



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

NOV 20, 1997

ACQUISITION AND
TECHNOLOGY

DP(DAR)

In reply refer to
DAR Tracking Number: 97-00012

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)
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Extension of Class Deviation for Reinvention Laboratory--
Reducing Oversight Costs

By memorandum dated November 19, 1996, I authorized all military departments and defense agencies to deviate from the requirements in Federal Acquisition Regulations (FAR) 44.201-1(c) (1) and (d); **44.201-2(a); 44.201-3;** 44.204(a), (b), and (c); and the clauses at FAR 52.244-1, -2, and -3 when contracting with Texas Instruments Defense Systems and Electronics Group, Dallas, Texas. I am extending the class deviation for an additional year.

This class deviation authorizes you to eliminate the subcontract consent requirements, except for those subcontracts specifically identified by the contracting officer in the Subcontracts (Deviation) clause, provided that Texas Instruments Defense Systems and Electronic Groups, Dallas, maintains an approved purchasing system in accordance with FAR Part 44. Contracting officers shall use the attached clause, with its Alternates, in lieu of the clauses at FAR 52.244-1, -2, and -3. Contracting officers may modify existing contracts with Texas Instruments Defense Systems and Electronics Group, Dallas, Texas, to include these subcontract notification and consent provisions only if adequate consideration is obtained.

The class deviation is extended for a one-year period ending November 30, 1998, or until the FAR is revised, whichever event occurs first.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

ENCLOSURE(1)



DEC 3 1997

52.244-2 Subcontracts (Deviation).

Contracting officers, when awarding contracts to **Texas** Instruments Defense Systems and Electronics Group, Dallas, Texas, shall insert the following clause in solicitations and contracts when contemplating (1) **a** cost-reimbursement contract; (2) a letter contract which exceeds the simplified acquisition threshold; (3) a fixed-price contract which exceeds the simplified acquisition threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated; or (4) a time-and-materials contract which exceeds the simplified acquisition threshold.

SUBCONTRACTS (OCT 1996) (DEVIATION)

(a) Definitions.

As used in this **clause--**

"Approved purchasing **system**" means a Contractor's purchasing system that has been reviewed and approved in accordance with Federal Acquisition Regulation (FAR) Part 44.

"Consent to **subcontract**" means the Contracting Officer's written consent for the prime Contractor to enter into a particular subcontract.

"**Subcontract**", means any contract as defined in **FAR** Subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment.

(c) When this clause is included in a fixed-price type contracts, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders) under such contracts.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract if--

(1) The proposed subcontract is of the cost-reimbursement, time-and-material, or labor-hour type;

(2) The proposed subcontract is fixed-price and exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract.

(e) Even if the Contractor has an approved purchasing system, the Contractor shall obtain the Contracting Officer's written consent before placing the following subcontracts:

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and certificate of current cost or pricing data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting--

(A) The principal element⁶ of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing **data in** determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's **cost** or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor's price objective and the price negotiated; and

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to **quantify** each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer **in advance** of entering into any subcontract for which consent to subcontract is not required under paragraph **(c)**, **(d)**, or **(e)** of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination **(1)** of the acceptability of any subcontract terms or conditions, **(2)** of the allowability of **any** cost under this contract, or **(3)** to relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontract shall not exceed the fee limitations in FAR 15.903(d).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action **or** suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(End of clause)

Alternate I (JUL 1995) (DEVIATION)

For cost-reimbursement contracts, substitute the following subparagraph **(f) (2)** for subparagraph **(f) (2)** of the basic clause:

(f) (2) Even if the Contractor **has an** approved purchasing system and consent is not required under paragraph **(d)** or **(e)** of this clause, the Contractor shall notify the Contracting Officer reasonably in advance of entering into any **(i)** cost-plus-fixed-fee subcontract, or **(ii)** fixed-price subcontract which exceed⁶ the **greater of** (A) the simplified acquisition threshold; **or (B) 5 percent** of the total estimated cost of this contract. The notification shall include the information required in subparagraphs **(f) (1) (i)** through **(f) (1) (iv)** of this clause.

Alternate II (**SEP** 1995) (DEVIATION)

If in the opinion of the contracting officer, the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer may add the following paragraph (**k**) to the basic clause:

(**k**) Paragraph (**d**) of this clause does not apply to the following subcontracts, which were evaluated during negotiations:

Alternate III (**SEP** 1995) (DEVIATION)

For a time-and-material⁶ contract, the contracting officer may **substitute** the following subparagraph (**d**) (2) for subparagraph (**d**) (2) of the basic clause:

(**d**) (2) The proposed subcontract is fixed-price and exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract, except subcontract⁶ for purchase of raw material or commercial stock items.