1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this contract are provided directly or indirectly (including through subcontracts) to a person or entity who is actively opposing United States or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities;

(2) Check the list of prohibited/restricted sources in the System for Award Management at [www.sam.gov](http://www.sam.gov) —

- (i) Prior to subcontract award; and
- (ii) At least on a monthly basis; and

(3) Terminate or void in whole or in part any subcontract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Contracting Officer provides to the Contractor written approval of the Head of the Contracting Activity to continue the subcontract.

**(b) The Head of the Contracting Activity has the authority to—**

(1) Terminate this contract for default, in whole or in part, if the Head of the Contracting Activity determines in writing that the contractor failed to exercise due diligence as required by paragraph (a) of this clause; or

(2)(i) Void this contract, in whole or in part, if the Head of the Contracting Activity determines in writing that any funds received under this contract have been provided directly or indirectly to a person or entity who is actively opposing United States or

Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(ii) When voided in whole or in part, a contract is unenforceable as contrary to public policy, either in its entirety or with regard to a segregable task or effort under the contract, respectively.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts, including subcontracts for commercial items, under this contract that have an estimated value over \$50,000 and will be performed outside the United States and its outlying areas.

(End of clause)

**252.225-7981 Additional Access to Contractor and Subcontractor Records  
(Other than USCENTCOM) (DEVIATION 2015-O0016)**

Include the following clause in all solicitations and resultant contracts valued at more than \$50,000, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are to be performed outside the United States and its outlying areas, in support of a contingency operation in which members of the armed forces are actively engaged in hostilities, except for contracts that will be performed in the United States Central Command (USCENTCOM) theater of operations.

**ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS  
(OTHER THAN USCENTCOM)(DEVIATION 2015-O0016) (SEP 2015)**

- (a) In addition to any other existing examination-of-records authority, the Government is authorized to examine any records of the Contractor and its subcontractors to the extent necessary to ensure that funds, including supplies and services, available under this contract are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- (b) The substance of this clause, including this paragraph (b), is required to be included in subcontracts, including subcontracts for commercial items, under this contract that have an estimated value over \$50,000 and will be performed outside the United States and its outlying areas.

(End of clause)

**Procedures—Prohibition on Providing Funds to the Enemy and Authorization of Additional Access to Records**

1. United States Africa Command (USAFRICOM), United States Central Command (USCENTCOM), United States European Command (USEUCOM), United States Pacific Command (USPACOM), United States Southern Command (USSOUTHCOM), and United States Transportation Command (USTRANSCOM) Commanders will identify persons and entities within the area of responsibility of such command that—

- Provide funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency directly or indirectly to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities; or
- Fail to exercise due diligence to ensure that none of the funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency are provided directly or indirectly to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

2. Upon the identification of a person or entity as described above, the combatant commanders will, in consultation with the Under Secretary of Defense for Policy, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the appropriate Chief of Missions, notify in writing the appropriate heads of contracting activities (HCA) of such identification of the person or entity.

3. Upon receipt of such notification, the HCA, without power of redelegation, will exercise this authority to determine in writing, whether to—

- Prohibit, limit, or otherwise place restrictions on the award of any DoD contracts to such identified persons or entities;
- Terminate for default any DoD contracts when the HCA determined that the contractor failed to exercise due diligence to ensure that none of the funds received under the contract are provided directly or indirectly to such identified person or entity; or
- Void, in whole or in part, any DoD contract that provided funds to such identified person or entity.

4. The HCA taking an action under paragraph 3. of these procedures to restrict, terminate, or void a contract shall, in writing, notify the affected contractor of the action.

The notice to the contractor shall inform the contractor of the right to request, within 30 days, an administrative review of the action.

5. Classified information relied upon to make a decision in accordance with paragraph 3. of these procedures may not be disclosed to a contractor with respect to which an action is taken pursuant to the authority provided in paragraph 3. of these procedures, or to their representatives, in the absence of a protective order issued by a court of competent jurisdiction established under Article I or Article III of the Constitution of the United States that specifically addresses the conditions upon which such classified information may be so disclosed.

6. Upon determination by the HCA to restrict the future award of contracts or subcontracts to a person or entity, the contracting activity shall notify OUSD(AT&L)DPAP/CC and request entry of the required data on the ineligible person or entity in the System for Award Management (SAM) Exclusions as follows (see FAR 9.404):

*Classification = Special Entity Designation*

*Agency = DoD*

*Exclusion Status = Active*

*Exclusion Type = Prohibition/Restriction*

*Comments: Pursuant to Subtitle E, Title VIII of the NDAA for FY 2015*

7. Upon termination or voiding of a contract, the contracting officer shall treat such action as a default for purposes of reporting in the Federal Awardee Performance and Integrity Information System (FAPIIS)(see FAR 42.1503(h)(1)).

8. For contracts awarded on or before December 31, 2019, to be performed outside the United States and its outlying areas, the contracting officer shall check the current list of prohibited or restricted persons or entities in SAM Exclusions prior to awarding the contract.

9. Contracting officers with contracts being performed outside the United States and its outlying areas in support of covered contingency operations shall also check SAM, at a minimum, on a monthly basis to ensure none of the existing contracts being performed in the covered combatant commands are associated with prohibited or restricted persons or entities.

10. The authority to examine records pursuant to 252.225-7984 (Attachment 2) may be exercised only upon a written determination by the contracting officer, upon a finding by the by the commanding officer of USAFRICOM, USCENTCOM, USEUCOM, USPACOM, USSOUTHCOM, or USTRANSCOM that there is reason to believe that funds available under the contract may have been provided directly or indirectly to persons or entities that are actively opposing United States or coalition forces in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

11. Each HCA shall enforce inclusion of the attached clauses 252.225-7993 (Attachment 1) and 52.225-7984 (Attachment 2) as prescribed.

12. Reports.

a. Reports on Prohibition on Providing Funds to the Enemy

i. The HCA that receives a notice pursuant to paragraph 2. of these procedures shall submit to [osd.pentagon.ousd-atl.mbx.contingency-contracting@mail.mil](mailto:osd.pentagon.ousd-atl.mbx.contingency-contracting@mail.mil) and the commander of the combatant command concerned a report on the action, if any, taken by the HCA pursuant to paragraph 3. of these procedures, including a determination not to terminate, void, or restrict the contract as otherwise authorized. Include the following:

- The contracting activity taking such action.
- An explanation of the basis for the action taken or not taken.
- If applicable, the value of the contract voided or terminated and the value of all contracts of the contracting activity in force with the person or entity concerned at the time the contract was terminated or voided.

ii. Each covered combatant command shall track and provide, at a minimum, the following data to [osd.pentagon.ousd-atl.mbx.contingency-contracting@mail.mil](mailto:osd.pentagon.ousd-atl.mbx.contingency-contracting@mail.mil) not later than January 15<sup>th</sup> of 2015, 2016, 2017, 2018, 2019, and 2020:

- The number of instances in which this authority was exercised to restrict, terminate, or void contracts, grants and cooperative agreements. Each such instance should include the contracting activity, contract number, contract value, requirement description, and contractor/subcontractor name at a minimum.
- The basis for the actions taken for each instance.
- A summary of the results of actions taken for each instance.
- The Commander's notification letters to HCAs.

iii. Reports may be submitted in unclassified form, but with a classified annex; or in classified form, as appropriate.

b. Reports on Authorization of Additional Access to Records.

i. For each instance in which the HCA exercised the additional authority to examine contractor and subcontractor records in accordance with this deviation or class deviation 2015-O0013, for the preceding calendar year, the HCA shall provide the following data to [osd.pentagon.ousd-atl.mbx.contingency-contracting@mail.mil](mailto:osd.pentagon.ousd-atl.mbx.contingency-contracting@mail.mil) and the Combatant Commander of the combatant command concerned:

- An explanation of the basis for the action taken; and

- A summary of the results of any examination of records so undertaken.

ii. Each combatant commander shall track and provide, at a minimum, the following data to [osd.pentagon.ousd-atl.mbx.contingency-contracting@mail.mil](mailto:osd.pentagon.ousd-atl.mbx.contingency-contracting@mail.mil) not later than January 15<sup>th</sup> of 2015, 2016, 2017, 2018, 2019, and 2020:

- The number of instances in which this authority was exercised to examine contractor/subcontractor's records. Each instance should include the contracting activity, contract number, contract value, requirement description, and contractor/subcontractor name.
- The basis for the action taken in each instance.
- A summary of the results of any examination of record so undertaken for each instance.
- The Commander's notification letter to HCAs.

iii. Reports may be submitted in classified form.



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

MAR 23 2015

In reply refer to  
DARS Tracking Number: 2015-O0013

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

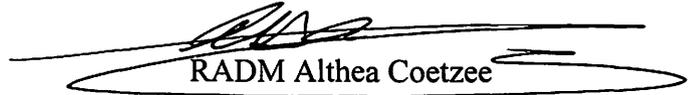
SUBJECT: Class Deviation– Additional Access to Contractor and Subcontractor Records

Effective immediately, contracting officers shall incorporate the clause at Attachment 1 in solicitations and contracts awarded on or before December 19, 2017, with an estimated value in excess of \$100,000, that will be performed in the United States Central Command (USCENTCOM) theater of operation. This clause shall be used in lieu of any FAR clause on this subject. In addition, to the maximum extent practicable, existing contracts being performed in this theater of operation that do not include the clause, shall be bilaterally modified in accordance with FAR 1.108(d), to the extent feasible, to include the clause.

Section 842(c) of the National Defense Authorization Act (NDAA) for FY 2015 (Pub. L. 113-291), amends section 842(d), of the NDAA for FY 2012 (Pub. L. 112-81), to extend the authorities applicable to USCENTCOM to have additional access to contractor and subcontractor records.

The authority to examine records pursuant to Attachment 1 may be exercised only upon a written determination by the contracting officer, upon a finding by the Commander of the USCENTCOM that there is reason to believe that funds available under the contract may have been subject to extortion or corruption or may have been provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

This class deviation remains in effect until December 19, 2017, or otherwise rescinded. My point of contact is Ms. Kyoung Lee, who may be reached at 571-256-2947, or at [kyoung.w.lee.civ@mail.mil](mailto:kyoung.w.lee.civ@mail.mil).



RADM Althea Coetzee  
Acting Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

**252.225-7994 Additional Access to Contractor and Subcontractor Records in the United States Central Command Theater of Operations (DEVIATION [2015-O0013])**

Include the following clause in all solicitations and contracts awarded prior to December 19, 2017, valued at more than \$100,000, that are to be performed in USCENTCOM.

**ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS (DEVIATION [2015-O0013]) (DATED)**

(a) In addition to any other existing examination-of-records authority, the Department of Defense is authorized to examine any records of the Contractor to the extent necessary to ensure that funds available under this contract are not—

(1) Subject to extortion or corruption; or

(2) Provided, directly or indirectly, to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

(b) The substance of this clause, including this paragraph (b), is required to be included in subcontracts under this contract that have an estimated value over \$100,000.

(End of clause)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

FEB 05 2015

In reply refer to  
DARS Tracking Number: 2015-00010

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

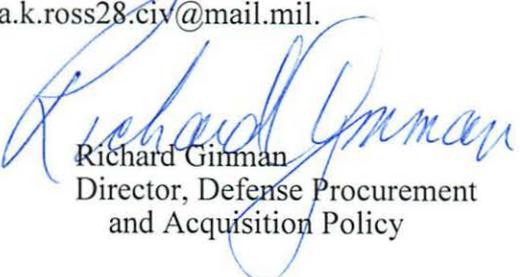
SUBJECT: Class Deviation—Prohibition on Contracting with Entities that Require Certain  
Internal Confidentiality Agreements

Effective immediately, none of the funds made available by the Financial Services and General Government Appropriations Act, 2015 (Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235), or any other Act, to include the Department of Defense Appropriations Act, 2015, may be made available for a contract with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

Contracting officers shall—

- Include the attached provision and clause in all solicitations that will use funds made available by the Financial Services and General Government Appropriations Act, 2015 (Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235), or any other Act, including solicitations for the acquisition of commercial items under FAR part 12; and
- Include the clause in all resultant contracts or in existing contracts when obligating FY 2015 appropriated funds.

This class deviation is effective upon signature, and remains in effect until incorporated in the FAR or DFARS or otherwise rescinded. My point of contact is Ms. Sandra Ross, who may be reached at 703-695-9774, or [Sandra.k.ross28.civ@mail.mil](mailto:Sandra.k.ross28.civ@mail.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

**252.203-7998 Prohibition on Contracting with Entities that  
Require Certain Internal Confidentiality Agreements—  
Representation. (DEVIATION 2015-00010)**

Insert the following provision in all solicitations that will use funds made available by the Financial Services and General Government Appropriations Act, 2015 (Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235), or any other Act, including solicitations for the acquisition of commercial items under FAR part 12.

PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL  
CONFIDENTIALITY AGREEMENTS—REPRESENTATION (DEVIATION 2015-00010)  
(FEB 2015)

(a) In accordance with section 743 of Division E, Title VIII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113-235), Government agencies are not permitted to use funds appropriated (or otherwise made available) under that or any other Act for contracts with an entity that requires employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contactors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The prohibition in paragraph (a) of this provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(c) *Representation.* By submission of its offer, the Offeror represents that it does not require employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contactors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(End of provision)

**252.203-7999 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements. (DEVIATION 2015-00010)**

Insert the following clause in all solicitations and contracts that will use funds made available by the Financial Services and General Government Appropriations Act, 2015 (Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235), or any other Act, including solicitations and contracts for the acquisition of commercial items under FAR part 12, or when obligating FY 2015 funds on existing contracts.

PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL  
CONFIDENTIALITY AGREEMENTS (DEVIATION 2015-00010)(FEB 2015)

(a) The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The Contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.

(c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d)(1) In accordance with section 743 of Division E, Title VIII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015, (Pub. L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(2) The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(End of clause)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JAN 12 2015

In reply refer to  
DARS Tracking Number: 2015-O0009

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Contractor Personnel Performing in the United States Central  
Command Area of Responsibility.

Effective immediately, this class deviation supersedes Class Deviation 2014-O0018,  
dated June 27, 2014. Contracting officers issuing contracts that require performance in the  
United States Central Command (USCENTCOM) area of responsibility shall use the following  
clause in lieu of DFARS 252.225.7040, as prescribed in Attachment 1:

- 252.225-7995, Contractor Personnel Performing in the United States Central  
Command Area of Responsibility (DEVIATION 2015-O0009) (JAN 2015).

This class deviation includes one change at subparagraphs (g)(2)(i) and (ii) of the clause  
to clarify that contractors shall use the Synchronized Predeployment and Operational Tracker to  
enter and maintain data on contractors authorized to accompany the Force in all circumstances.

This class deviation remains in effect until incorporated in the DFARS or otherwise  
rescinded. My point of contact is Mr. William Reich, who may be reached at 571-256-7009, or  
at [william.f.reich2.civ@mail.mil](mailto:william.f.reich2.civ@mail.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment :  
As stated

**252.225-7995 Contractor Personnel Performing in the United States Central Command Area of Responsibility. (DEVIATION 2015-O0009)**

Use this clause, in lieu of DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in solicitations and contracts that will require contractor personnel to perform in the United States Central Command (USCENTCOM) Area of Responsibility (AOR).

**CONTRACTOR PERSONNEL PERFORMING IN THE UNITED STATES CENTRAL  
COMMAND AREA OF RESPONSIBILITY  
(DEVIATION 2015-O0009)(JAN 2015)**

(a) *Definitions.* As used in this clause—

“Combatant Commander” means the Commander of the United States Central Command Area of Responsibility.

“Contractors authorized to accompany the Force,” or “CAAF,” means contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany U.S. Armed Forces in applicable operations and have been afforded CAAF status through a letter of authorization. CAAF generally include all U.S. citizen and third-country national employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. Armed Forces and who routinely are collocated with the U.S. Armed Forces (especially in non-permissive environments). Personnel collocated with U.S. Armed Forces shall be afforded CAAF status through a letter of authorization. In some cases, Combatant Commander subordinate commanders may designate mission-essential host nation or local national contractor employees (e.g., interpreters) as CAAF. CAAF includes contractors previously identified as contractors deploying with the U.S. Armed Forces. CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

“Designated reception site” means the designated place for the reception, staging, integration, and onward movement of contractors deploying during a contingency. The designated reception site includes assigned joint reception centers and other Service or private reception sites.

“Law of war” means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

“Non-CAAF” means personnel who are not designated as CAAF, such as local national (LN) employees and non-LN employees who are permanent residents in the operational area or third-country nationals not routinely residing with U.S. Armed Forces (and third-country national expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. Armed Forces. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary)

when performing their jobs in the direct vicinity of U.S. Armed Forces. Non-CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

“Subordinate joint force commander” means a sub-unified commander or joint task force commander.

(b) *General.*

(1) This clause applies to both CAAF and non-CAAF when performing in the United States Central Command (USCENTCOM) Area of Responsibility (AOR)

(2) Contract performance in USCENTCOM AOR may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) When authorized in accordance with paragraph (j) of this clause to carry arms for personal protection, contractor personnel are only authorized to use force for individual self-defense.

(4) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(5) Service performed by contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.*

(1)(i) The Combatant Commander will develop a security plan for protection of contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—

- (A) The Contractor cannot obtain effective security services;
- (B) Effective security services are unavailable at a reasonable cost; or
- (C) Threat conditions necessitate security through military means.

(ii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, CAAF will be afforded emergency medical and dental care if injured while supporting applicable operations. Additionally, non-CAAF employees who are injured while in the vicinity of U. S. Armed Forces will normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized.

(3) Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization signed by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the USCENTCOM AOR. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract. Contractor personnel who are issued a letter of authorization shall carry it with them at all times while deployed.

(4) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the USCENTCOM AOR under this contract.

(d) *Compliance with laws and regulations.*

(1) The Contractor shall comply with, and shall ensure that its personnel performing in the USCENTCOM AOR are familiar with and comply with, all applicable—

(i) United States, host country, and third country national laws;

(ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;

(iii) United States regulations, directives, instructions, policies, and procedures; and

(iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(3) The Contractor shall ensure that CAAF and non-CAAF are aware—

(i) Of the DoD definition of “sexual assault” in DoDD 6495.01, Sexual Assault Prevention and Response Program;

(ii) That the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause). Other sexual misconduct may constitute offenses under the Uniform Code of Military Justice, Federal law, such as the Military Extraterritorial Jurisdiction Act, or host nation laws; and

(iii) That the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences to the contractor employees (see paragraph (h)(1) of this clause).

(4) The Contractor shall report to the appropriate investigative authorities, identified in paragraph (d)(6) of this clause, any alleged offenses under—

(i) The Uniform Code of Military Justice (chapter 47 of title 10, United States Code) (applicable to contractors serving with or accompanying an armed force in the field during a declared war or contingency operations); or

(ii) The Military Extraterritorial Jurisdiction Act (chapter 212 of title 18, United States Code).

(5) The Contractor shall provide to all contractor personnel who will perform work on a contract in the deployed area, before beginning such work, information on the following:

(i) How and where to report an alleged crime described in paragraph (d)(4) of this clause.

(ii) Where to seek victim and witness protection and assistance available to contractor personnel in connection with an alleged offense described in paragraph (d)(4) of this clause.

(iii) This section does not create any rights or privileges that are not authorized by law or DoD policy.

(6) The appropriate investigative authorities to which suspected crimes shall be reported include the following—

(i) US Army Criminal Investigation Command at <http://www.cid.army.mil/reportacrime.html>;

(ii) Air Force Office of Special Investigations at <http://www.osi.andrews.af.mil/library/factsheets/factsheet.asp?id=14522>;

(iii) Navy Criminal Investigative Service at <http://www.ncis.navy.mil/Pages/publicdefault.aspx>;

(iv) Defense Criminal Investigative Service at <http://www.dodig.mil/HOTLINE/index.html>;

(v) To any command of any supported military element or the command of any base.

(7) Personnel seeking whistleblower protection from reprisals for reporting criminal acts shall seek guidance through the DoD Inspector General hotline at 800-424-9098 or [www.dodig.mil/HOTLINE/index.html](http://www.dodig.mil/HOTLINE/index.html). Personnel seeking other forms of victim or witness protections should contact the nearest military law enforcement office.

(8) The Contractor shall ensure that Contractor employees supporting the U.S. Armed Forces deployed outside the United States are aware of their rights to—

(A) Hold their own identity or immigration documents, such as passport or driver's license;

(B) Receive agreed upon wages on time;

(C) Take lunch and work-breaks;

(D) Elect to terminate employment at any time;

(E) Identify grievances without fear of reprisal;

(F) Have a copy of their employment contract in a language they understand;

(G) Receive wages that are not below the legal in-country minimum wage;

(H) Be notified of their rights, wages, and prohibited activities prior to signing their employment contract; and

(I) If housing is provided, live in housing that meets host-country housing and safety standards.

(e) *Preliminary personnel requirements.*

(1) The Contractor shall ensure that the following requirements are met prior to

deploying CAAF (specific requirements for each category will be specified in the statement of work or elsewhere in the contract):

(i) All required security and background checks are complete and acceptable.

(ii) All CAAF deploying in support of an applicable operation—

(A) Are medically, dentally, and psychologically fit for deployment and performance of their contracted duties;

(B) Meet the minimum medical screening requirements, including theater-specific medical qualifications as established by the geographic Combatant Commander (as posted to the Geographic Combatant Commander's website or other venue); and

(C) Have received all required immunizations as specified in the contract.

(1) During predeployment processing, the Government will provide, at no cost to the Contractor, any military-specific immunizations and/or medications not available to the general public.

(2) All other immunizations shall be obtained prior to arrival at the deployment center.

(3) All CAAF and selected non-CAAF, as specified in the statement of work, shall bring to the USCENTCOM AOR a copy of the Public Health Service Form 791, "International Certificate of Vaccination" that shows vaccinations are current.

(iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit the USCENTCOM AOR and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center.

(iv) Special area, country, and theater clearance is obtained for all personnel deploying. Clearance requirements are in DoD Directive 4500.54E, DoD Foreign Clearance Program. For this purpose, CAAF are considered non-DoD contractor personnel traveling under DoD sponsorship.

(v) All deploying personnel have received personal security training. At a minimum, the training shall—

- (A) Cover safety and security issues facing employees overseas;
- (B) Identify safety and security contingency planning activities; and
- (C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all CAAF. The basic training will be provided through—

(1) A military-run training center; or

(2) A web-based source, if specified in the contract or approved by the Contracting Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that—

(i) Such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, *et seq.*);

(ii) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States;

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)); and

(iv) In time of declared war or a contingency operation, CAAF are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10).

(v) Such employees are required to report offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

(vi) Such employees will be provided victim and witness protection and assistance.

(f) *Processing and departure points.* CAAF shall—

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a designated reception site (DRS) upon arrival at the deployed location. The DRS will validate personnel accountability, ensure that specific USCENTCOM AOR entrance requirements are met, and brief contractor personnel on theater-specific policies and procedures.

(g) *Personnel data.*

(1) The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system to enter and maintain data for all Contractor employees covered by this clause, following the procedures in paragraph (g)(3) of this clause.

(2) Upon becoming an employee under this contract, the Contractor shall enter into SPOT, and shall continue to use SPOT web-based system to maintain accurate, up-to-date information throughout the employment in the AOR. Changes to status of individual contractor personnel relating to their in-theater arrival date and their duty location, to include closing out the employment in the AOR with their proper status (e.g., mission complete, killed, wounded) shall be annotated within the SPOT database in accordance with the timelines established in the SPOT business rules.<sup>1</sup>

(i) In all circumstances, this includes any personnel performing private security functions and CAAF.

(ii) For personnel other than those performing private security functions and CAAF, this requirement excludes anyone—

(A) Hired under contracts valued below the simplified acquisition threshold;

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<sup>1</sup> Hyperlink to <http://www.acq.osd.mil/log/PS/spot.html>

(B) Who will be performing in the CENTCOM AOR less than 30 continuous days; or

(C) Who, while afloat, are tracked by the Diary message Reporting System.

(3) Follow these steps to register in and use SPOT:

(i) SPOT registration requires one of the following login methods:

(A) A Common Access Card (CAC) or a SPOT-approved digital certificate; or

(B) A Government-sponsored SPOT user ID and password. This type of log-in method is only allowed for those individuals who are not authorized to obtain a CAC or an external digital certificate, and requires SPOT Program Management Office approval.

(ii) *To register in SPOT:*

(A) Contractor company administrators should register for a SPOT account at <https://spot.dmdc.mil>; and

(B) The customer support team must validate user need. This process may take two business days. Company supervisors will be contacted to validate Contractor company administrator account requests and determine the appropriate level of user access.

(iii) Upon approval, all users will access SPOT at <https://spot.dmdc.mil/>.

(iv)(A) Refer SPOT application assistance questions to the Customer Support Team at—

(1) Phone: 703-578-5407, DSN 312-698-5407; or

(2) Email: [dodhra.beau-alex.dmdc.mbx.spot-helpdesk@mail.mil](mailto:dodhra.beau-alex.dmdc.mbx.spot-helpdesk@mail.mil).

(B) Refer to the SPOT OSD Program Support website at <http://www.acq.osd.mil/log/PS/spot.html> for additional training resources and documentation regarding registration for and use of SPOT.

(h) *Contractor personnel.*

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to

its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall identify all personnel who occupy a position designated as mission essential and ensure the continuity of essential Contractor services during designated operations, unless, after consultation with the Contracting Officer, Contracting Officer's representative, or local commander, the Contracting Officer directs withdrawal due to security conditions.

(3) The Contractor shall ensure that contractor personnel follow the guidance at paragraph (e)(2)(v) of this clause and any specific Combatant Commander guidance on reporting offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

(4) Contractor personnel shall return all U.S. Government-issued identification, to include the Common Access Card, to appropriate U.S. Government authorities at the end of their deployment (or, for non-CAAF, at the end of their employment under this contract).

*(i) Military clothing and protective equipment.*

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, contractor personnel must—

(i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and

(ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

*(j) Weapons.*

(1) If the Contractor requests that its personnel performing in the USCENTCOM AOR be authorized to carry weapons for individual self-defense, the request shall be made through the Contracting Officer to the Combatant Commander,

in accordance with DoD Instruction 3020.41. The Combatant Commander will determine whether to authorize in-theater contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If contractor personnel are authorized to carry weapons in accordance with paragraph (j)(1) of this clause, the Contracting Officer will notify the Contractor what weapons and ammunition are authorized.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922;

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition;

(iv) Comply with applicable Combatant Commander and local commander force-protection policies; and

(v) Understand that the inappropriate use of force could subject them to U.S. or host-nation prosecution and civil liability.

(4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(5) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the USCENTCOM AOR.

(l) *Purchase of scarce goods and services.* If the Combatant Commander has established an organization for the USCENTCOM AOR whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.

(m) *Evacuation.*

(1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national contractor personnel.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(n) *Next of kin notification and personnel recovery.*

(1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.

(2) In the case of isolated, missing, detained, captured, or abducted contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 3002.01E, Personnel Recovery in the Department of Defense.

(o) *Mortuary affairs.* Contractor personnel who die while in support of the U.S. Armed Forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22, Mortuary Affairs Policy, and DoD Instruction 3020.41, Operational Contractor Support.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are performing in the USCENTCOM AOR.

(End of clause)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

DEC 24 2014

In reply refer to  
DARS Tracking Number: 2015-00006

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Temporary Extension of the Test Program for Negotiation of  
Comprehensive Small Business Subcontracting Plans

Effective immediately, contracting officers shall continue to follow the requirements of DFARS subpart 219.7 with regard to implementation of the test program for negotiation of comprehensive small business subcontracting plans, with the exception that at 219.702(3) the expiration date of “December 31, 2014” is revised by this deviation to read “December 31, 2017”.

This class deviation partially implements section 821 of the National Defense Authorization Act for Fiscal Year 2015. Further amendments to the test program will be implemented in the DFARS through the standard rulemaking process.

This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded. My point of contact is Ms. Lee Renna, who may be reached at 571-372-6095, or at [marylee.renna.civ@mail.mil](mailto:marylee.renna.civ@mail.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JUL 14 2014

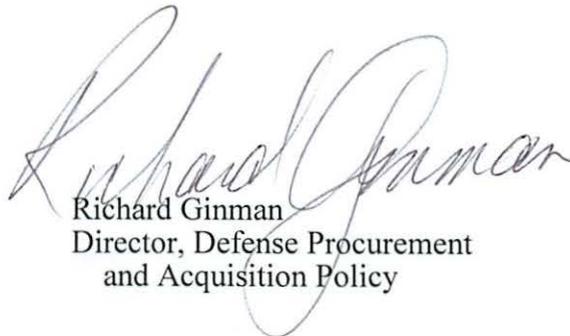
ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

In reply refer to  
DARS Tracking Number: 2014-O0019

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Providing Accelerated Payment to Small Business Subcontractors

Effective August 1, 2014, DoD has re-instated the temporary practice of providing accelerated payments to all prime contractors (see OMB Memorandum M-14-10, dated July 10, 2014). DoD contracting officers shall continue to use the clause at FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors, which requires contractors, upon receipt of accelerated payments from the Government, to make accelerated payments to small business subcontractors. My point of contact is Mark Gomersall, 571-372-6099 or [mark.r.gomersall.civ@mail.mil](mailto:mark.r.gomersall.civ@mail.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D. C. 20503

DEPUTY DIRECTOR  
FOR MANAGEMENT

July 10, 2014

M-14-10

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Beth F. Cobert  
Deputy Director for Management

SUBJECT: **Extension of Policy to Provide Accelerated Payment to Small Business Subcontractors**

Office of Management and Budget (OMB) Memorandum M-12-16, "Providing Prompt Payment to Small Business Subcontractors," established the Executive Branch policy that agencies should, to the full extent permitted by law, temporarily accelerate payments to all prime contractors – with a goal of paying them within 15 days of receipt of proper invoices – in order to allow them to provide prompt payments to small business subcontractors. To support the policy, the Federal Acquisition Regulatory Council (FAR Council) created a new clause for agencies to incorporate into their contracts requiring prime contractors to accelerate payments to their small business subcontractors when they receive accelerated payments from the government. The FAR Council is also considering strategies that might be used over the longer term to help maintain effective cash flow and prompt payment to small business subcontractors.

The temporary policy established by Memorandum M-12-16, which was extended by Memorandum M-13-15, is set to expire on July 11, 2014. **This memorandum further extends the temporary policy to December 31, 2016.** Agencies should continue providing six-month reports to OMB in accordance with the instructions provided in M-12-16. If an agency determines that it may need to exempt itself from complying with the extension of this temporary policy, it should confer with OMB before taking action.

As a reminder, the policies in Memorandum M-12-16 do not affect the application of the Prompt Payment Act's late payment interest penalty provision. Nor do they change the application of OMB Memorandum M-11-32, "Accelerating Payments to Small Businesses for Goods and Services." Memorandum M-11-32 requires agencies to make their payments to small business prime contractors as soon as practicable to the full extent permitted by law, with the goal of making payments within 15 days of receipt of proper invoices. These efforts should include seeking ways to accelerate payments while simultaneously ensuring proper payments by maintaining internal controls over payment processes.

If you have any questions regarding this memorandum, please contact Mathew Blum ([mblum@omb.eop.gov](mailto:mblum@omb.eop.gov)), Associate Administrator of the Office of Federal Procurement Policy, or Mike Wetklow ([mwetklow@omb.eop.gov](mailto:mwetklow@omb.eop.gov)), Chief, Accountability, Performance, and Reporting Branch of the Office of Federal Financial Management.



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

OCT 06 2014

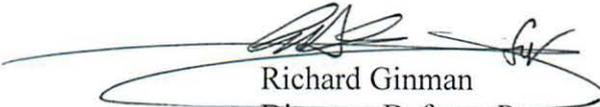
In reply refer to  
DARS Tracking Number: 2014-O0016

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Requirements for Contractor Personnel Performing in the U.S.  
Southern Command Area of Responsibility

Effective immediately, contracting officers shall use the attached clause, entitled “Requirements for Contractor Personnel Performing in the U.S. Southern Command (USSOUTHCOM) Area of Responsibility,” in all solicitations and contracts with performance in the USSOUTHCOM area of responsibility. The USSOUTHCOM Commander has identified a need to utilize the attached clause, including requirements for personnel recovery, medical suitability screening and the use of the Synchronized Predeployment and Operational Tracker (SPOT) during operational phases (to include Phase 0) when the clause at DFARS 252.225-7040 does not apply.

This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded. My point of contact is Mr. William Reich, who may be reached at 571-256-7009, or at [william.f.reich2.civ@mail.mil](mailto:william.f.reich2.civ@mail.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

**252.225-7987 REQUIREMENTS FOR CONTRACTOR PERSONNEL  
PERFORMING IN USSOUTHCOM AREA OF RESPONSIBILITY  
(DEVIATION 2014-O0016)**

**Clause prescription:**

Insert the following clause in solicitations and contracts for performance in the USSOUTHCOM area of responsibility, unless the clause at 252.225-7040 applies.

\* \* \* \* \*

**REQUIREMENTS FOR CONTRACTOR PERSONNEL PERFORMING IN  
USSOUTHCOM AREA OF RESPONSIBILITY  
(CLASS DEVIATION 2014-O0016) (OCT 2014)**

(a) *Definitions.*

“The U.S. Southern Command (USSOUTHCOM) area of responsibility (AOR),” as used in this clause, includes the geographic areas of Antigua and Barbuda, Argentina, Aruba, Barbados, Belize, Bolivia, Brazil, British Virgin Islands, Cayman Islands, Chile, Colombia, Costa Rica, Cuba, Curacao, Dominica, Dominican Republic, Ecuador, El Salvador, Falkland Islands, French Guiana, Grenada, Guadeloupe, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Mayotte, Montserrat Nicaragua, Panama, Paraguay, Peru, Saint Barthelemy, Saint Martin, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sint Maarten, Suriname, Trinidad and Tobago, Turks and Caicos Islands, Uruguay, and Venezuela.

(b) *General.*

(1) Contract performance in support of U.S. Armed Forces outside the United States may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(2) Unless immune from host-nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel can subject such personnel to United States or host-nation prosecution and civil liability.

(c) *Support.*

(1) U.S. citizen and third country national (TCN) contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization signed by the contracting officer in order to travel to, from, or within

the USSOUTHCOM AOR. The letter of authorization also will identify any additional authorizations, privileges, or Government support to which Contractor personnel are entitled under this contract.

(2) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the USSOUTHCOM AOR under this contract.

(d) *Pre-travel requirements.*

The Contractor shall ensure that the following requirements are met prior to sending or using Contractor personnel in the USSOUTHCOM AOR. Specific requirements for each category may be specified in the statement of work or elsewhere in the contract.

(1) All required security and background checks are complete and acceptable.

(2) All Contractor personnel must be medically, dentally, and psychologically fit for performance of their contracted duties. All U.S. citizen and TCN Contractor personnel must meet the medical screening requirements established by the USSOUTHCOM Commander in the Medical Suitability Screening Regulation, SC Regulation 40-501, as well as the requirements identified in FORCE HEALTH PROTECTION (FHP) GUIDANCE FOR DEPLOYMENT in the USSOUTHCOM AOR or their successors and follow immunization and health protection guidelines outlined therein. All immunizations must be obtained prior to traveling to the USSOUTHCOM AOR. U.S. citizen contractor personnel and TCN Contractor personnel traveling from a country outside of the USSOUTHCOM AOR must travel into the USSOUTHCOM AOR with a current copy of the Public Health Service Form 791, "International Certificate of Vaccination." In addition, U.S. citizen contractor personnel and TCN contractor personnel traveling to the USSOUTHCOM AOR are required to be beneficiaries of a medical evacuation plan and service through an insurance plan provided by their employer or paid for individually.

(3) The Contractor shall collect a DNA record for all U.S. citizen Contractor personnel traveling to the USSOUTHCOM AOR and shall have arrangements for storage of the DNA reference specimen through a private facility or arrange for the storage of the specimen by contacting the Armed Forces Repository of Specimen Samples for the Identification of Remains (AFRSSIR) at <http://www.afmes.mil/index.cfm?pageid=afdil.afrssir.overview> or phone: (302) 346-8800. In addition, U.S. citizen contractor personnel shall comply with the requirements of DoDI 3020.41, Enclosure 3, paragraph 8.b., or its successor.

(4) U.S. citizen contractor personnel and TCN Contractor personnel traveling to the USSOUTHCOM AOR must follow the requirements identified in the Electronic Foreign Clearance Guide available at <https://www.fcg.pentagon.mil/fcg.cfm> and must have all necessary passports, visas, and other documents required to enter, exit or work in the USSOUTHCOM AOR; and must also have the appropriate DoD identity credential(s). Contractor personnel shall return all U.S. Government-issued identification, to include the Common Access Card, to appropriate U.S. Government authorities within 5 days of the end of their travel or contractual duties.

(5) Special area, country, and theater clearance is obtained for U.S. citizen contractor personnel and TCN Contractor personnel traveling in the USSOUTHCOM AOR. Clearance requirements are in DoD Directive 4500.54E, DoD Foreign Clearance Program (FCP). For this purpose, U.S. citizen and TCN Contractor personnel are considered non-DoD Contractor personnel traveling under DoD sponsorship.

(6) All U.S. citizen contractor personnel and TCN Contractor personnel must receive personal security training. At a minimum, the training shall—

- (i) Cover safety and security issues facing employees within the USSOUTHCOM AOR;
- (ii) Identify safety and security contingency planning activities; and
- (iii) Identify ways to utilize safety and security personnel and other resources appropriately.

(7) All U.S. citizen DOD sponsored contractors must comply with current force protection, personnel recovery and theater entry requirements as posted in DODI 3020.41 Operational Contract Support, DODI 3002.03 DOD Personnel Recovery – Reintegration of Recovered Personnel, the DOD Foreign Clearance Guide at <https://www.fcg.pentagon.mil/> and current USSOUTHCOM guidance prior to travel to any country in the USSOUTHCOM AOR. All U.S. citizen Contractor personnel must complete the following:

- (i) Anti-Terrorism (AT) Level 1 Training course available at <https://Jkodirect.jten.mil> (Login and Search for the course on the Course Catalog tab via the number or key word, enroll, and Launch). AT training must be completed within 12 months (1 year) prior to entry into the USSOUTHCOM AOR.
- (ii) IAW the DOD Foreign Clearance Guide and USSOUTHCOM theater entry requirements, DOD sponsored contractors entering the theater on official business will have a DD Form 1833 Isolated Personnel Report (ISOPREP) on file in Personnel Recovery Mission Software (PRMS). The ISOPREP will be

reviewed within 6 months prior to theater entry and every 6 months while in the AOR.

(iii) IAW USSOUTHCOM theater entry requirements, all DOD sponsored contractors must complete the computer based SERE 100.1 Code of Conduct training course prior to theater entry. Training is available online <http://jko.jten.mil> (Log into your account, go to the Course Catalog and search for SERE 100.1, enroll, and Launch) or through disk based software. Training is good for 3 years.

(iv) IAW the DOD Foreign Clearance Guide and USSOUTHCOM theater entry requirements, all DOD sponsored contractors traveling to designated high risk areas should receive a High Risk of Isolation (HRI) Briefing. The HRI Briefing is required for all DOD personnel conducting operations in, over, or around uncertain or hostile areas increasing their risk of becoming missing, isolated, detained, or captured.

(v) For more information or specific questions regarding completion of these requirements please contact the designated contracting officer's representative (COR). The COR will contact the appropriate DOD agency or service component for additional guidance.

(e) *Personnel data.*

(1) The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system at <https://spot.dmdc.mil>, to enter and maintain the data for the following Contractor personnel:

(i) All U.S. citizen contractor personnel and TCN contractor personnel who travel to the USSOUTHCOM AOR for periods of performance anticipated to exceed 30 consecutive days.

(ii) TCN, host nation (HN), or local national (LN) personnel who reside with or work in the immediate vicinity of U.S. Armed Forces and/or DOD Civilian personnel for periods of performance anticipated to exceed 30 consecutive days.

(iii) Private security contractors and contingency contractor personnel authorized to carry weapons regardless of proximity to U.S. Armed Forces or the length of the period of performance of their contract.

(iv) Contractor personnel with a place of performance within the continental United States, including the USSOUTHCOM Headquarters and Joint Interagency Task Force-South (JIATF-S) Headquarters, that may—within the terms of

their contracts—deploy to the USSOUTHCOM AOR for periods anticipated to exceed 30 consecutive days.

(2) The Contractor shall enter into the SPOT web-based system the required information on Contractor personnel prior to travel to the USSOUTHCOM AOR and shall continue to use the SPOT web-based system to maintain accurate, up-to-date information throughout the period of travel for all Contractor personnel. Changes to the status of individual Contractor personnel relating to their in-theater arrival date and their duty location, to include closing out the trip with their proper status (e.g., mission complete, killed, wounded), shall be annotated within the SPOT database in accordance with the timelines established in the SPOT business rules.

(End of clause)



ACQUISITION,  
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AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

APR 15 2014

In reply refer to  
DARS Tracking Number: 2014-00015

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Update to Accelerated Payments to Small Businesses

**This class deviation supersedes Class Deviation 2014-O0006, dated February 6, 2014.**  
Effective immediately, the attached list of DoD entitlement and payment systems that have acquired the capability to provide accelerated payments to small businesses has been updated to include the Defense Agencies Initiative system (DAI).

DoD revised DFARS 232.903 and 232.906 to assist small business concerns by paying them as quickly as possible after receipt of an invoice and all proper documentation. DoD is using a phased implementation approach because all DoD entitlement and payment systems required modification to accommodate the accelerated payments.

The Defense Logistics Agency completed modifications to DAI to provide for these accelerated payments. We plan to update this class deviation as each of the remaining DoD Component systems acquires the capability to perform the accelerated payment process.

This class deviation remains in effect until superseded or rescinded. My point of contact for this action is Annette Gray who may be reached at 571-372-6093 or at [annette.d.gray.civ@mail.mil](mailto:annette.d.gray.civ@mail.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

**Class Deviation 2014-O0015  
DoD Entitlement and Payment Systems Capable of Providing  
Accelerated Payments To Small Businesses**

- **Defense Agencies Initiative (DAI)**
- **OnePay**
- **Integrated Accounts Payable Systems (IAPS)**
- **Computerized Accounts Payable System-Windows (CAPSW)**
- **Enterprise Business System (EBS)**
- **Financial Accounting and Budget System (FABS)**
- **Transportation Financial Management System (TFMS)**
- **Corps of Engineers Financial Management System (CEFMS)**
- **Automated Voucher Examining and Disbursement System (AVEDS)**
- **Fuels Automated System (FAS)**
- **Standard Automated Voucher Examination System (SAVES)**
- **Mechanization of Contract Administration Services (MOCAS) System**



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

MAR 20 2014

In reply refer to  
DARS Tracking Number: 2014-O0013

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation–Prohibition Against Using Fiscal Year 2014 Funds to Contract with  
Entities Convicted of Fraud Against the Federal Government

Effective immediately, funds made available by the Department of Defense Appropriations Act, 2014 (Division C of Public Law 113-76) may not be used to enter into a contract with any person or other entity that is listed in the Excluded Parties List System (EPLS)/System for Award Management (SAM) Exclusion as having been convicted of fraud against the Federal Government.

The contracting officer shall review the exclusion information in SAM and note the application of the Cause and Treatment (CT) Code associated with the exclusion. Contractors may be debarred, suspended, or proposed for debarment for a conviction of, or civil judgment for, commission of fraud or a criminal offense (see FAR 9.406-2). CT Codes specifically associated with a fraud conviction are A, A1, FF, J, J1 and R.

This class deviation is effective upon signature, and remains in effect until incorporated in the FAR or DFARS or otherwise rescinded. My point of contact is Ms. Amy Williams, who may be reached at 571-372-6106, or amy.g.williams.civ@mail.mil.

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy



ACQUISITION,  
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AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

MAR 13 2014

In reply refer to  
DARS Tracking Number: 2014-O0011

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Determination of Fair and Reasonable Prices When Using Federal  
Supply Schedule Contracts

Effective immediately, contracting officers shall comply with the following policy, in lieu of FAR 8.404(d), Pricing, when using Federal Supply Schedules. This class deviation clarifies that ordering activity contracting officers are responsible for making a determination of fair and reasonable pricing when using Federal Supply Schedules.

8.404(d) *Pricing*. (DEVIATION)

Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a specific task (e.g., installation, maintenance, and repair). GSA has determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, to be fair and reasonable for the purpose of establishing the schedule contract. GSA's determination does not relieve the ordering activity contracting officer from the responsibility of making a determination of fair and reasonable pricing for individual orders, BPAs, and orders under BPAs, using the proposal analysis techniques at 15.404-1. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded. My point of contact is Mr. Mark Gomersall, who may be reached at 571-372-6099, or at Mark.R.Gomersall.civ@mail.mil.

Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

FEB 21 2014

In reply refer to  
DARS Tracking Number: 2014-O0009

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Prohibition Against Using Fiscal Year 2014 Funds to Contract  
with Corporations that Have an Unpaid Delinquent Tax Liability or a Felony  
Conviction under Federal Law

Effective immediately, funds made available by the Department of Defense  
Appropriations Act, 2014, and the Military Construction and Veterans Affairs, and Related  
Agencies Appropriations Act, 2014 (Public Law 113-76, Divisions C and J), may not be used to  
enter into a contract with any corporation that—

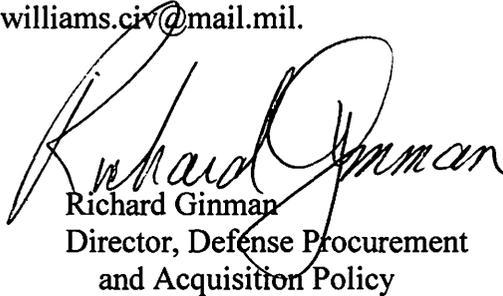
- Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or
- Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

These prohibitions apply to all Fiscal Year 2014 funds appropriated to DoD by Pub. L. 113-76, including those for military construction.

Contracting officers shall include the attached provision in all solicitations that will use funds appropriated by the Department of Defense Appropriations Act, 2014, and the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Public Law 113-76, Divisions C and J), including solicitations for the acquisition of commercial items under FAR part 12, and shall apply the following restrictions:

The contracting officer shall not award a contract to any corporation that provides an affirmative response to either of the representations in the provision at 252.209-7993 (Attachment) regarding any unpaid Federal tax liability, or regarding a conviction of a felony criminal violation of Federal law within the preceding 24 months, unless the agency debarring and suspending official has considered suspension or debarment of the corporation and has made a written determination that this further action is not necessary to protect the interests of the Government. Upon receipt of an affirmative response to the representation, contracting officers shall consult with the agency debarring and suspending official.

This class deviation is effective upon signature, and remains in effect until incorporated in the FAR or DFARS or otherwise rescinded. My point of contact is Ms. Amy Williams, who may be reached at 571-372-6106, or amy.g.williams.civ@mail.mil.



Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

Class Deviation—Prohibition Against Using Fiscal Year 2014 Funds to Contract with Corporations that Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

**252.209-7993 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law—Fiscal Year 2014 Appropriations.**

Include the attached provision in all solicitations that will use funds appropriated by the Department of Defense Appropriations Act, 2014 and by the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2014 (Pub. L. 113-76, Divisions C and J), including solicitations for the acquisition of commercial items under FAR part 12.

**REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID  
DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY  
FEDERAL LAW—FISCAL YEAR 2014 APPROPRIATIONS  
(DEVIATION 2014-OO0009) (FEB 2014)**

(a) In accordance with sections 8113 and 8114 of the Department of Defense Appropriations Act, 2014, and sections 414 and 415 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2014 (Public Law 113-76, Divisions C and J), none of the funds made available by those divisions (including Military Construction funds) may be used to enter into a contract with any corporation that—

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) It is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,

**Class Deviation—Prohibition Against Using Fiscal Year 2014 Funds to Contract with Corporations that Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law**

(2) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

MAR 14 2014

ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

In reply refer to  
DARS Tracking Number: 2014-O0007

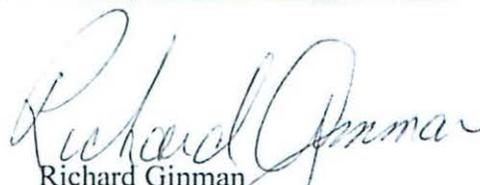
MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation— Prohibition on the Use of the 8(a) Business Development  
Program for Acquisition of Military Simulation and Military Simulation Training

Effective January 30, 2014, in accordance with the Stipulation and Agreement of Settlement in *DynaLantic Corporation v. United States Department of Defense, et al.*, No. 95-2301 (EGS)(D.D.C.) (*DynaLantic v. Department of Defense*) approved by the Court on January 30, 2014 (Attachment), contracting officers are prohibited from awarding “prime contracts under the Section 8(a) program (competitive and sole source) for the purchase of military simulation and military simulation training contracts.... ‘Military simulation’ and ‘military simulation training’ contracts are contracts for (i) the provision or sale of devices where the primary purpose of the device or devices is instruction for the use, operation and/or maintenance of military equipment of any nature or kind (including, but not limited to, aircraft, ships, tanks, etc.), and (ii) the training in the use, operation or maintenance with all military simulator equipment.” Accordingly, contracting officers shall not use FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), in the case of such procurements.

The injunction entered by the Court in its August 15, 2012, decision and order, as modified by the Stipulation and Agreement of Settlement, remains in effect. The modifications are described in this class deviation. The memorandum from the Director of Defense Procurement and Acquisition Policy, dated August 22, 2012, subject: “Immediate Cessation of Small Business Development Program (8(a) Program) Procurement Contracts for Military Simulators or Services in the Military Simulator Industry,” advised addressees of the decision, provided instructions effective August 15, 2012, based on the decision, and included as attachments the Court’s decision and order dated August 15, 2012.

This class deviation remains in effect until further notice. My point of contact is Ms. Lee Renna, who may be reached at 571-372-6905, or at [marylee.renna.civ@mail.mil](mailto:marylee.renna.civ@mail.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated



NOW, THEREFORE, Plaintiff and Defendants stipulate and agree as follows:

1. Subject to the Court's approval, the injunction entered by the Court in its August 15, 2012 Order shall be modified to read as follows: "Defendants shall not award prime contracts under the Section 8(a) program (competitive and sole source) for the purchase of military simulation and military simulation training contracts without first articulating a strong basis in evidence for doing so. 'Military simulation' and 'military simulation training' contracts are contracts for (i) the provision or sale of devices where the primary purpose of the device or devices is instruction for the use, operation and/or maintenance of military equipment of any nature or kind (including, but not limited to, aircraft, ships, tanks, etc.), and (ii) the training in the use, operation or maintenance with all military simulator equipment." The injunction, as so modified, shall not apply to contracts already in effect as of the date this Stipulation and Agreement of Settlement is signed by Plaintiff and Defendants.

2. The provisions contained in this Paragraph are contingent upon the Court's approval of the modifications to its injunction set forth in Paragraph 1 above, and shall become effective only upon the Court's entry of this Stipulation and Agreement as a Court order:

A. Defendants shall pay Plaintiff the sum of One Million and 00/100 Dollars (\$1,000,000.00) in full and final satisfaction of Plaintiff's claims for attorney's fees, costs, and other litigation expenses on account of (i) this action from its inception up to the date this Stipulation and Agreement of

Settlement is signed by Plaintiff and Defendants, (ii) Plaintiff's pending appeal in D.C. Circuit Case No. 12-5330, (iii) Defendants' appeal in D.C. Circuit Case 12-5329, (iv) Plaintiff's appeal in D.C. Circuit Case No. 96-5260, and (v) Plaintiff's petition for writ of mandamus in D.C. Circuit Case No. 12-5220, and Defendants shall have no further liability for any such fees, costs, or expenses. Payment shall be made as promptly as practicable, consistent with the normal processing procedures followed by Defendants, the Department of Justice, and the Department of the Treasury, by electronic transfer of funds as specified in instructions provided to Defendants' counsel by Plaintiff's counsel in writing.

- B. Plaintiff shall promptly dismiss its pending appeal in D.C. Circuit Case No. 12-5330.
- C. Defendants shall refrain from seeking to vacate the injunction entered by the Court in this case for a period of at least two years after the date on which this Stipulation and Agreement of Settlement is signed by Plaintiff and Defendants. At any time after the expiration of that two-year period, Defendants may give notice to the Court and to Plaintiff of Defendants' intent to begin re-using the Section 8(a) program for military simulation and military simulation training contracts. Such notice (i) shall be in writing, (ii) shall be given at least thirty days prior to the date on which Defendants propose to begin such contracting activities, and (iii) shall be

filed and served through the Court's electronic case filing system or as otherwise permitted by the Federal Rules of Civil Procedure and the local civil rules. The injunction shall remain in effect until further action is taken by the Court modifying or dissolving it.

3. Except as expressly set forth herein, Plaintiff reserves all of its rights (i) with respect to the injunction entered by the Court in this case, and (ii) to oppose any request to vacate the injunction.

4. If Plaintiff at any time believes that any contracting action or proposed contracting action by Defendants has violated or would violate the Court's injunction, Plaintiff shall notify Defendants of the alleged violation and Defendants shall then have ten days to cure the violation or otherwise respond to the claim. The parties shall make a good faith effort to resolve any dispute arising from or regarding the injunction's scope or applicability before bringing the dispute to the Court's attention.

5. The Court shall retain jurisdiction over this case.

6. Each signatory hereto represents and warrants that he is fully authorized to enter into this Stipulation.

IN WITNESS WHEREOF, Plaintiff and Defendants, intending to be legally bound, have executed this Stipulation on this 28th day of January 2014.

/s/ Michael E. Rosman  
MICHAEL E. ROSMAN  
D.C. Bar #454002  
Center for Individual Rights  
1233 20<sup>th</sup> St. N.W., Suite 300  
Washington, D.C. 20036  
(202) 833-8400

*Counsel for Plaintiff*

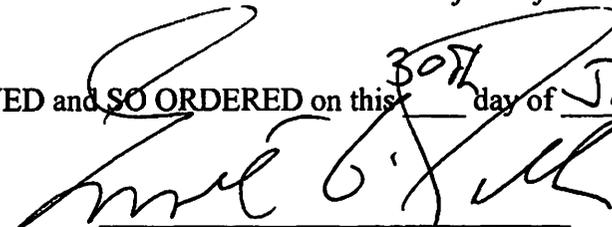
JOCELYN SAMUELS  
Acting Assistant Attorney General  
Civil Rights Division  
United States Department of Justice

RONALD C. MACHEN Jr.  
United States Attorney  
District of Columbia

/s/ Daniel F. Van Horn  
DANIEL F. VAN HORN  
D.C. Bar #924092  
Chief, Civil Division  
United States Attorney's Office  
555 Fourth St., N.W. – Room E4226  
Washington, D.C. 20530  
(202) 252-2506

*Counsel for Defendants*

APPROVED and SO ORDERED on this 30<sup>th</sup> day of JAN, 2014.

  
UNITED STATES DISTRICT JUDGE



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

OCT 22 2013

In reply refer to  
DARS Tracking Number: 2014-00004

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Prohibition Against Using Fiscal Year 2014 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

Effective immediately, funds made available by the Continuing Appropriations Act, 2014 (Public Law 113-46) may not be used to enter into a contract with any corporation that—

- Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or
- Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

These prohibitions apply to all Fiscal Year 2014 DoD funds appropriated by Pub. L. 113-46, including those for military construction.

Contracting officers shall include the attached provision in all solicitations that will use funds made available by the Continuing Appropriations Act, 2014 (Pub. L. 113-46), including

solicitations for the acquisition of commercial items under FAR part 12, and shall apply the following restrictions:

The contracting officer shall not award a contract to any corporation that provides an affirmative response to either of the representations in the provision at 252.209-7994 (Attachment) regarding any unpaid Federal tax liability or a conviction of a felony criminal violation of Federal law within the preceding 24 months, unless the agency debarring and suspending official has considered suspension or debarment of the corporation and has made a written determination that this further action is not necessary to protect the interests of the Government. Upon receipt of an affirmative response to the representation, contracting officers shall consult with the agency debarring and suspending official.

This class deviation is effective upon signature, and remains in effect until incorporated in the FAR or DFARS or otherwise rescinded. My point of contact is Meredith Murphy, who may be reached at 571-372-6098, or [meredith.k.murphy.civ@mail.mil](mailto:meredith.k.murphy.civ@mail.mil).



Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

Class Deviation—Prohibition Against Using Fiscal Year 2014 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

**252.209-7994 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law—Fiscal Year 2014 Appropriations.**

Include the attached provision in all solicitations that will use funds made available by the Continuing Appropriations Act, 2014 (Pub. L. 113-46), including solicitations for the acquisition of commercial items under FAR part 12.

**REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW—FISCAL YEAR 2014 APPROPRIATIONS  
(DEVIATION 2014-O0004) (OCTOBER 2013)**

(a) In accordance with section 101(a) of Division A of the Continuing Appropriations Act, 2014 (Pub. L. 113-46), none of the funds made available by that Act for DoD (including Military Construction funds) may be used to enter into a contract with any corporation that—

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) It is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,

(2) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

OCT - 1 2013

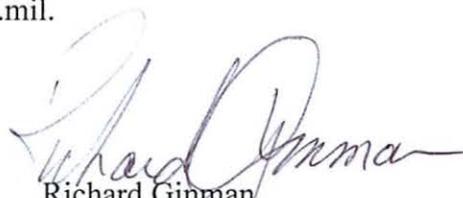
In reply refer to  
DARS Tracking Number: 2013-O0021

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Contract Consolidation

Effective immediately, contracting officers shall use \$2 million in lieu of \$6 million for the dollar threshold set forth at DFARS 207.170-3(a). Agencies are prohibited from consolidating contract requirements exceeding this threshold unless the acquisition strategy includes the results of market research, identification of any alternative approaches that would involve a lesser degree of contract consolidation, and a determination by the senior procurement executive that the contract consolidation is necessary and justified.

This class deviation remains in effect until incorporated in the FAR and/or DFARS, or otherwise rescinded. My point of contact is Ms. Lee Renna, who may be reached at 571-372-6095, or at [marylee.renna.civ@mail.mil](mailto:marylee.renna.civ@mail.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

SEP 25 2013

In reply refer to  
DARS Tracking Number: 2013-O0019

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

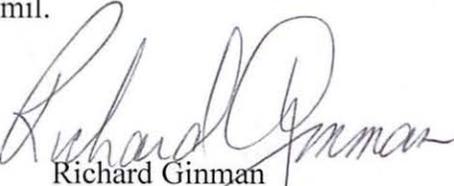
SUBJECT: Class Deviation—Commercial Item Omnibus Clause for Acquisitions Using the  
Standard Procurement System

Effective immediately, when using the Standard Procurement System (SPS) to contract for commercial items, all Department of Defense contracting activities may deviate from the requirements in Federal Acquisition Regulation (FAR) 12.301(b)(4) and the clause at FAR 52.212-5. This class deviation supersedes class deviation 2009-O0005.

The clause at FAR 52.212-5 requires the contracting officer to “check a box” to identify the clauses that are applicable to the specific acquisition of commercial items. Rather than requiring the contracting officers to “check the applicable clauses,” SPS has a clause logic capability that automatically selects the clauses under FAR 52.212-5.

Contracting officers may use the SPS clause logic capability to automatically select the clauses that are applicable to the specific solicitation and contract. Contracting officers shall ensure that the attached deviation clause is incorporated into these solicitations and contracts because the deviation clause fulfills the statutory requirements on auditing and subcontract clauses applicable to commercial items. The deviation also authorizes adjustments to the attached deviation clause required by future changes to the clause at 52.212-5 that are published in the FAR.

This class deviation is effective upon signature, and remains in effect for five years, or until otherwise rescinded. My point of contact is Ms. Lisa Romney who may be reached at 703-697-4396, or [janice.l.romney.civ@mail.mil](mailto:janice.l.romney.civ@mail.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

**FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (DEVIATION 2013-00019)**

Use the following clause in lieu of 52.212-5, as prescribed in class deviation 2013-00019.

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR  
EXECUTIVE ORDERS—COMMERCIAL ITEMS  
(DEVIATION 2013-00019) (SEP 2013)

(a) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (a) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor

does not maintain in the ordinary course of business or pursuant to a provision of law.

(b) (1) Notwithstanding the requirements of any other clauses of this contract, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (b) (1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Apr 2010) ([41 U.S.C. 3509](#)).

(ii) [52.219-8](#), Utilization of Small Business Concerns (Dec 2010) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iii) [52.222-17](#), Nondisplacement of Qualified Workers (JAN 2013) (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause [52.222-17](#).

(iv) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Veterans (Sep 2010) ([38 U.S.C. 4212](#)).

(vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (Oct 2010) ([29 U.S.C. 793](#)).

(vii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(viii) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. Chapter 67](#)).

(ix) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

Alternate I (Aug 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(x) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) ([41 U.S.C. Chapter 67](#)).

(xi) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Feb 2009) ([41 U.S.C. Chapter 67](#)).

(xii) [52.222-54](#), Employment Eligibility Verification (E.O. 12989) (JUL 2012).

(xiii) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xiv) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) 42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

*Alternate I (2013-00019) (SEP 2013)*. As prescribed in [12.301\(b\)](#) (4) , delete paragraph (a) from the basic clause, redesignate paragraph (b) (1) as paragraph (a), and redesignate paragraphs (b) (1) (i) through (b) (1) (xiv) as paragraphs (a) (1) through (a) (14) and redesignate paragraph (b) (2) as paragraph (b) .

*Alternate II (2013-00019) (SEP 2013)*. As prescribed in [12.301\(b\)](#) (4) (ii), substitute the following paragraphs (a) (1) and (b) (1) for paragraphs (a) (1) and (b) (1) of the basic clause as follows:

(a) (1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 ([5 U.S.C. App.](#)), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(b) (1) Notwithstanding the requirements of any other clause in this contract, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (a) of this clause.* This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (a) (1) (ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (b) (1).* Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 3509)).

(B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5).

(C) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(D) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(E) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212).

(F) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

(G) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(H) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. Chapter 67, et seq.).

(I) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

(J) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) ([41 U.S.C. Chapter 67.](#)).

(K) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Feb 2009) ([41 U.S.C. 351](#), et seq.).

(L) [52.222-54](#), Employment Eligibility Verification (E.O. 12989) (Jul 2012).

(M) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) ([42 U.S.C.1792](#)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(N) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#)) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

SEP 24 2013

In reply refer to  
DARS Tracking Number: 2013-O0018

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Past Performance Evaluation Thresholds and Reporting  
Requirements

Effective immediately, all contracting officers shall comply with the attached language, in lieu of FAR 15.304(c)(3)(i) and 42.1502, when collecting and using past performance information. This class deviation updates the DoD thresholds that identify when contracting officers must evaluate a contractor's performance.

The Guidance for CPARS, dated September 2013, includes revisions to the categorization of "fuels" and "health care." These two categories previously were listed separately in Table 1 of the Guidance. The threshold for "fuels" has been raised to \$5,000,000 and is included under the "operations support" business sector. The threshold for "health care" has been raised to "\$1,000,000, and is included under the "services" business sector.

This class deviation requires past performance reporting for contracts awarded under FAR subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who are Blind or Severely Handicapped, when the thresholds in this class deviation are exceeded, and it applies these thresholds to reporting requirements for FAR subpart 8.6, Acquisition from Federal Prison Industries, Inc. The thresholds in this class deviation also apply to reporting requirements for individual task or delivery orders, when past performance evaluations are required for orders by FAR subpart 42.15.

Contracting officers are encouraged to manually register and complete assessment reports on science and technology contracts and delivery/task orders under budget accounts 6.1 (basic research), 6.2 (applied research), and 6.3 (advanced technology development) over \$1,000,000,

DARS Tracking Number 2013-O0018  
Class Deviation—Past Evaluation Thresholds and Reporting Requirements

consistent with the threshold for services, although the completion of past performance evaluations is not mandatory for these types of contracts.

This class deviation supersedes Class Deviations 2012-O0017 and 2012-O0018. This class deviation is effective upon signature, and remains in effect until incorporated in the FAR or DFARS or otherwise rescinded. My point of contact is Sandra Ross, who may be reached at 703-695-9774, or [sandra.k.ross28.civ@mail.mil](mailto:sandra.k.ross28.civ@mail.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

Revised past performance thresholds to be used in lieu of the thresholds at FAR 15.304(c)(3)(i) and 42.1502(b):

**215.304 Evaluation factors and significant subfactors (DEVIATION).**

(c)(3)(i) In lieu of the threshold specified at FAR 15.304(c)(3)(i), except as provided at FAR 15.304(c)(3)(iii), evaluate past performance in source selections for negotiated competitive acquisitions as follows:

(A) For systems and operations support acquisitions expected to exceed \$5,000,000;

(B) For services and information technology acquisitions expected to exceed \$1,000,000; and

(C) For ship repair and overhaul acquisitions expected to exceed \$500,000.

**242.1502 Policy (DEVIATION).**

In lieu of the threshold specified at FAR 42.1502(b), 42.1502(c), and 42.1502(d), except as provided at FAR 42.1502(e), (f), and (h), prepare an evaluation of contractor performance as follows:

(i) For systems and operations support contracts that exceed \$5,000,000;

(ii) For services and information technology contracts that exceed \$1,000,000; and

(iii) For ship repair and overhaul contracts that exceed \$500,000.

**NOTE:** The Governmentwide CPARS guidance lists various business sectors. DoD includes health care under the services business sector and includes fuels under the operations support business sector.



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

AUG 30 2013

In reply refer to  
DARS Tracking Number: 2013-O0017

MEMORANDUM FOR COMMANDER, UNITED STATES CENTRAL COMMAND (ATTN:  
JOINT THEATER SUPPORT CONTRACTING COMMAND)  
COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Contractor Demobilization

Effective immediately, contracting officers shall use the attached clause in all solicitations and contracts with performance in Afghanistan, except solicitations and contracts for commodities.

This class deviation remains in effect until it is incorporated in the DFARS, or is otherwise rescinded. My point of contact is Ms. Barbara J. Trujillo, who may be reached at 571-256-7010, or at [barbara.j.trujillo2.civ@mail.mil](mailto:barbara.j.trujillo2.civ@mail.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

**252.225-7998 Contractor Demobilization. (DEVIATION 2013-O0017)**

Insert the following clause in all solicitations and contracts with performance in Afghanistan, except solicitations and contracts for commodities:

**CONTRACTOR DEMOBILIZATION  
(DEVIATION 2013-O0017) (AUGUST 2013)**

(a) Generally, the Contractor is responsible for demobilizing all of its personnel and equipment from the Afghanistan Combined Joint Operations Area (CJOA).

(b) *Demobilization plan.* The Contractor shall submit a demobilization plan to the Contracting Officer for approval a minimum of 120 calendar days prior to the end of the current contract performance period or as otherwise directed by the Contracting Officer. Upon acceptance of the demobilization plan by the Contracting Officer, the demobilization plan becomes a material part of the contract and the Contractor agrees to fully perform its demobilization in accordance with that plan. The demobilization plan shall address the items specified in this clause and must demonstrate the Contractor's plans and ability to remove its personnel and equipment from the CJOA and to return Government property no later than 30 days after the expiration of the current period of performance.

(c) *Demobilization plan implementation.* Every 30 calendar days after incorporation of the plan into the contract, or as otherwise directed by the Contracting Officer, the Contractor shall provide written information to the Contracting Officer and Contracting Officer Representative that addresses the Contractor's progress in implementing the plan. The Contractor shall continue to provide the information in the preceding sentence until the Contractor has completely and properly demobilized. If the Contracting Officer or Contracting Officer Representative identifies deficiencies with the plan, as approved, or with the implementation of that plan, the Contractor shall submit a corrective action plan (CAP) to those officials within five calendar days to remedy those deficiencies. The Contracting Officer shall review the CAP within five calendar days to determine whether the CAP is acceptable. Upon approval by the Contracting Officer, the CAP becomes a material part of the demobilization plan.

(d) *Plan contents*

(1) The plan shall identify the method of transportation (air, ground) the Contractor intends to use to remove its personnel and equipment from the CJOA and whether that method of transportation is Government or Contractor-furnished. If Government-furnished transportation is authorized, the plan must identify the

contract term or condition which authorizes Government transportation of the personnel and equipment associated with this contract.

(2) The plan shall identify the number of Contractor personnel to be demobilized by category (U.S. citizens, Third Country Nationals (TCN), Local Nationals (LN)) and, for U.S. and TCN personnel, identify the point of origin or home country to which they will be transported and the timeline for accomplishing that objective. If U.S. or TCN employees have authorization to remain in the CJOA after completion of demobilization, the plan shall identify the name each individual, their nationality, their location in the CJOA, and provide a copy of the authorization. The plan shall also identify whether the Contractor needs the Contracting Officer to extend the Letters of Authorization (LOA) for any Contractor personnel to execute the demobilization plan.

(3) The plan shall identify all Contractor equipment and the timeline for accomplishing its demobilization. The Contractor shall identify all equipment, whether or not it is covered by CJTSCC Acquisition Instruction Clause "Inbound / Outbound Cargo and Contractor Equipment Census." The plan shall also specify whether the Contractor intends to leave any equipment in the CJOA, a list of all such equipment, including its location, and the reason(s) therefor.

(4) The plan shall identify all Government property provided or made available to the Contractor under this contract or through any separate agreement or arrangement (e.g., Installation Mayors, Garrison Commanders). The plan shall also identify the timeline for vacating or returning that property to the Government, including proposed dates for conducting joint inspections.

(e) *Demobilization requirements:*

(1) The Contractor shall demobilize and return its personnel to their point of origin or home country according to the approved demobilization plan.

(2) The Contractor is not authorized to use Government-furnished transportation unless specifically authorized in this contract.

(3) The Contractor may request an extension of the LOAs only for those Contractor personnel whose presence is required to execute the approved demobilization plan. The Contractor shall submit its request no later than 30 calendar days prior to the expiration of the current period of performance. LOAs may only be extended for a period up to 30 calendar days after expiration of the current performance period. The request shall contain the following information:

(i) The names of each individual requiring an extension.

(ii) The required extension period.

(iii) The justification for each extension (e.g., the specific function(s) the individual will perform during the demobilization period). The Contractor is not entitled to any additional compensation if LOAs are extended.

(4) The Contractor shall close out their employees deployments with the proper status entered into the Synchronized Pre-Deployment Operational Tracker (SPOT) database (e.g. active, redeployed, no-shows, killed, injured) within 72 hours of their employee's re-deployment and, if applicable, release their personnel in SPOT.

(5) All Contractor equipment that is lost, abandoned or unclaimed personal property that comes into the custody or control of the Government after the demobilization period has ended may be sold or otherwise disposed of in accordance with 10 U.S.C. section 2575. Notwithstanding the previous sentence and the Government's authority under 10 U.S.C. section 2575, the Government may exercise any other contractual rights for the Contractor's failure to perform in accordance with its demobilization plan.

(6) If the Contractor waives its interest to all lost, abandoned or unclaimed personal property, the Contractor may still be liable for all costs incurred by the Government to remove or dispose of the abandoned property.

(7) The Government may dispose of any and all lost, unclaimed, or abandoned personal property in accordance with 10 U.S.C. section 2575.

(8) The Contractor shall return all Government property provided or made available under this contract or through any separate agreement. The Contractor shall report all lost or damaged Government property in accordance with DFARS 52.245-1(h) unless other procedures are identified in the contract or separate agreement. If the Government inspects the property and finds that damages or deficiencies have not been reported by the end of the demobilization period, the Government may reduce payments under the contract by the amounts required to correct the damages or deficiencies or replace the loss.

(9) The Contractor is liable for all cleanup, clearing, and/or environmental remediation expenses incurred by the Government in returning a Government facility to its original condition. If damages or deficiencies are discovered during the inspection of said facility, the Contractor shall make the necessary repairs or corrections and then notify the Installation Mayor, Garrison Commander, or their designees to arrange for a re-inspection of the facility. If the Installation Mayor or Garrison Commander inspects the facility and finds that damages or deficiencies

have not been repaired or corrected by the end of the demobilization period, the Government may reduce payments under the contract by the amounts required to correct the damages or deficiencies.

(10) The Contractor shall ensure that all employees, including all subcontractor employees at all tiers, return installation and/or access badges to the local Access Control Badging Office for de-activation and destruction according to the approved demobilization plan. The Contractor shall submit a Badge Termination Report to ensure each record is flagged and the badge is revoked. If an employee's badge is not returned, the Contractor shall submit a Lost, Stolen or Unrecovered Badge Report to the appropriate Access Control Badging Office. Contractor employees in possession of a Common Access Card (CAC) shall be responsible for turning in the CAC upon re-deployment through a CONUS Replacement Center in the United States. Failure to comply with these requirements may result in delay of final payment.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(End of Clause)



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

APR 24 2013

ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

In reply refer to  
DARS Tracking Number: 2013-O0012

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Authorization for Contractors to Use Government Supply Sources  
in Support of Operation Enduring Freedom.

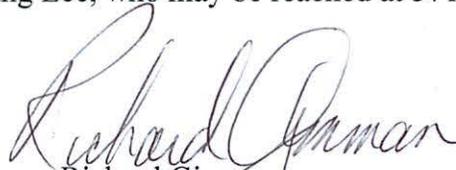
This class deviation supersedes Class Deviation 2013-O0001, dated October 12, 2012. Effective immediately, contracting officers are encouraged to authorize contractors (including contractors with fixed-price contracts) to utilize appropriate Government sources of supply in performance of contracts in support of Operation Enduring Freedom. Appropriate Government sources of supply include—

- The GSA Central Asia and South Caucasus Supply Catalog under the GSA Global Supply Program (<http://www.gsa.gov/portal/content/18171>); or
- The Defense Logistics Agency (DLA) (for construction material).

This policy constitutes a deviation from the policy at FAR 51.101, which restricts the use of Government supply sources in other than cost-reimbursement contracts.

Contracting officers may modify existing contracts to include FAR 52.251-1 and DFARS 252.251-7000, in order to permit the use of Government supply sources. Both DLA and GSA local sourcing items can currently be accessed via MILSTRIP requisitioning only, which will necessitate the assignment of a Department of Defense Activity Address Code (DODAAC) by the Department of Defense contracting officer (DFARS PGI 251.102). Contracting officers shall comply with the requirements of FAR 51.102 and DFARS 251.102 when providing this authorization to contractors.

This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded. My point of contact is Ms. Kyoung Lee, who may be reached at 571-256-2947, or at [Kyoung.Lee@osd.mil](mailto:Kyoung.Lee@osd.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

APR - 8 2013

In reply refer to  
DARS Tracking Number: 2013-O0010

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation--Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

Effective immediately, funds made available by the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6) may not be used to enter into a contract with any corporation that—

- Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or
- Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

These prohibitions apply to all Fiscal Year 2013 DoD funds appropriated by Pub. L. 113-6, including those for military construction. Class Deviation 2013-O0006, dated January 22, 2013, remains in effect for funds appropriated by the Continuing Appropriations Resolution,

2013 (Pub. L. 112-175), which made appropriations for Fiscal Year 2013 through March 27, 2013.

Contracting officers shall include the attached provision in all solicitations that will use funds made available by the Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113-6), including solicitations for the acquisition of commercial items under FAR part 12, and shall apply the following restrictions:

The contracting officer shall not award a contract to any corporation that provides an affirmative response to either of the representations in the provision at 252.209-799X (Attachment) regarding any unpaid Federal tax liability or a conviction of a felony criminal violation of Federal law within the preceding 24 months.

However, contracting officers may make an award despite these restrictions if the agency debaring and suspending official has considered suspension or debarment of the corporation and has made a written determination that this further action is not necessary to protect the interests of the Government. Upon receipt of an affirmative response to the representation, contracting officers shall consult with the agency debaring and suspending official.

This class deviation is effective upon signature, and remains in effect until incorporated in the FAR or DFARS or otherwise rescinded. My point of contact is Meredith Murphy, who may be reached at 571-372-6098, or [meredith.murphy@osd.mil](mailto:meredith.murphy@osd.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

Deviation 2013-00010

Class Deviation--Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

**252.209-799X Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law--Fiscal Year 2013 Appropriations.**

REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW--FISCAL YEAR 2013 APPROPRIATIONS (DEVIATION 2013-000XX) (DATE)

(a) In accordance with sections 8112 and 8113 of Division C and sections 514 and 515 of Division E of the Consolidated and Further Continuing Appropriations Act, 2013, (Pub. L. 113-6), none of the funds made available by that Act for DoD (including Military Construction funds) may be used to enter into a contract with any corporation that--

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that--

(1) It is [ ] is not [ ] a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,

(2) It is [ ] is not [ ] a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JAN 22 2013

In reply refer to  
DARS Tracking Number: 2013-O0006

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

Effective immediately, funds made available by the Continuing Appropriations Resolution, 2013 (Public Law 112-175) may not be used to enter into a contract with any corporation which—

- For general appropriations for the Department of Defense—
  - Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or
  - Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

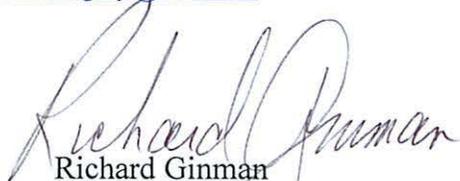
- For military construction funds, was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

Contracting officers shall include one of the attached provisions in all solicitations that will use funds made available by the Continuing Appropriations Resolution, 2013 (Pub. L. 112-175), including solicitations for the acquisition of commercial items under FAR part 12, and shall apply the following restrictions:

- The contracting officer shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 252.209-7997 (Attachment 1) regarding any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability or with regard to conviction of a felony criminal violation of Federal law within the preceding 24 months.
- The contracting officer shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 252.209-7996 (Attachment 2) regarding conviction of a felony criminal violation of Federal law within the preceding 24 months.

However, contracting officers may make an award despite these restrictions if the agency debaring and suspending official has considered suspension or debarment of the corporation and has made a written determination that this further action is not necessary to protect the interests of the Government. Upon receipt of an affirmative response to the representation, contracting officers shall consult with the agency debaring and suspending official.

This class deviation is effective upon signature, and remains in effect until incorporated in the FAR or DFARS or otherwise rescinded. My point of contact is Meredith Murphy, who may be reached at 571-372-6098, or [meredith.murphy@osd.mil](mailto:meredith.murphy@osd.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

Deviation 2013-00006

Class Deviation-Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

**252.209-7997 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law-DoD Appropriations.**

REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW-DoD APPROPRIATIONS (DEVIATION 2013-00006) (DATE)

(a) In accordance with section 101(a)(3) of the Continuing Appropriations Resolution, 2013, (Pub. L. 112-175) none of the funds made available by that Act for general appropriations for DoD may be used to enter into a contract with any corporation that-

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that-

(1) It is [ ] is not [ ] a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,

(2) It is [ ] is not [ ] a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)

Deviation 2013-00006

Class Deviation—Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have a Felony Conviction under Federal Law

**252.209-7996 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law—DoD Military Construction Appropriations.**

REPRESENTATION BY CORPORATIONS REGARDING A FELONY CONVICTION UNDER ANY FEDERAL LAW—DoD MILITARY CONSTRUCTION APPROPRIATIONS (DEVIATION 2013-00006) (DATE)

(a) In accordance with section 101(a)(10) of the Continuing Appropriations Resolution, 2013, (Pub. L. 112-175) none of the funds made available by that Act for military construction may be used to enter into a contract with any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that it is [ ] is not [ ] a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JUL 24 2012

In reply refer to  
DARS Tracking Number: 2012-O0013

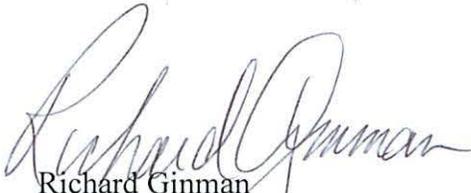
MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—DCAA Policy and Procedure for Sampling Low-Risk Incurred  
Cost Proposals

Effective immediately, for the purposes of satisfying the audit requirements at FAR 4.804-5(a)(12), 42.705-1(b)(2), and 42.705-2(b)(2)(i), Department of Defense contracting officers shall continue to rely on either a DCAA audit report or a DCAA memorandum documenting that, based on a risk assessment and a proposal adequacy evaluation pursuant to FAR 42.705-1(b)(1)(iii), DCAA deemed the incurred cost proposal to be low-risk and did not select it for further audit in accordance with the attached DCAA Policy dated July 6, 2012.

This DCAA policy represents a continuation of a risk-based sampling process in use since 1994. It remains a prudent use of resources and contains adequate safeguards against unacceptable risk, while still ensuring that the contracting officer will have all the information needed for contract closeout.

This deviation remains in effect until it is incorporated into the FAR or DFARS or is otherwise rescinded. My point of contact is Mr. Mark Gomersall who may be reached at 571-372-6099, or mark.gomersall@osd.mil.

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated



**DEFENSE CONTRACT AUDIT AGENCY  
DEPARTMENT OF DEFENSE  
8725 JOHN J. KINGMAN ROAD, SUITE 2135  
FORT BELVOIR, VA 22060-6219**

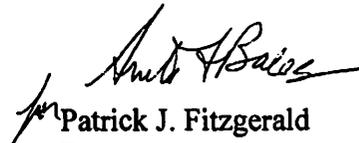
OFFICE OF THE DIRECTOR

July 6, 2012

**MEMORANDUM FOR DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION  
POLICY**

**SUBJECT: Modification of DCAA Process for Sampling Low-Risk Incurred Cost Proposals**

As coordinated with your office, enclosed are our policies and procedures for sampling low-risk incurred cost proposals. The policies and procedures will be implemented upon your issuance of the related Class Deviation. We believe this process will provide for a more effective oversight approach without significantly increasing risk to the Government. Should you have any questions, please contact me at (703) 767-3200.

  
Patrick J. Fitzgerald  
Director

Enclosure:  
Policy and Procedures

**DCAA Policy and Procedures for  
Sampling Low-Risk Incurred Cost Proposals**

**POLICY**

All incurred cost proposals should be evaluated upon receipt for adequacy, in accordance with FAR 52.216-7, using the DCAA Incurred Cost Proposal Adequacy checklist. If the incurred cost proposal is not adequate and the deficiencies cannot be remedied with minor effort, the proposal will be returned to the contractor with written instructions on required corrective actions, in accordance with CAM Chapter 6.

All adequate annual incurred cost proposals exceeding \$250 million in auditable dollar value (ADV) will be audited. All other incurred cost proposals received and determined to be adequate will be assessed for risk. All adequate high-risk proposals will be audited.

To address the current significant backlog, low risk adequate annual incurred cost proposals (using criteria below) submitted by contractors with auditable dollar value (ADV) of \$1 million or less and received prior to October 1, 2011, will not be selected for audit. A Memorandum for Contracting Officer will be issued as discussed in the following paragraphs.

**CRITERIA FOR CLASSIFICATION OF PROPOSALS TO HIGH-RISK AND LOW-RISK POOLS**

For all proposals with \$250 million or less in ADV, FAOs should classify risk as high or low for all adequate incurred cost proposals on hand where an audit (field work) has not been started, using the criteria specified below:

**Low Risk Proposal Criteria**

- We have prior incurred cost audit experience (i.e., an incurred cost audit has been performed).
- No significant audit leads or no other significant risk has been identified (any known business system deficiencies that would have a significant impact on the final indirect rate proposal for this FY, significant risk identified by the contracting officer, etc.).
- No prior significant total exception dollar reported in the last year audited.  
Significant exception dollars are defined by strata in the table below:

| <b>Low-Risk Adequate Proposals by Auditable Dollar Value (ADV)</b> | <b>Amount of Previous Exception Dollars (including Corporate, Home Office, etc) Classified as Significant (gov. impact)</b> |
|--|---|
| \$1M or less   | \$15,000  |
| \$1M to \$15 Million   | \$25,000  |
| \$15M to \$50 Million  | \$55,000  |
| \$50 Million to \$250 Million                                      | \$100,000   |

**DCAA Policy and Procedures for  
Sampling Low-Risk Incurred Cost Proposals**

**LOW-RISK SAMPLING PERCENTAGES**

Low-risk proposals will be selected for audit using sampling techniques based on the guidance below. An adequacy evaluation must be performed prior to designating a proposal as low risk. No other audit procedures will be applied to the remaining low-risk proposals not selected for audit.

| <b>Low-Risk Adequate Proposals by<br/>Auditable Dollar Value (ADV)</b> | <b>Low-Risk Sampling<br/>Percentages</b> |
|--|--|
| \$1M or less received after 9/30/2011                                  | 1%                                       |
| \$1M to \$50 Million   | 5%                                       |
| \$50 Million to \$100 Million  | 10%                                      |
| \$100 Million to \$250 Million*  | 20%                                      |
| Greater than \$250 Million   | 100%                                     |

\* A mandatory incurred cost audit will be performed once every three years for all proposals greater than \$100 million up to \$250 million. If a contractor does not have a proposal selected for audit in the 20 percent sample in a three-year cycle, the FAO shall select a proposal for audit the third year after the last audit. This selection is in addition to those incurred cost proposals selected for audit in the 20 percent sample for any given Government fiscal year.

**CLOSURE METHODS TO BE USED FOR PROPOSAL CONSIDERED LOW-RISK  
NOT SELECTED FOR AUDIT**

The following procedures will be performed on the proposals in the low-risk pool that were not selected in the sample for audit:

- Issue a Memorandum for Contracting Officer, including the key steps performed from the adequacy checklist (see enclosed proforma adequacy determination letter).
- Low-risk proposals not selected in the sample for audit should be closed with disposition code "N – Assignment completed but no formal report issued" as of the date of the memorandum to the contracting officer. The proposal ADV should be reported in the dollars examined field so that the Agency can determine the value of incurred cost proposals that were not audited. Costs questioned and total exception dollars will be reported as zero. The Audit, Desk Review, or No Audit field entry will be "N = No Audit" and the Audit Determined/Negotiated field entry will be "N = Negotiated."

**PROCEDURES**

- Upon receipt of this guidance, the FAO should identify all incurred cost proposals on hand for which the audit has not started.

**DCAA Policy and Procedures for  
Sampling Low-Risk Incurred Cost Proposals**

- Perform an adequacy determination, if not already completed.
- All adequate incurred cost proposals exceeding \$250 million in ADV will be audited.
- Proposals less than or equal to \$250 million received and determined adequate will be assessed for risk. The auditor will determine whether the remaining incurred cost proposals should be included in the high-risk pool or low-risk pool using the attached risk assessment worksheet.
- All adequate low-risk incurred cost proposals less than or equal to \$1 million received prior to October 1, 2011 will not be audited or sampled. Draft memorandum to the contracting officer.
- All adequate incurred cost proposals included in the high-risk pool will be audited.
- All other adequate low-risk incurred cost proposals will be randomly selected for audit based on the following initial sampling percentages. Regional offices in coordination with OWD will determine and document sampling plan.
  - One percent (1%) of the incurred cost proposals up to \$1 million received after September 30, 2011, and included in the low-risk pool, will be randomly selected for audit.
  - Five percent (5%) of the incurred cost proposals of \$1 million to \$50 million included in the low-risk pool will be randomly selected for audit.
  - Ten percent (10%) of the incurred cost proposals of \$50 million to \$100 million included in the low-risk pool will be randomly selected for audit.
  - Twenty percent (20%) of the incurred cost proposals of \$100 million to \$250 million included in the low-risk pool will be randomly selected for audit. A mandatory incurred cost audit will be performed once every three years.
- Draft a memorandum to the contracting officer for those low-risk proposals not selected for audit unless the FAO has multiple proposals from the same contractor, then follow the procedures below.
- If a contractor has more than one incurred cost proposal in the initial low-risk pool, the following procedures will be used:
  - If no proposals for the contractor are selected in the sample for audit, close out all adequate incurred cost proposals that were in the sampling pool for that contractor using the procedures discussed above.
  - If one or more proposals are selected in the sample for audit, do not disposition any of the other proposals for the contractor until the audit is completed.
    - If significant questioned costs are found, audit all other incurred cost proposals that were in the sampling pool for the contractor using multi-year audit techniques.
    - If no significant questioned costs are found, close out all other proposals that were in the sampling pool using the procedures discussed above.



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JUL -6 2012

In reply refer to  
DARS Tracking Number: 2012-O0010

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

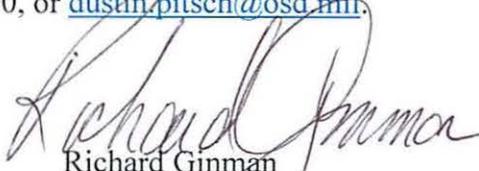
SUBJECT: Class Deviation—Prohibition on Collection of Political Information

Effective immediately, contracting officers may not require any entity to submit political information as part of a solicitation or any contract action nor may they use fiscal year 2012 funds to require or recommend the submission of political information.

“Political information” means information relating to political spending, including any payment consisting of a contribution, expenditure, independent expenditure, or disbursement for an electioneering communication that is made by the contractor, any of its partners, officers, directors or employees, or any of its affiliates or subsidiaries to a candidate or on behalf of a candidate for election for Federal office, to a political committee, to a political party, to a third party entity with the intention or reasonable expectation that it would use the payment to make independent expenditures or electioneering communications, or that is otherwise made with respect to any election for Federal office, party affiliation, and voting history. Each of the terms ‘contribution’, ‘expenditure’, ‘independent expenditure’, ‘candidate’, ‘election’, ‘electioneering communication’, and ‘Federal office’ has the meaning given the term in the Federal Campaign Act of 1971 (2 U.S.C. 431 et seq.).

This deviation implements 10 U.S.C 2335, as added by section 823 of the National Defense Authorization Act of 2012 (Pub. L. 112-81), and it also implements section 743 of the Consolidated Appropriations Act of 2012 (Pub. L. 112-74).

This class deviation is effective upon signature, and remains in effect until it is incorporated in the FAR or DFARS or is otherwise rescinded. My point of contact is Dustin Pitsch, who may be reached at 571-372-6090, or [dustin.pitsch@osd.mil](mailto:dustin.pitsch@osd.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

MAR - 9 2012

In reply refer to  
DARS Tracking Number: 2012-O0007

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation– Prohibition Against Contracting With Corporations That Have a  
Felony Conviction under Federal or State Law

Effective immediately, none of the funds made available by section 514 of Division H of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74) may be used to enter into a contract with any corporation that was convicted of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

Contracting officers shall include the attached provision 252.209-7998 in all solicitations that will use funds made available by Division H of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), including solicitations for acquisition of commercial items under FAR part 12, and shall apply the following restrictions:

In accordance with section 514 of Division H of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), except as provided in the following paragraph of this memorandum, the contracting officer shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 252.209-7998 (attached) with regard to any felony criminal violation of Federal or State law within the preceding 24 months.

However, contracting officers may make an award despite these restrictions if the agency debarment and suspending official has considered suspension or debarment of the corporation and has made a written determination that this further action is not necessary to protect the interests

of the Government. Upon receipt of an affirmative response to the representation, contracting officers shall consult with the agency debaring and suspending official.

This class deviation is effective upon signature, and remains in effect until incorporated in the FAR or DFARS or otherwise rescinded. My point of contact is Amy Williams, who may be reached at 703-602-0328, or [amy.williams@osd.mil](mailto:amy.williams@osd.mil).



Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

Deviation 2012-00007

Class Deviation-Additional Responsibility Matters When Using Fiscal Year 2012 Funds.

**252.209-7998 Representation Regarding Conviction of a Felony Criminal Violation under any Federal or State Law.**

REPRESENTATION REGARDING CONVICTION OF A FELONY CRIMINAL VIOLATION UNDER ANY FEDERAL OR STATE LAW (DEVIATION 2012-00007) (DATE 2012)

(a) In accordance with section 514 of Division H of the Consolidated Appropriations Act, 2012, none of the funds made available by that Act may be used to enter into a contract with any corporation that was convicted of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(b) The Offeror represents that it is  is not  a corporation that was convicted of a felony criminal violation under a Federal or State law within the preceding 24 months.

(End of provision)



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

JAN 23 2012

In reply refer to  
DARS Tracking Number: 2012-O0004

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation– Prohibition Against Contracting With Corporations That Have An  
Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

Effective immediately, none of the funds made available by Division A of the  
Consolidated Appropriations Act, 2012 (Pub. L. 112-74) may be used to enter into a contract  
with any corporation which –

- Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government; or
- Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

Contracting officers shall include the attached provision 252.209-7999 in all solicitations that will use funds made available by Division A of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), including solicitations for acquisition of commercial items under FAR part 12, and shall apply the following restrictions:

In accordance with sections 8124 and 8125 of Division A of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), except as provided in the following paragraph of this memorandum, the contracting officer shall not award a contract to any corporation that provides an affirmative response to the representation in the provision at 252.209-7999 at Attachment 1 of this deviation, with regard to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability or with regard to conviction of a felony criminal violation of Federal law within the preceding 24 months.

However, contracting officers may make an award despite these restrictions if the agency debarring and suspending official has considered suspension or debarment of the corporation and has made a written determination that this action is not necessary to protect the interests of the Government. Upon receipt of an affirmative response to the representation, contracting officers shall consult with the agency debarring and suspending official.

This class deviation is effective upon signature, and remains in effect until incorporated in the FAR or DFARS or otherwise rescinded. My point of contact is Ms. Amy Williams, who may be reached at 703-602-0328, or [amy.williams@osd.mil](mailto:amy.williams@osd.mil).



Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

Deviation 2012-00004

Class Deviation- Prohibition Against Contracting With Corporations That Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law

**252.209-7999 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law.**

REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW  
(DEVIATION 2012-00004) (JAN 2012)

(a) In accordance with sections 8124 and 8125 of Division A of the Consolidated Appropriations Act, 2012, (Pub. L. 112-74) none of the funds made available by that Act may be used to enter into a contract with any corporation that-

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that-

(1) It is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,

(2) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JAN 31 2012

In reply refer to  
DARS Tracking Number: 2012-O0003

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation–Revision to Cost Accounting Standards Threshold

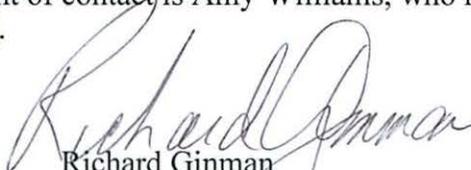
Effective immediately, contracting officers shall use the attached provision and clauses in lieu of the following FAR provision and clauses:

- FAR provision 52.230-1 Cost Accounting Standards Notices and Certification.
- FAR clause 52.230-2 Cost Accounting Standards.
- FAR clause 52.230-3 Disclosure and Consistency of Cost Accounting Standards.
- FAR clause 52.230-4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.
- FAR clause 52.230-5 Cost Accounting Standards—Educational Institution.

The attached provision and clauses shall be included in new solicitations and resultant contracts in accordance with the prescriptions at FAR 30.201-3 and 30.201-4, except that the contracting officer shall use the amount of \$700,000 in lieu of \$650,000, when applying the prescription at 30.201-4(b).

This deviation implements the increase in the cost accounting standards threshold from \$650,000 to \$700,000, as recently incorporated at 48 CFR 9901 and 9903 by the Cost Accounting Standards Board (76 FR 79545).

This class deviation is effective upon signature, and remains in effect until incorporated in the FAR or otherwise rescinded. My point of contact is Amy Williams, who may be reached at 703-602-0328, or [amy.williams@osd.mil](mailto:amy.williams@osd.mil).

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

**Class Deviation 2012-0003**

**Revision of Cost Accounting Standards Threshold**

**52.230-1 Cost Accounting Standards Notices and Certification (Deviation).**

As prescribed in 30.201-3, insert the following provision:

**COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (DEVIATION 2012-0003) (JAN 2012)**

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c) (5) or 9903.201-2(c) (6), respectively.

**I. DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION**

(a) Any contract in excess of \$700,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Revision of Cost Accounting Standards Threshold

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

(1) *Certificate of Concurrent Submission of Disclosure Statement.* The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

(i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and

(ii) One copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: \_\_\_\_\_

Name and Address of Cognizant ACO or Federal Official Where Filed: \_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) *Certificate of Previously Submitted Disclosure Statement.* The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: \_\_\_\_\_

Name and Address of Cognizant ACO or Federal Official Where Filed: \_\_\_\_\_

Revision of Cost Accounting Standards Threshold

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

[ ] (3) *Certificate of Monetary Exemption*. The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

[ ] (4) *Certificate of Interim Exemption*. The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS—ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

**Class Deviation 2012-0003**

**Revision of Cost Accounting Standards Threshold**

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

**III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS**

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

Yes  No

(End of provision)

**Class Deviation 2012-0003**

**Revision of Cost Accounting Standards Threshold**

Alternate I (Apr 1996). As prescribed in 30.201-3(b), add the following paragraph (c)(5) to Part I of the basic provision:

o (5) *Certificate of Disclosure Statement Due Date by Educational Institution*. If the offeror is an educational institution that, under the transition provisions of 48 CFR 9903.202-1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

o (i) A Disclosure Statement Filing Due Date of \_\_\_\_\_ has been established with the cognizant Federal agency.

o (ii) The Disclosure Statement will be submitted within the 6-month period ending \_\_\_\_\_ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official Where Disclosure Statement is to be Filed:

\_\_\_\_\_  
\_\_\_\_\_

**52.230-2 Cost Accounting Standards (Deviation).**

As prescribed in 30.201-4(a), insert the following clause:

**COST ACCOUNTING STANDARDS (DEVIATION) (JAN 2012)**

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (*CAS-covered Contracts Only*) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all

Revision of Cost Accounting Standards Threshold

other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) (Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no

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**Revision of Cost Accounting Standards Threshold**

agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all

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**Revision of Cost Accounting Standards Threshold**

other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$700,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

**52.230-3 Disclosure and Consistency of Cost Accounting Practices (Deviation).**

As prescribed in 30.201-4(b)(1) (except that amount of \$700,000 is to be used in lieu of \$650,000), insert the following clause:

**DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (DEVIATION 2012-00003) (JAN 2012)**

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.

(2) (*CAS-covered Contracts Only*) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains

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**Revision of Cost Accounting Standards Threshold**

trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(c), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

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(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$700,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

**52.230-4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns (Deviation).**

As prescribed in 30.201-4(c), insert the following clause:

**DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES—FOREIGN CONCERNS  
(DEVIATION 2012-00003) (JAN 2012)**

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; and 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract, as indicated in 48 CFR 9904.

(2) (*Cost Accounting Standard (CAS)-covered Contracts Only*). If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 48 CFR

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9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the U.S. Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the U.S. Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(c) that the change is desirable and not detrimental to the interests of the U.S. Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the U.S. Government.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the U.S. Government. Such adjustment shall provide for recovery of the increased costs to the U.S. Government, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the U.S. Government was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in 48 CFR 9903 and 48 CFR 9904 and as to any cost adjustment demanded by the U.S. Government, such failure to agree will

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constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the U.S. Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause prescribed in FAR 30.201-4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$700,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

**52.230-5 Cost Accounting Standards—Educational Institution (Deviation).**

As prescribed in 30.201-4(e), insert the following clause:

**COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTION (DEVIATION 2012-00003)  
(JAN 2012)**

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (*CAS-covered Contracts Only*). If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect

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costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required

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prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a) (3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a) (4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a) (4) (i) or (a) (4) (iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a) (2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a) (2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the

**Class Deviation 2012-0003**

**Revision of Cost Accounting Standards Threshold**

aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;

(2) This requirement shall apply only to negotiated subcontracts in excess of \$700,000; and

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

MAR 31 2011

In reply refer to  
DARS Tracking Number: 2011-O0006

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND LOGISTICS MANAGEMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Utilities Privatization – Class Deviation from FAR Part 31

Contracting officers may use this class deviation when awarding qualified contracts in conjunction with the conveyance of a utility system under 10 U.S.C. § 2688, “Utility Systems: Conveyance Authority.” To qualify for the deviation, a contract must meet the conditions detailed in Attachment A and the Cost Accounting Standards (CAS) Board waiver at Attachment B. The applicability of this deviation extends to all qualified contracts awarded as of August 31, 2010.

This deviation replaces and updates the deviation granted under CPF Tracking Number 2007-O00007. The updates include: a statement of which elements of the waiver contractors must meet for each type of situation; a requirement for contractors to meet all the conditions in the waiver; and expansion of the permissible contract types.

The Head of the Contracting Agency shall report to this office (Attention: DPAP/CPF) on a quarterly basis any contracts awarded that use this class deviation. The report, submitted within 30 days of the end of the quarter, shall include, at a minimum, the following information:

1. Contract number
2. Contractor name
3. Date of contract award
4. Amount of contract award
5. Indication of use of CAS waiver as required in Attachment A, Section 1.b.(ii).

This class deviation remains in effect until it is incorporated into the DFARS or is otherwise rescinded. My point of contact for this issue is Mr. Mark Gomersall, 703-602-0302 or [mark.gomersall@osd.mil](mailto:mark.gomersall@osd.mil).

  
Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

**Deviation from FAR Part 31 - Contract Cost Principles and Procedures**

Section 1. **General Deviation from FAR Part 31.** This deviation applies to Government contracts awarded in conjunction with the conveyance of a utility system under 10 U.S.C. § 2688 provided all of the conditions listed in this section are met. This deviation permits, but does not require, the Head of the Contracting Activity (HCA) to waive the requirements of FAR Part 31.

The HCA may exclude from the contract some or all of the requirements of FAR Part 31 provided all of the following conditions are met:

- a. The contract is one of the following types:
  - (i) Firm fixed price contracts (FFP);
  - (ii) Fixed price contracts with economic price adjustment (where the price adjustment is based on an index or established prices, not based on actual costs incurred) (FPEPA); or
  - (iii) Fixed price contracts with prospective price redetermination (where the price adjustment is based on actual costs incurred) (FPPPR).
- b. The contract either:
  - (i) Is exempt from the application of the Cost Accounting Standards (CAS); or
  - (ii) Meets all the requirements of the CAS Board waiver of September 2, 2004, related to contracts entered into under the authority of 10 U.S.C. § 2688 (erroneously referred to as section 2686).
- c. The contract requires that the actual costs used for purposes of establishing the initial fixed price and any subsequent price submittals:
  - (i) Meet the limitations specified in Section 2 for any deviation granted from FAR 31.205-20, Interest and other financial costs;
  - (ii) Meet the limitations specified in Section 3 for any deviation granted from FAR 31.205-41, Taxes;
  - (iii) Exclude the types of costs listed at 10 U.S.C. § 2324(e) (as it exists on the date of contract award). Any reasonable method of estimating such costs is sufficient to meet this requirement; and
  - (iv) Exclude the types of costs that are not normally considered as reimbursable by the applicable regulatory body that oversees the utility rate determinations of the business segment performing the contract.

d. The contract provides the Government with access to all records related to the accounting practices used to determine the costs and the supporting data for any estimates of unallowable costs.

Section 2. **FAR 31.205-20 -- Interest and Other Financial Costs.** If a deviation under section 1 includes a deviation from the requirements at FAR 31.205-20, the following conditions, in addition to those under section 1, must also be met. This deviation permits, but does not require, the Contracting Officer to waive the requirements of FAR 31.205-20.

This deviation applies only when all of the following conditions, as well as the conditions of section 1, are met:

a. The contracting officer determines, in writing, that:

- (i) Allowing the costs will significantly reduce the costs of the United States for the utility services provided under the subject contract;
- (ii) The interest costs and directly related financial costs incurred to obtain loans or borrow capital from third-party financial institutions are reasonable based on the particular facts and circumstances involved; and
- (iii) The interest and directly related financial costs are associated with capital expenditures to acquire, renovate, upgrade, and expand utility systems under the subject utility services contract.

b. The contract states that cost of money is an unallowable contract cost under FAR 31.205-10, Cost of money, either during or after the period of the loan for all assets to which the loan relates; and

c. Interest rates used to calculate allowable costs are limited to 600 basis points above the Contract Disputes Act interest rate (41 U.S.C. § 611) in effect at the time the contractor makes the capital expenditure.

d. The deviation does not apply to any imputed interest on the contractor's own funds.

Section 3. **FAR 31.205-41 – Taxes.** If a deviation under section 1 includes a deviation from the requirements of FAR 31.205-41(b)(1), the following conditions, in addition to those under section 1, must also be met. This deviation permits, but does not require, the HCA to waive the requirements of FAR 31.205-41(b)(1).

To the maximum extent practical, contracts should be structured in a manner that will not result in a Contribution in Aid of Construction (CIAC) tax. Nevertheless, the HCA may determine that the CIAC tax is an allowable cost provided all of the following conditions, as well as the conditions of section 1, are met:

a. Based on the particular facts and circumstances involved, the HCA determines that incurrence of the CIAC tax is necessary to achieve the most beneficial business case for the Government and allowing the CIAC tax will result in significant benefits to the Government that outweigh the cost of allowing the tax.

- b. The HCA has adequately documented, in writing:
  - (i) The basis for the DoD determination of fair market value using a generally accepted valuation methodology.
  - (ii) The basis for the determination that the benefits to the Government outweigh the estimated cost of the tax (this requires an estimate of the expected corporate tax rate of the contractor, the marginal tax liability caused by the CIAC, and the anticipated difference in fair market value between the DoD and Internal Revenue Service (IRS) valuations).
  
- c. The contract limits the allowable cost to the portion of the actual CIAC tax attributable to the difference between:
  - (i) The fair market value determinations of DoD using a generally accepted valuation methodology; and
  - (ii) The fair market value determination of the IRS in assessing the tax.

SEP 2 2004

Ms. Deidre A. Lee  
Director, Defense Procurement and  
Acquisition Policy  
Department of Defense  
Washington, DC 20301

Dear Ms. Lee:

This responds to your December 19, 2003 letter, and the additional information you provided on April 5, 2004, to the Cost Accounting Standards (CAS) Board, requesting a CAS waiver for contracts entered into under the authority of 10 U.S.C. 2686, "Utility Systems, Conveyance Authority."

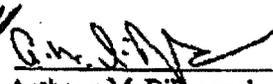
On September 2, 2004, the CAS Board approved the requested waiver subject to the conditions set forth in the attached "Enclosure."

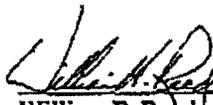
In granting this waiver, the CAS Board recognizes that the utilities industry has a set of established accounting practices that are used by regulatory authorities to set rates for utility customers (e.g., FERC, NARUC, RUS, or AWWA). The Board believes that the enclosed waiver conditions, which include requirements for contractors to consistently follow these established industry accounting practices, and to disclose in writing the accounting practices used for allocation of indirect costs, provides adequate protection for the Government. If any contractor selected for a contract under the above described authority does not agree to the conditions in this waiver, the contractor will be subject to CAS requirements, provided it otherwise satisfies the appropriate CAS applicability criteria.

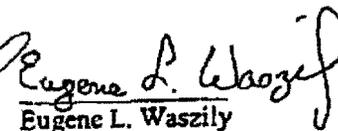
Please inform this Office, within ninety days after the close of each fiscal year, of the extent and use of this waiver.

Sincerely,

  
James P. Bedingfield  
Member

  
Anthony M. DiPasquale  
Member

  
William F. Reed  
Member

  
Eugene L. Waszily  
Member

**Enclosure**

The Cost Accounting Standards are hereby waived for contracts entered into under the authority of 10 U.S.C. 2686, "Utility Systems, Conveyance Authority" that meet all of the following conditions:

1. The contract is one of the following types:
  - a. Firm fixed price contracts (FFP);
  - b. Fixed price contracts with economic price adjustment (where the price adjustment is based on an index or established prices, not based on actual costs incurred) (FPEPA);  
or
  - c. Fixed price contracts with prospective price redetermination (where the price adjustment is based on actual costs incurred) (FPPPR).
2. The business segment performing the contract is not, at the time of contract award, currently performing on any other contract that is subject to the Cost Accounting Standards.
3. The contract is awarded without the submission of cost or pricing data.
4. For contracts that are awarded without adequate price competition (regardless of contract type) and for all FPPPR contracts, the contract must include a clause that:
  - a. Requires the contractor to prepare the proposal for the initial contract or for the price redetermination using accounting practices that (i) comply with pronouncements of the Federal Energy Regulatory Commission (FERC), the National Association of Regulatory Utility Commissioners (NARUC), the Rural Utility Service (RUS), or the American Water Works Association (AWWA) and (ii) are consistent with the contractor's written and established practices for measuring, assigning, and allocating costs;
  - b. Requires the contractor to disclose, in writing, its established accounting practices for allocating indirect costs to contracts for which CAS has been waived, and to consistently use those disclosed practices to prepare proposal(s); and
  - c. Provides for an adjustment to the contract price if it is later found that the price was increased because the contractor used accounting practices that were in noncompliance with FERC, NARUC, RUS, or AWWA, or were inconsistent with the contractor's written and established practices. The amount of the adjustment shall be the difference between the contract price that was negotiated and the price that would have been negotiated had the business unit used compliant accounting practices that were in accordance with FERC, NARUC, RUS, or AWWA, and were consistent with the contractor's written and established practices. The Government shall be entitled to a

credit or cash recovery (at the Government's option) for the amount of the increased price plus interest. The interest shall be computed from the date the payment by the Government until the date of repayment by the contractor. The interest rate shall be the rate specified at 26 U.S.C. 6621(a)(2).

5. For FPPPR contracts, the contract includes the clause at FAR 52.215-2, Audit and Records-Negotiation.

6. For FPPPR contracts, the contract includes the following clause

The actual costs used for purposes of establishing any price predetermination under the contract must exclude all statutory and contractually unallowable costs. The actual costs must also exclude the types of costs that are not normally reimbursed by the applicable regulatory body that oversees the utility rate determinations of the business segment performing the contract. Any reasonable method of estimating such costs, including a statistical sample of contractor costs projected to the total cost universe, is sufficient to meet this requirement. Should any unallowable costs be included in the negotiated price predetermination, the Government shall be entitled to recover the amount of those unallowable costs plus interest from the date of the predetermination until the date of repayment, in accordance with 26 U.S. C. 6621(a)(2).

7. For FFP and FPEPA contracts (where the price adjustment is not based on actual costs incurred), the contract includes a clause that provides the Contracting Officer and his authorized representative access to all relevant contractor records, including but not limited to the accounting practices and cost records in use at the time of the contract award and at the time of the price redetermination.



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

OCT -8 2010

In reply refer to  
DARS Tracking Number: 2011-O0002

MEMORANDUM FOR COMMANDER, UNITED SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION & LOGISTICS MANAGEMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS, DEFENSE AGENCIES  
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Class Deviation – Congressional Notification on Significant Contract Terminations

Effective immediately, contracting officers are authorized to deviate from the requirements at DFARS 249.7001 to provide congressional notification prior to executing any contract termination involving a reduction in employment of 100 or more contractor employees for contracts with entities that are other than United States firms, which are performed in Iraq and Afghanistan. For purposes of this deviation, a United States firm is one that is incorporated or legally organized in the United States.

This class deviation remains in effect until incorporated into the DFARS or until rescinded. My point of contact, Mary Overstreet, may be reached at 703-602-0311, or [mary.overstreet@osd.mil](mailto:mary.overstreet@osd.mil).

Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy