



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

AUG 27 2009

In reply refer to
DAR Tracking Number: 2009-O0010

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), 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

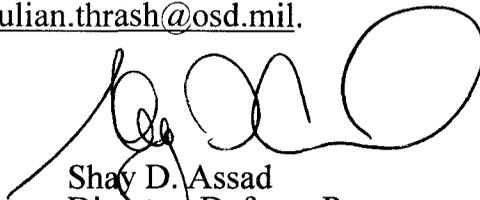
SUBJECT: Class Deviation to the Department of Defense Federal Acquisition
Regulation Supplement (DFARS) for Continuation of Essential
Contractor Services

Effective immediately, contracting officers are authorized to use the attached clause in solicitations and contracts that are identified by the requiring agency as having essential contractor services which support mission essential functions.

Today's changing threat environment has increased the need for continuity of operations capabilities and plans that enable agencies to continue their essential functions across a broad spectrum of emergencies. An example of such a threat to continuity of operations includes, but is not limited to, the 2009 H1N1 influenza pandemic.

Department of Defense Instruction (DoDI) 3020.37, *Continuation of Essential DoD Contractor Services During Crises*, dated November 6, 1990, requires the Department to provide for a reasonable assurance of the continuation of essential services provided by contractors, including services provided to Foreign Military Sales customers, during crisis situations. This class deviation is necessary to ensure consistency in the implementation of this requirement.

This deviation is effective until incorporated into the DFARS or otherwise rescinded. Any questions should be addressed to Mr. Julian Thrash, Senior Procurement Analyst, at 703-602-0310, or via e-mail at julian.thrash@osd.mil.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated

Class Deviation 2009-00010
CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES

Subpart 237.XX- CONTINUATION OF ESSENTIAL CONTRACTOR
SERVICES

237.XX00 Scope.

This subpart prescribes procedures for the acquisition of essential contractor services which support mission essential functions.

237.XX01 Definitions.

As used in this subpart-

(1) "Essential contractor service" means a service provided by a firm or individual under contract to DoD to support mission essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations may be seriously impaired by the interruption of these services.

(2) "Mission essential functions" means those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities. Failure to perform or sustain these functions would significantly affect DoD's ability to provide vital services or exercise authority, direction, and control.

237.XX02 Policy.

Although the excusable delays and termination for default clauses generally relieve contractors from delay and default liability when a failure to perform arises from causes beyond their control, contractors providing services designated as essential contractor services by a DoD

component are expected to use their best efforts to continue providing such services, in accordance with the terms and conditions of their contracts even during periods of crisis.

237.XX03 Contract clause.

Use the clause at 252.237-70XX, Continuation of Essential Contractor Services in solicitations and contracts for services that are in support of mission essential functions.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.237-70XX, Continuation of Essential Contractor Services.

As prescribed in 237.XX03, use the following clause:

CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (Aug 2009)

(a) The Contracting Officer has identified all or a portion of the contractor services performed under this contract as essential contractor services in support of mission essential functions. The contractor-provided services that have been determined to be essential contractor services in support of mission essential functions are listed in attachment __, Mission Essential Contractor Services, dated _____.

(b) The Contractor shall have a plan after award of this contract or incorporation of this clause in a contract by modification, for continuing the performance of essential contractor services identified in (a) above during a crisis.

(1) The Contractor shall identify in the plan provisions made for the acquisition of necessary personnel and resources, if necessary, for continuity of operations for up to 30 days or until normal operations can be resumed;

(2) The plan must, at a minimum, address—

(i) Challenges associated with maintaining contractor essential services during an extended event, such as a pandemic that occurs in repeated waves;

(ii) The time lapse associated with the initiation of the acquisition of necessary personnel and resources and their actual availability on site;

(iii) The components, processes, and requirements for the identification, training, and preparedness of personnel who are capable of relocating to alternate facilities or performing work from home; and

(iv) Any established alert and notification procedures for mobilizing identified "essential contractor service" personnel; and

(v) The approach for communicating expectations to contractor employees regarding their roles and responsibilities during a crisis.

(c) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption. In the event the Contractor anticipates not being able to perform due to any of the causes enumerated in the excusable delay clause of this contract, the Contractor shall notify the contracting officer or other designated representative as expeditiously as possible and use its best efforts and cooperate with the Government in the Government's efforts to maintain the continuity of operations.

(d) The Government reserves the right in such crisis situations to use federal employees of other agencies or contract support from other contractors or to enter into new contracts for essential contractor services. Any new contracting efforts would be conducted in accordance with OFPP letter, "Emergency Acquisitions" May 2007 and FAR and DFARS Subparts 18 and 218 respectively or any other subsequent emergency guidance issued.

(e) This clause shall be included in subcontracts for the essential services.

(End of Clause)