



**U.S. Department
of Transportation**

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

ACTION: Class Deviation
CD-17-001

August 30, 2017

SUBJECT: Class Deviation from the Federal Acquisition Regulation to Implement an Act to Enhance Whistleblower Protection for Contractor Employees – Pilot Program

FROM: Willie H. Smith
Senior Procurement Executive, M-60

TO: Chief of the Contracting Office (COCO)
Acquisition Personnel

In accordance with Federal Acquisition Regulation (FAR) 1.404, I authorize a class deviation from the Federal Acquisition Regulation (FAR) to revise the FAR to make the 4-year Whistleblower Pilot program permanent. FAR Case 2017-005, Whistle blower Protection for Contractor Employees has been opened and is being processed to revise the FAR to make the pilot program permanent.

The current coverage in the FAR states that when the 4-year pilot (41 U.S.C 4712) expires, the previous whistleblower coverage is back in effect. However, this Class Deviation is issued to direct agencies to continue to use the pilot program coverage until the FAR is revised making the pilot program permanent (FAR Case 2017-005).

Agency action required:

- 1. Agencies shall use the text (including the revised clauses and the solicitations provision/contract clauses matrix) provided in the Attached.**
- 2. Agencies should revise existing solicitations and contracts for noncommercial items awarded since January 2, 2017 to include 52.203-17, if the contract is above the simplified acquisition threshold and has a year or more of performance remaining.**

FAR 3.900 in the attached deviation has been changed to show that paragraph (a) is not in effect, and that paragraph (b) is in effect. Until FAR case 2017-005 is finalized, this deviation provides clarification on the use of FAR clauses 52.203-17 and 52.212-4(r). Agencies have the discretion to change the handling of commercial items, to use FAR clause 52.203-17 for commercial and noncommercial items. The inclusion of FAR clause 52.203-17 in acquisitions for noncommercial items remains unchanged.

The changes are as follows:

1. Remove the whistleblower protections of 41 U.S.C. 4712 listed in paragraph (r) of FAR clause 52.212-4. List the 52.203-17 clause in 52.212-5; and

2. Revise the FAR clause matrix to show an “A” (“required when applicable”) for FAR 52.203-17 for commercial items.

Public Law 114-261 requires that “At the time of any major modification to a contract that was awarded before the date of the enactment of this Act (December 14, 2016), the head of the contracting agency shall make best efforts to include in the contract a contract clause providing for the applicability of the amendments made by this section...” Since coverage lapsed for noncommercial item contracts, agencies should revise existing solicitations and contracts for noncommercial items awarded since January 2, 2017 to include 52.203-17, if the contract is above the simplified acquisition threshold and has a year or more of performance remaining.

This class deviation remains in effect until it is incorporated into the FAR, or is otherwise rescinded.

Questions concerning this class deviation should be directed to Lenita Ahmadi at lenita.ahmadi@dot.gov (202) 366-4974.