



ACQUISITION
AND SUSTAINMENT

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

In reply refer to
DARS Tracking Number: 2023-O0003, Revision 2

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
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
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Temporary Authorizations for Covered Contracts Related to
Ukraine

Effective immediately, this class deviation revises and supersedes Class Deviation 2023-O0003, Revision 1, issued on August 2, 2023. This revision is necessary to revise the definition of a “covered contract” by reinstating statutory language authorizing use of the temporary flexibilities for “other defense articles of DoD” at paragraph (A)(1).

(A) Definitions. As used in this class deviation—

“Covered contract” means a contract or modification of a contract awarded by DoD, or a subcontract or modification of a subcontract under a contract awarded by DoD, to—

- (1) Build the stocks of critical munitions and other defense articles of DoD;
- (2) Provide materiel and related services to foreign allies and partners that have provided support to the government of Ukraine; or
- (3) Provide materiel and related services to the Government of Ukraine.

“Head of an agency” means the Secretary of Defense; the Secretary of the Army; the Secretary of the Navy; or the Secretary of the Air Force.

(B) Use of Other Than Competitive Procedures.

(1) A covered contract may be presumed to be in the public interest for purposes of meeting the requirements of FAR 6.302-7, Public Interest. Contracting officers may award a covered contract under the authority of FAR 6.302-7 without providing for full and open competition. FAR 6.302-7(b) is not applicable to awards made under this authority. The documentation otherwise required by FAR 6.303 is not required in the case of a covered contract.

(2) Notwithstanding FAR 6.302-7(c) and DFARS 206.302-7(c), the head of an agency may delegate the authority to make the determination specified at FAR 6.302-7(a)(2) no lower than an officer or employee who—

(a) If a member of the Armed Forces, is a general or flag officer; or

(b) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in comparable or higher position under another schedule).

(3) In lieu of the requirement at FAR 6.302-7(c)(2), not later than 7 days before awarding a covered contract using the authority in paragraph (B)(1) of this deviation, the head of an agency shall submit written notification of use of this authority to the congressional defense committees.

(C) Special Emergency Procurement Authorities. Notwithstanding FAR part 18 and DFARS part 218, contracting officers may apply the special emergency procurement authorities to covered contracts in accordance with the following thresholds:

(1) Micro purchase threshold:

(a) \$20,000 in the case of a covered contract to be awarded and performed, or purchase to be made, inside the United States; and

(b) \$35,000 in the case of a covered contract to be awarded and performed, or purchase to be made, outside the United States.

(2) Simplified acquisition threshold:

(a) \$800,000 in the case of a covered contract to be awarded and performed, or purchase to be made, inside the United States; and

(b) \$1,500,000 in the case of a covered contract to be awarded and performed, or purchase to be made, outside the United States.

(3) Simplified procedures at FAR subpart 13.5 are authorized for purchases of products and services for amounts greater than the simplified acquisition threshold but not greater than \$15 million for which the contracting officer reasonably expects, based on the nature of the products or services sought and on market research, that offers will include only commercial products or commercial services.

(4) The head of an agency carrying out a procurement for a covered contract may treat the product or service as a commercial product or a commercial service for the purpose of carrying out the procurement. A covered contract in an amount of more than \$20 million that is awarded on a sole-source basis for a product or service treated as a commercial product or a commercial service is not exempt from:

(a) Cost accounting standards, notwithstanding FAR 12.214; or

(b) Certified cost or pricing data requirements, notwithstanding FAR 15.403-1(b)(3).

(D) **Undefinitized Contract Actions.** Notwithstanding DFARS 217.7404-5(b), for covered contracts, the head of an agency may waive the limitations in DFARS 217.7404(a), Foreign military sales contracts; 217.7404-3, Definitization schedule; and 217.7404-4, Limitations on obligations.

(E) **Temporary Exemption from Certified Cost or Pricing Data Requirements.**

(1) Where no other exception to certified cost or pricing data requirements applies, contracting officers may waive certified cost or pricing data requirements (FAR 15.403-4) when awarding a covered contract on a fixed-price incentive firm target basis, based on the stipulations below. While this authority exempts offerors and contractors under covered contracts from certified cost or pricing data requirements, contracting officers may request, and the offeror or contractor shall provide, data other than certified cost or pricing data to support the determination of a fair and reasonable price.

(a) Target price equals ceiling price; and

(b) The Government underrun share ratio is a minimum of 60 percent with a cap for the negotiated profit dollars of 15 percent of target cost.

(2) The following conditions apply to covered contracts when using this exemption from certified cost or pricing data requirements:

(a) Awarded profit dollars shall be fixed, but the contractor may ultimately realize a profit rate of higher than 15 percent by underrunning target costs.

(b) The target prices negotiated by the Government shall not exceed the most recent negotiated prices for the same items while allowing for appropriate adjustments, including those for quantity differences or relevant, applicable economic indices.

(3) An exemption for a covered contract also applies to subcontracts under that contract.

(4) Notwithstanding FAR 15.403-4(d), contracting officers may waive the requirement for submission of certified cost or pricing data for covered contracts on behalf of a foreign government where the contract meets the requirements of paragraphs (E)(1) through (E)(3).

(F) Technical Data Packages for Large-Caliber Cannon. The requirements of section 7542 of title 10, United States Code, which include the funding restriction that DoD appropriated funds may not be used to transfer to a foreign country a technical data package for a defense item being manufactured or developed in an arsenal or to assist a foreign country in producing such a defense item, do not apply to the transfer of technical data to an international partner for the production of large-caliber cannons produced for—

(1) The replacement of defense articles from stocks of the Department of Defense provided to the Government of Ukraine or to foreign countries that have provided support to Ukraine at the request of the United States; or

(2) Contracts awarded by the Department of Defense to provide materiel directly to the Government of Ukraine.

(G) Multiyear Procurement Authority For Certain Munitions.

(1) In accordance with section 1244(c) and beginning in FY 2023, the head of an agency may enter into one or more multiyear contracts to procure the items listed in paragraph (G)(2) of this deviation within the specified limitations and may utilize existing contracts covering such programs. The requirements in the following paragraphs do not apply to these procurements:

(a) 217.170 paragraphs (a) through (c).

(b) 217.170 paragraphs (d)(1)(i) through (iii).

(c) 217.170 paragraph (d)(4).

(d) 217.172 paragraphs (a) and (b).

(e) 217.172 paragraphs (f) and (g).

(f) 217.172 paragraph (h)(2)(viii)(A), certification requirement. Although the certification is not required, the head of an agency is still required to provide the information listed at (h)(2)(viii)(A)(1) through (3) to the congressional defense committees.

(g) 217.172 paragraph (h)(2)(viii)(B).

(h) 217.172(h)(3) through 217.172(j).

The requirements at FAR 17.105-1(b) and 17.106-3 (except for 17.106-3(c)) do not apply to these procurements.

(2) Following is the list of items for which the authority at section 1244(c) may be used:

- (a) 864,000 XM1128, XM1113, M107, and M795 (155mm rounds);
- (b) 12,000 AGM-179 Joint Air-to-Ground Missiles (JAGM);
- (c) 700 M142 High Mobility Artillery Rocket Systems (HIMARS);
- (d) 1,700 MGM-140 Army Tactical Missile Systems (ATACMS);
- (e) 2,600 Harpoons;
- (f) 1,250 Naval Strike Missiles;
- (g) 106,000 Guided Multiple Launch Rocket Systems (GMLRS);
- (h) 3,850 PATRIOT Advanced Capability-3 (PAC-3) Missile Segment Enhancement (MSE);
- (i) 5,600 FIM-92 Stinger;
- (j) 28,300 FGM-148 Javelin;
- (k) 5,100 AIM-120 Advanced Medium-Range Air-to-Air Missile (AMRAAM);
- (l) 2,250,000 Modular Artillery Charge System (MACS);
- (m) 12,050 155m Excalibur M982A1;
- (n) 950 Long Range Anti-Ship Missiles (LRASM);
- (o) 3,100 Joint Air-to-Surface Standoff Missiles (JASSM);
- (p) 1,500 Standard Missile-6 Missiles (SM-6); and
- (q) 5,100 Sidewinder Missiles (AIM-9X).

(3) To the extent and in such amounts as specifically provided in advance in appropriations Acts for the purposes described in paragraph (G)(2) of this deviation, the head of an agency may enter into one or more contracts for advance procurement associated with a program listed in paragraph (G)(2) of this deviation and for systems and subsystems associated with such program in economic order quantities when cost savings are achievable.

(H) Special Reporting Requirements.

(1) Agencies using the authority at paragraph (B) of this deviation shall provide written notification, not later than 7 days before contract award, to Defense Pricing and Contracting (DPC) at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil. The notification shall include the following:

- (a) Program name.
- (b) Contract number.
- (c) Total estimated contract value (including options).
- (d) Contracting activity name and DoDAAC.
- (e) Contractor name and Commercial and Government Entity (CAGE) code.
- (f) Quantities and/or period of performance.
- (g) Reason for using the authority.
- (h) Expected outcome of using the authority.

(2) When using the authority at paragraph (G) of this deviation, agencies shall provide written notification, within 7 days after award, to the congressional defense committees and DPC at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil. The notification shall include the following:

- (a) Program name.
- (b) Contract number, and modification number, if applicable.
- (c) Total estimated contract value (including options).
- (d) Contracting activity.
- (e) Contractor name and CAGE code.
- (f) Quantities.
- (g) Specific authority used.
- (h) Reason for use of the authority.
- (i) Expected outcome of using the authority.

Class Deviation 2023-O0003, Revision 2
Temporary Authorizations for Covered Contracts Related to Ukraine

This class deviation implements section 1244(a) and (c) of the NDAA for FY 2023 and remains in effect until September 30, 2024. My point of contact is Ms. Kimberly Ziegler, DPC/DARS, who may be reached at kimberly.r.ziegler.civ@mail.mil.

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting