



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

NOV 23 2010

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 & LOGISTICS MANAGEMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Request for information – DFARS Requirement Implementing Additional
Contractor Requirements and Responsibilities Restricting the Use of Mandatory
Arbitration Agreements

The Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118), section 8116, prohibited departments and agencies from using funds for any contract in excess of \$1M and not for commercial items or commercially available off-the-shelf items unless the contractor agreed to certain conditions.

Deviation 2010-O0004 was signed on February 17, 2010, prohibiting use of FY10 funds and required the inclusion of DFARS clause 252.222-7999 in covered contracts. An interim DFARS rule was published and effective May 19, 2010, with changes to DFARS Subpart 222.74—Restrictions on the Use of Mandatory Arbitration Agreements. This rule required the inclusion of clause 252.222-7006 in all solicitations and contracts valued in excess of \$1M utilizing FY10 Defense Appropriations Act funds except for the acquisition of commercial items or commercially available off-the-shelf items. Subpart 222.7403 states the Secretary of Defense may waive applicability and identifies procedures.

To respond to a congressional inquiry, please provide the following information for the period of February 27, 2010 to September 30, 2010:

- The number of contracts (including task and delivery orders and bilateral modifications adding new work) over \$1M and not for commercial items or commercially available off-the-shelf items
- The number of contracts that properly included the clause 252.222-7999 or 252.222-7006
- Reasons why the clause was not otherwise included as required if not 100%
- Identify any instance where a contractor did not accept a contract where the clause was to be included

- Has the Secretary approved any waivers? If yes, please identify the requirement.

Please submit the information by Thursday, January 6, 2011, to my point of contact for this action, Ms Sandra Ross, via email to Sandra.ross@osd.mil or fax to 703-614-1254. She may be contacted at 703-695-9774 for additional information.

A handwritten signature in black ink, appearing to read 'Shay D. Assad', with a large circular flourish at the end.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy