



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

4 Oct 1995

MEMORANDUM FOR DISTRIBUTION

Subj : DIRECTOR, DEFENSE PROCUREMENT POLICY MEMORANDA

- Encl: (1) OUSD DP(DAR) Memo of 20 Sept 95, Subj: Extension to Class Deviation - Special Tooling, DAR Tracking Number: 95-00007
(2) OUSD DP(DAR) Memo of 22 Sept 95, Subj: Class Deviation for Reinvention Laboratory-Reducing Oversight Costs, DAR Tracking Number: 95-00002
(3) OUSD DP(DAR) Memo of 22 Sept 95, Subj: Waiver Authority

Enclosures (1) and (2) are forwarded for information and immediate implementation, as appropriate.

Enclosure (3) provides notification that the Director, Defense Procurement (D,DP) has authorized the Assistant Secretary of the Navy(Research, Development & Acquisition), to approve certain class deviations, during a one-year test period. Therefore, between now and 30 September 1996, Navy activities should submit requests for class deviations covered by the D,DP's delegation of approval authority to this office for approval.

Elliott B. Branch

Elliott B. Branch
Executive Director
Acquisition & Business
Management

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Writer: K. Wright, (703) 602-2806



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000



SEP 20 1995

DP (DAR)

In reply refer to
DAR Tracking Number: 95-00007

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
DIRECTOR, PROCUREMENT POLICY, ASA (RD&A) /SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT : Extension to Class Deviation - Special Tooling

I extend the authority for all military departments and defense agencies to use the April 1984 edition of the Special Tooling clause and its related prescriptive language (attached) in lieu of the clause at 52.245-17 and its prescriptive language at 45.306-5" I also waive that portion of the Government property (Fixed-price Contracts) clause at 52.245-2 that states that special tooling "is subject to title provisions in the Special Tooling clause. This waiver is necessary because the 1984 edition of the Special Tooling clause does not contain title provisions.

I am extending the class deviation for a one year period ending October 16, 1996, or until the FAR is revised, whichever event occurs first.

Eleanor R. Spector
Director of Defense Procurement

Attachments

ENCLOSURE(1)



27 SEP 1995.

45.305 Additional clauses for facilities contracts.

(a) (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.245-17, Special Tooling, in solicitations and contracts when: a fixed-price contract is contemplated, the contracting officer decides (see 45.306-2(d)) to acquire rights to the contractor's special tooling, and it is not practical to identify the special tooling required.

(2) If the Government does not intend to acquire special tooling from subcontractors and an appropriate price reduction is obtained, the contracting officer shall use the clause with its Alternate I.

52.245-17 **Special Tooling.**

As prescribed in 45.305(a)(1), when contracting by negotiation, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated, the contracting officer decides to acquire rights to the contractor's special tooling, and it is not practical to identify the special tooling required:

SPECIAL TOOLING (APR 1984) (DEVIATION)

(a) **Definition.** "Special tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and **replacement** of these items, that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular **services**. It does not include **material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.** Special tooling, for the purpose of this clause, does not include any **item** acquired by the Contractor before the effective date of this contract, or replacement of such items, whether or not altered or adapted for use in **performing** this contract, or **items specifically** excluded by the Schedule of this contract.

(b) **Use of special tooling.** The Contractor agrees to use the special tooling only in performing this contract or as otherwise approved **by** the Contracting Officer.

(c) **Initial list of special tooling.** If the Contracting Officer so requests, the Contractor shall furnish the Government an initial list of all special tooling acquired or manufactured **by** the Contractor for performing this contract (but see paragraph (d) for tooling that has become obsolete). The list shall specify the nomenclature, tool number, related product part number (or service

performed), and unit or group cost of the special tooling. **The** list shall be furnished within 60 days after delivery of the first production end **item** under this contract unless a later date is prescribed.

(d) Changes in design. Changes in the design or specifications of the end **items** being produced under this contract may affect the interchangeability of end item parts. In such an event, unless **otherwise** agreed to by the Contracting Officer, the Contractor **shall** notify the Contracting Officer of any part not interchangeable with a new or superseding part. Pending disposition instructions, such usable tooling shall be retained and maintained by the Contractor.

*(e) Contractor's offer to retain **specialtooling.*** **The Contractor** may indicate a desire to retain certain **items** of special tooling at the time it furnishes a list or notification pursuant to paragraphs (c), (d), or (h) of this **clause**. The Contractor shall furnish a written offer designating those **items** that it wishes to retain by specifically listing the items or by listing the particular products, parts, or services for which the items were used or designed. The offer shall be made on one of the following bases:

(1) **An amount** shall be offered for retention of the **items** free of any Government interest. This amount should ordinarily not be less than the current fair value of the **items**, considering among other things, the value of the **items** to the Contractor for use in future work.

(2) Retention **may** be requested for a limited period of **time** and under terms as **may** be agreed to by the Government and the Contractor. This **temporary** retention is subject to final disposition pursuant to paragraph (i) of this clause.

(f) Property control records. The Contractor shall maintain adequate property control records of all special tooling in accordance with its normal industrial practice. The records shall be made available for Government inspection at all reasonable times. **To** the extent practicable, the Contractor shall identify all special tooling subject to this clause with an appropriate stamp, tag, or other mark.

(9) Maintenance. **The** Contractor shall take all reasonable steps necessary to maintain the identity and existing condition of usable items of special tooling from the date such **items** are no longer needed by the Contractor until final disposition under paragraph (i) of this clause. These maintenance requirements do not apply to those items designated by the Contracting Officer for disposal as scrap or identified as of no further interest to the Government under paragraph (i) (4) of this clause. The Contractor is not required to keep unneeded items of special tooling in place.

(h) **Final list of special tooling.** When all or a substantial part of the work under this contract is completed or terminated, the Contractor shall furnish the Contracting Officer a final list of special tooling with the same information as required for the initial list under paragraph (c) of this clause. The **final** list shall include all items not previously reported under paragraph (c). The Contracting Officer may provide a written waiver of this requirement or grant an extension. The requirement may be extended until the completion of this contract together with the **completion** of other contracts and subcontracts authorizing the use of the special tooling under paragraph (b) of this clause. Special tooling that has become obsolete as a result of changes in design or specification need not be reported except as provided for in paragraph (d) .

(i) **Disposition instructions.** The Contracting Officer shall provide the Contractor with disposition instructions for special tooling identified in a list or notice submitted under paragraphs (c), (d), or (h) of this clause. The instructions shall be provided within 90 days of receipt of the list or notice, unless the period is extended by mutual agreement. The Contracting Officer may direct disposition by any of the methods listed in subparagraphs (1) through (4) of this paragraph, or a combination of such methods. Any failure of the Contracting Officer to provide specific instructions within the 90 day period shall be construed as direction under subparagraph (i)(3).

(1) The Contracting Officer shall give the Contractor a list specifying the products, parts, or services for which the Government may require special tooling and request the Contractor to transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable **items** of special tooling that were designed for or used in the production or performance of such products, parts, or **services** and that were On **hand** when such production or **performance** ceased.

(2) The Contracting Officer may accept or reject any offer made **by** the Contractor under paragraph (e) of this **clause** to retain **items** of special tooling or may request further negotiation of the offer. The Contractor agrees to enter into the negotiations in good faith. **The net** proceeds from the Contracting Officer's acceptance of the Contractor's retention offer shall either be deducted from amounts due the Contractor under this contract or shall be otherwise paid to the Government as directed **by** the Contracting Officer.

(3) The Contracting Officer may direct the Contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling reported **by** the Contractor under this clause. **The net** proceeds of all sales shall either be **deducted** from amounts due the Contractor under this contract or shall be **otherwise** paid to the Government as

directed by the Contracting Officer. to the extent that the Contractor incurs any costs occasioned by compliance with such directions, for which it is not otherwise **compensated**, the contract price shall be equitably adjusted in **accordance** with the Changes clause of this contract.

(4) **The** Contracting Officer may furnish the contractor with a statement disclaiming further Government interest or rights in any of the special tooling listed.

(j) *Storage or shipment.* The Contractor shall promptly transfer to the Government title to the special tooling specified by the Contracting Officer and arrange for either the shipment or the *storage* of such tooling in accordance with the final disposition **instructions in** subparagraph (i) (1) of **this** clause. Tooling to be shipped **shall** be properly packaged, packed, and **marked in** accordance with the directions of the Contracting Officer. Tooling to be stored shall be stored pursuant to a storage agreement between the Government and the Contractor, and as directed **by** the Contracting Officer. Tooling shipped or stored shall be accompanied by operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used **or** designed. To the extent that the Contractor incurs costs for authorized storage or shipment under this paragraph and not otherwise **compensated** for, the contract price shall be equitably adjusted in accordance with the Changes clause of **this** contract.

(k) *Subcontract provisions.* In order to perform this contract, the Contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontracts appropriate provisions to obtain Government rights comparable to the rights of the Government under this clause (unless the Contractor and the Contracting Officer agree that such rights are not of substantial interest to the Government) . The Contractor agrees to exercise such rights for the benefit of the Government as directed **by** the Contracting Officer.

(End of clause)

Alternate I (Apr 1984). If the Government does not intend to acquire special tooling from subcontractors and an appropriate price reduction is obtained, delete paragraph (k) from the basic clause.



ACQUISITION AND
TECHNOLOGY
DP (DAR)

OFFICE OF THE UNDER **SECRETARY** OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000



SEP 221995

In reply refer to
DAR Tracking Number 95-00002

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**
DIRECTOR, PROCUREMENT POLICY, **ASA (RD&A) / SARD-PP**
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Class Deviation for Reinvention Laboratory-Reducing
Oversight Costs

I authorize 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.

Specifically, 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 Electronics Group, 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.

This class deviation is approved for a one-year period ending September 30, 1996, or until the FAR is revised, whichever event occurs first.

Eleanor R. Spector
Director, Defense Procurement

Attachment

ENCLOSURE(2)



27 SEP 1995

52.244-2 Subcontract (**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 (SEP 1995) (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 FAR Part 44.

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

"Subcontract" includes but is not limited to purchase orders, and changes and modifications to purchase orders.

(b) This **clause** does not apply to fixed-price type contracts. However, it does apply to subcontracts resulting from unpriced modifications to such contracts.

(c) 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.

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

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract for which consent to subcontract is required under paragraphs (c) or (d) 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 elements 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 paragraphs (c) or (d) of this clause.

(f) 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.

(g) No subcontract 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 subcontracts shall not exceed the fee limitations in paragraph 15.903(d) of the Federal Acquisition Regulation (FAR) .

(h) 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.

(i) 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 (SEP 1995) (DEVIATION)

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

(e)(2) Even if the Contractor has an approved purchasing system and consent is not required under paragraph (c) or (d) 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 exceeds the greater of (A) the simplified acquisition threshold in Part 13 of the Federal Acquisition Regulation; or (B) 5 percent of the total estimated cost of this contract. The notification shall include the information required in subparagraphs (e) (1) (i) through (e) (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 (j) to the basic clause:

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

Alternate III (SEP 1995) (DEVIATION)

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

(c)(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 subcontracts for purchase of raw material or commercial stock items.



ACQUISITION AND
TECHNOLOGY
DP (DAR)

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 **DEFENSE** PENTAGON
WASHINGTON DC 20301-3000



SEP 2.2 1995

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (RESEARCH, DEVELOPMENT ,
AND ACQUISITION)
ASSISTANT SECRETARY OF THE NAVY (RESEARCH, DEVELOPMENT ,
AND ACQUISITION)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(ACQUISITION) .

SUBJECT : Waiver Authority

I am establishing a one-year test that delegates additional approval authority for deviations to the Federal Acquisition Regulation (FAR) and Defense FAR Supplement (DFARS) .

Effective October 1, 1995, I delegate the authority for you to approve deviations from the FAR or the DFARS except for:
(1) deviations which have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors; or (2) deviations identified in DFARS 201.402(1) (i) . This authority to deviate does not extend to requirements imposed by statute or directives of other agencies such as the Small Business Administration and the Department of Labor that have statutory or executive regulatory authority.

This waiver authority will be effective for a one-year period ending October 1, 1996. At the end of that year, please provide a report which describes all deviations exercised as a result of the authority provided by this memorandum so that I can consider the benefits of making this delegation permanent.

Eleanor R. Spector
Director, Defense Procurement

ENCLOSURE(3)



SEP 1995