



Homeland Security

DEC 22 2009

MEMORANDUM FOR: Department of Homeland Security
Heads of the Contracting Activities

FROM: Richard K. Gunderson /s/
Acting Chief Procurement Officer

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

Purpose: The purpose of this memorandum is to issue a class deviation in accordance with FAR 1.404, in order that contracting officers at the Department of Homeland Security may continue to utilize the authority at FAR Subpart 13.5 to issue solicitations and award contracts under the Commercial Items Test Program beyond the stated expiration date of January 1, 2010.

Effective Date: Immediately

Background: On December 1, 2009, the Civilian Agency Acquisition Council (CAAC) issued Civilian Agency Acquisition Letter 2009-04 which recommended that civilian agencies issue a class deviation to extend the authority to issue solicitations under Subpart 13.5. This subpart authorizes, as a test program, the use of simplified procedures for acquisition of certain commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5.5 million (\$11 million for acquisitions as described in 13.500(e)). Currently, the FAR authorizes the contracting officer to issue solicitations under this subpart until January 1, 2010. An expedited FAR case is being processed by the CAAC to change the date of expiration of the test program to January 1, 2012. Pending a final rule, it is reasonable and practical for DHS to issue a class deviation in accordance with FAR 1.404 to extend the authorities of the test program.

Expiration Date: This class deviation will remain in effect until rescinded or until publication of the forthcoming FAR final rule that will serve to extend the test program for certain commercial items until January 1, 2012.

Attachments:

- DHS Class Deviation from the Federal Acquisition Regulations (FAR) Subpart 13.5 – Test Program for Certain Commercial Items, dated December 8, 2010
- Civilian Agency Acquisition Letter 2009-04, dated December 1, 2010

Additional Information: Questions or comments about this class deviation may be directed to David Duda at (202) 447-5415, or by email at David.Duda@dhs.gov.

**Class Deviation from the Federal Acquisition Regulation (FAR)
Subpart 13.5 – Test Program for Certain Commercial Items**

Findings

On December 1, 2009, the Civilian Agency Acquisition Council issued Civilian Agency Acquisition Letter 2009-04, which recommends that civilian agencies authorize a class deviation for the extension of the test program for certain commercial items provided at FAR Subpart 13.5.

Subpart 13.5 authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5.5 million (\$11 million for acquisitions as described in 13.500(e)), including options, 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.

FAR 13.500(d) provides authority to issue solicitations under this test program until January 1, 2010.

Determination

In accordance with FAR 1.404, I hereby issue a class deviation so that contracting officers at the Department of Homeland Security may continue to use the authority in FAR Subpart 13.5 to issue solicitations and award contracts beyond the stated expiration date of January 1, 2010.

An expedited FAR case is being processed to change the date of expiration of the test program to January 1, 2012. This class deviation will remain in effect until rescinded or until publication of a final rule that will serve to extend the test program for certain commercial items.

/s/

Richard K. Gunderson
Acting Chief Procurement Officer
Department of Homeland Security

22 DEC 09

Date