



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3000

ACQUISITION, TECHNOLOGY
AND LOGISTICS

APR 26 2001

DP (DAR)

In reply refer to
DAR Tracking Number: 2001-00002

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
EXECUTIVE DIRECTOR FOR PROCUREMENT MANAGEMENT (DLSC/DLA)

SUBJECT: Class Deviation-Commercial Item Omnibus Clauses for
Acquisitions Using the Standard Procurement System

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), the clause at FAR 52.212-5, Defense FAR Supplement (DFARS) 212.301(f)(iii), and the clause at DFARS 252.212-7001.

The clauses at FAR 52.212-5 and DFARS 252.212-7001 require contracting officers to "check a box" to identify the clauses that are applicable to the specific acquisition of commercial items. Rather than requiring contracting officers to "check the applicable clauses", SPS has a clause logic capability that automatically selects the clauses under FAR 52.212-5 and DFARS 252.212-7001.

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 must ensure that the attached "deviation" clauses are incorporated into these solicitations and contracts because these "deviation" clauses fulfill the statutory requirements on auditing and subcontract clauses applicable to commercial items. The deviation also authorizes adjustments to these "deviation" clauses required by future changes to the clauses at 52.212-5 or 252.212-7001 that are published in the FAR or DFARS.



This class deviation is effective immediately and approved until April 30, 2004, or until the FAR or DFARS is revised.



Deidre A. Lee
Director, Defense Procurement

Attachment:
As stated

cc: DSMC, Ft. Belvoir

**FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT
STATUTES OR EXECUTIVE ORDER--COMMERCIAL ITEMS (APR 2001)
(DEVIATION)**

(a) Comptroller General Examination of Record. The Contractor agrees to 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 the 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 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) The Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components-

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793);

(4) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996) [; and

(5) 52.222-41, the Service Contract Act As Amended (41 U.S.C. 351, et seq.) Subcontracts for certain commercial services may be exempt from coverage if they meet the criteria in FAR 22.1103-4(c) or (d) (see DoD class deviation number 2000-00006).]

(End of Clause)

DFARS 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (XXX 2001) (DEVIATION)

In addition to the clauses listed in paragraph (b) of the Contract Terms and Conditions Required to Implement Statutes or Executive Order-Commercial Items (DEVIATION) clause of this contract [FAR 52.212-5], the Contractor shall include the terms of the following clauses, if applicable in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

[252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).]

(End of Clause)