



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

APR 26 2010

In reply refer to  
DARS Tracking Number: 2010-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), DASA(P)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION & LOGISTICS MANAGEMENT),  
DASN(A&LM)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DIRECTORS, DEFENSE AGENCIES  
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Class Deviation– Award Fee Reduction or Denial for Jeopardizing the  
Health or Safety of Government Personnel

Effective immediately, when issuing solicitations or contracts (including task or  
delivery orders) with award fee provisions, contracting officers shall use the attached  
clause, 252.216-7999, Award Fee Reduction or Denial for Jeopardizing the Health or  
Safety of Government Personnel.

This class deviation implements section 823 of the National Defense  
Authorization Act for Fiscal Year 2010 (Pub. L. 111-84). Section 823 provides that the  
contractor's performance shall be evaluated during the award fee period to include  
consideration of actions that caused serious bodily injury or death to any civilian or  
military personnel of the Government through the contractor's gross negligence or with  
the contractor's reckless disregard for Government personnel safety. The prime  
contractor's (or its subcontractors') negligence or reckless disregard may be determined  
through criminal, civil, or administrative proceedings.

This deviation remains in effect until incorporated in the DFARS or otherwise  
rescinded. My staff point of contact for this matter is Ms. Cassandra R. Freeman,  
703-602-8383 or [cassandra.freeman@osd.mil](mailto:cassandra.freeman@osd.mil).

Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

**Clause prescription.**

Use the following clause 252.216-7999 (Deviation), Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, in all solicitations and contracts containing award fee provisions.

**252.216-7999 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel. (Deviation)**

AWARD FEE REDUCTION OR DENIAL FOR JEOPARDIZING THE HEALTH OR SAFETY OF GOVERNMENT PERSONNEL (APR 2010) (Deviation)

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

“Covered incident”—(1) Means any incident in which the contractor—

(i) Has been determined, through a criminal, civil, or administrative proceeding that results in a disposition listed in paragraph (2) of this definition in the performance of this contract to have caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

(ii) Has been determined through a criminal, civil, or administrative proceeding that results in a disposition listed in paragraph 2 of this definition to be liable for actions of a subcontractor of the Contractor that caused serious bodily injury or death to any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel.

(2) Shall include those incidents that have resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault or liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damage of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in —

Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel

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(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (a)(2)(i), (a)(2)(ii) or (a)(2)(iii).

"Serious bodily injury" means a grievous physical harm that result in a permanent disability.

(b) The award fee of the Contractor may be reduced or denied, if its performance under this contract for the relevant award fee period results in a covered incident.

(End of Clause)