



ACQUISITION  
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

In reply refer to  
DARS Tracking Number: 2023-O0003

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Temporary Authorizations for Covered Contracts Related to  
Ukraine

Effective immediately, contracting officers may use the following temporary acquisition flexibilities for covered contracts provided by section 1244(a), of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023:

(A) Definitions. As used in this class deviation—

“Covered contract” means a contract, subcontract, or modification of a contract or subcontract awarded by DoD to—

- (1) Build the stocks of critical munitions and other defense articles of DoD;
- (2) Provide materiel and related services to foreign allies and partners that have provided support to the government of Ukraine; and
- (3) Provide materiel and related services to the Government of Ukraine.

“Head of an agency” means the Secretary of Defense; the Secretary of the Army; the Secretary of the Navy; or the Secretary of the Air Force.

(B) Use of Other Than Competitive Procedures.

(1) A covered contract may be presumed to be in the public interest for purposes of meeting the requirements of FAR 6.302-7, Public Interest. Contracting officers may award a

covered contract under the authority of FAR 6.302-7 without providing for full and open competition. FAR 6.302-7(b) is not applicable to awards made under this authority. The documentation otherwise required by FAR 6.303 is not required in the case of a covered contract.

(2) Notwithstanding FAR 6.302-7(c) and DFARS 206.302-7(c), the head of an agency may delegate the authority to make the determination specified at FAR 6.302-7(a)(2) no lower than an officer or employee who—

a. If a member of the Armed Forces, is a general or flag officer; or

b. If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in comparable or higher position under another schedule).

(3) In lieu of the requirement at FAR 6.302-7(c)(2), not later than 7 days before awarding a covered contract using the authority in paragraph (B)(1) of this deviation, the head of an agency shall submit written notification of use of this authority to the congressional defense committees.

(C) Special Emergency Procurement Authorities. Notwithstanding FAR part 18 and DFARS part 218, contracting officers may apply the special emergency procurement authorities to covered contracts in accordance with the following thresholds:

(1) Micro purchase threshold:

a. \$20,000 in the case of a covered contract to be awarded and performed, or purchase to be made, inside the United States; and

b. \$35,000 in the case of a covered contract to be awarded and performed, or purchase to be made, outside the United States.

(2) Simplified acquisition threshold:

a. \$800,000 in the case of a covered contract to be awarded and performed, or purchase to be made, inside the United States; and

b. \$1,500,000 in the case of a covered contract to be awarded and performed, or purchase to be made, outside the United States.

(3) Simplified procedures at FAR subpart 13.5 are authorized for purchases of products and services for amounts greater than the simplified acquisition threshold but not greater than \$15 million for which the contracting officer reasonably expects, based on the nature of the products or services sought and on market research, that offers will include only commercial products or commercial services.

(4) The head of an agency carrying out a procurement of a product or a service for a covered contract may treat the product or service as a commercial product or a commercial service for the purpose of carrying out the procurement. In lieu of FAR 15.403-1(c)(3)(iv), a covered contract in an amount of more than \$20 million that is awarded on a sole-source basis for a product or service treated as a commercial product or a commercial service is not exempt from:

- a. Cost accounting standards, notwithstanding FAR 12.214; or
- b. Certified cost or pricing data requirements, notwithstanding FAR 15.403-1(b)(3).

(D) **Undefinitized Contract Actions.** Notwithstanding DFARS 217.7404-5(b), for covered contracts, the head of an agency may waive the limitations in DFARS 217.7404(a) Foreign military sales contracts; 217.7404-3 Definitization schedule; and 217.7404-4, Limitations on obligations.

(E) **Temporary Exemption from Certified Cost or Pricing Data Requirements.**

(1) Where no other exception to certified cost or pricing data requirements applies, contracting officers may waive certified cost or pricing data requirements (FAR 15.403-4) when awarding a covered contract on a fixed-price incentive firm target basis, based on the stipulations below. While this authority exempts offerors and contractors under covered contracts from certified cost or pricing data requirements, contracting officers may request, and the offeror or contractor shall provide, data other than certified cost or pricing data to support the determination of a fair and reasonable price.

(a) Target price equals ceiling price; and

(b) The Government underrun share ratio is a minimum of 60 percent with a cap for the negotiated profit dollars of 15 percent of target cost.

(2) The following conditions apply to covered contracts when using this exemption from certified cost or pricing data requirements:

a. Awarded profit dollars shall be fixed, but the contractor may ultimately realize a profit rate of higher than 15 percent by underrunning target costs.

b. The target prices negotiated by the Government shall not exceed the most recent negotiated prices for the same items while allowing for appropriate adjustments, including those for quantity differences or relevant, applicable economic indices.

(3) An exemption for a covered contract also applies to subcontracts under that contract.

(4) Notwithstanding FAR 15.403-4(d), contracting officers may waive the requirement for submission of certified cost or pricing data for covered contracts on behalf of a foreign government where the contract meets the requirements of paragraphs (E)(1) through (E)(3).

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(F) Technical Data Packages for Large-Caliber Cannon. The requirements of section 7542 of title 10, United States Code, which include the funding restriction that DoD appropriated funds may not be used to transfer to a foreign country a technical data package for a defense item being manufactured or developed in an arsenal or to assist a foreign country in producing such a defense item, do not apply to the transfer of technical data to an international partner for the production of large-caliber cannons produced for—

(1) The replacement of defense articles from stocks of the Department of Defense provided to the Government of Ukraine or to foreign countries that have provided support to Ukraine at the request of the United States; or

(2) Contracts awarded by the Department of Defense to provide materiel directly to the Government of Ukraine.

This class deviation implements section 1244(a), of the NDAA for FY 2023 and remains in effect until September 30, 2024. My point of contact is Ms. Dawn Messer, DPC/DARS, who may be reached at [leslie.d.messer.civ@mail.mil](mailto:leslie.d.messer.civ@mail.mil).

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