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Homeland
Security

MEMORANDUM FOR PROCUREMENT OFFICERS

FROM: Thomas Essig 
Chief Procurement Officer

SUBJECT: Class Deviation from Federal Acquisition Regulation
(FAR) Subpart 13.5, Test Program for Certain Commercial Items

Purpose: To issue a class deviation from the requirements of FAR Subpart 13.5, specifically to exempt DHS solicitations from the applicability of the stated test program expiration date of January 1, 2008 [FAR 13.500(d)].

Effective Date: Immediately

Reference: On February 6, 2008, the Civilian Agency Acquisition Council (CAAC) Chairman issued CAAC Letter 2008-01, which authorized civilian agencies to issue a class deviation to the current expiration date of the Test Program for Certain Commercial Items prescribed at FAR Subpart 13.5.

Background: The current Test Program for Certain Commercial Items, in accordance with FAR Subpart 13.5, expired on January 1, 2008. Subsequently, Section 822 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, extended the test program until January 1, 2010. That section of the Act reads:

"SEC. 822. EXTENSION OF AUTHORITY FOR USE OF SIMPLIFIED ACQUISITION PROCEDURES FOR CERTAIN COMMERCIAL ITEMS. (a) Extension- Section 4202(e) of the Clinger-Cohen Act of 1996 (division D of Public Law 104-106, 100 Stat. 652; 10 U.S.C. 2304 note) is amended by striking 'January 1, 2008' and inserting 'January 1, 2010'."

An expedited FAR case is being processed to change the date of expiration for the program in FAR 13.500(d). Pending issuance of a Final Rule effecting that change, it is imperative that DHS issue a class deviation in order to ensure that its Contracting Officers may continue to conduct acquisitions in accordance with the parameters of the Test Program for Certain Commercial Items.

Expiration Date: This class deviation will remain in effect until publication of the forthcoming Final Rule that will serve to extend the Test Program for Certain Commercial Items until January 1, 2010.

**Class Deviation from the Federal Acquisition Regulation (FAR)
Subpart 13.5-Test Program for Certain Commercial Items, Section 13.500(d),
Expiration of Authority to Issue Solicitations on January 1, 2008**

Determination and Findings

Under the authority granted, DHS Contracting Officers may issue solicitations under FAR Subpart 13.5, Test Program for Certain Commercial Items, until January 1, 2010 as specified under Public Law 110-181.

Findings

FAR Subpart 13.5 authorizes, as a test program, use of simplified acquisition procedures for supplies and services in amounts greater than the simplified acquisition threshold, subject to limitations specified therein, if the Contracting Officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Further, FAR Subpart 13.5, at Section 13.500, paragraph (d) provides authority to issue solicitations under this test program until January 1, 2008.

Subsequent to the expiration of the test program, Section 822 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, extended the test program until January 1, 2010. Following this action, the Civilian Agency Acquisition Council (CAAC) initiated an expedited FAR case as needed to change the date of expiration for the test program in FAR 13.500(d).

Determination

In accordance with FAR 1.404, I hereby grant a waiver to FAR 13.500(d), specifically to exempt DHS solicitations from the applicability of the stated test program expiration date of January 1, 2008. As required by FAR 1.404, consultation for this deviation was provided via CAAC Acquisition Letter 2008-01, issued February 6, 2008. This class deviation shall remain in effect until publication of the forthcoming Final Rule that will serve to extend the Test Program for Certain Commercial Items until January 1, 2010.



Thomas W. Essig
Chief Procurement Officer
Department of Homeland Security

2/25/08

Date