DEPARTMENT OF THE NAVY
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JUN - 9 2004

DAR Tracking Number:
2004-00002

MEMORANDUM FOR DISTRIBUTION

Subj: CLASS DEVIATION-COMMERCIAL ITEM OMNIBUS CLAUSES FOR ACQUISITIONS USING THE STANDARD PROCUREMENT SYSTEM

Encl: (1) DPAP memo dtd April 29, 2004

Ref: (a) OASN (RD&A) ABM memo dtd May 14, 2001

Enclosure (1) is forwarded for your information and immediate implementation, as appropriate. It extends the class deviation forwarded by enclosure (1) of reference (a). Specifically, the deviation authorizes all DoD contracting activities to deviate from the requirements of FAR 12.301(b)(4), the clause at 52.212-5, DFARS 212.301(f)(iii), and the clause at DFARS 252.212-7001, when using the Standard Procurement System to contract for commercial items.

This class deviation is effective immediately and remains in effect until April 30, 2009, or until otherwise rescinded.

Please forward the enclosed memorandum to appropriate contracting personnel.

M. F. Daggard
Chief of Staff/Policy
for DASN(ACQ MGMT)

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

APR 29 2004

DPAP(DAR)

In reply refer to
DAR Tracking Number: 2004-O0002

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY ASSISTANT SECRETARY OF THE ARMY, (POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY AND SUPPLY DIRECTORATE (DLA)

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

When using the Standards 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 Supplements (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 the contracting officer to "check a box" to identify the clauses that are applicable to the specific acquisition of commercial items. Rather than requiring the 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

ENCLOSURE(1)

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 on May 1, 2004, and remains in effect until April 30, 2009, or until otherwise rescinded.

Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

cc:
DSMC, Ft. Belvoir

Class Deviation—Commercial Item Omnibus Clauses for Acquisitions Using the Standard Procurement System
Tracking Number 2004-O0002

FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (APR 2004)(DEVIATION)

(a) *Comptroller General Examination of Record.* The Contractor shall 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 and 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 type and 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)(1) Notwithstanding the requirements of any other clause in this contract, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause.

(i) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-41, Service Contract Act of 1965, as Amended (May 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

DFARS 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (JAN 2004) (DEVIATION)

In addition to the clauses listed in paragraph (b) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items clause of this contract (FAR 52.212-5 (APR 2004) (DEVIATION)), 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 (APR 2003) (10 U.S.C. 2533a).
252.247-7023	Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
252.247-7024	Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(End of clause)