



OFFICE OF THE UNDER SECRETARY OF DEFENSE
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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MAR 17 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (SENIOR PROCUREMENT EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (SENIOR PROCUREMENT EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & LOGISTICS MANAGEMENT),
ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Plan for Restricting Government-Unique Contract Clauses on Commercial
Contracts

Section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (Public Law 110-181), directs the Under Secretary of Defense for Acquisition, Technology and Logistics to develop and implement a plan to minimize the number of government-unique contract clauses used in commercial contracts by restricting the clauses to those (1) Government-unique clauses authorized by law or regulation, or (2) any additional clauses that are relevant and necessary to a specific contract. Commercial contracts are defined as those contracts awarded by the federal government for procurement of a commercial item as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

In addition, FAR 12.301(a), requires, to the maximum extent practicable, only those clauses that are (1) required to implement provisions of law or executive orders applicable to the acquisition of commercial items, or (2) determined to be consistent with customary commercial practice may be included in contracts for commercial items.

It is the Department's policy to limit the number of contract clauses consistent with the stated statutory and regulatory requirements. Unique clauses or instructions incorporated into solicitations and contracts for commercial items by contracting activities in addition to those prescribed in the FAR and DFARS shall not be used, unless

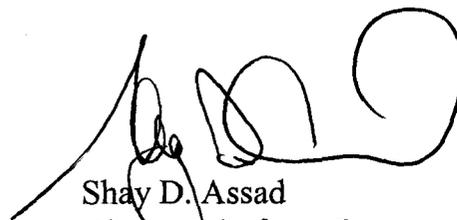


the contracting activity can demonstrate that inclusion of such instruction or clause is essential.

Not later than 120 calendar days from the date of this memorandum, please survey contracting activities under your cognizance and provide the following information:

1. Have contracting activities under your cognizance issued commercial contracts during FY'07 or FY'08? If so:
 - a. Have these activities issued commercial contracts that have included FAR/DFARS clauses that would typically be inconsistent with customary commercial practice, commercial items acquisition procedures, or that are otherwise not specifically essential? If so, please provide supporting rationale for inclusion of these clauses.
 - b. Have these activities issued commercial contracts that have included supplemental, local, or additional instruction or guidance other than that specifically promulgated in the FAR/DFARS? If so, please provide supporting rationale for inclusion of this additional information.
2. A specific plan of action to restrict the number of unique clauses that may be included in contracts for commercial items. Also, please identify specific procedures that will be put in place to ensure appropriate oversight, and senior level approval for the inclusion of any unique clauses in contracts for commercial items.

My point of contact for this subject is Mr. Anthony E. Cicala at (703)693-7062, or email: anthony.cicala@osd.mil.



Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing