UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

FEB 14 2001

PROCUREMENT MEMORANDUM 2001-01

MEMORANDUM FOR: Heads of Contracting Offices

FROM: Michael S. Sade
Director for Acquisition Management
and Senior Procurement Executive

SUBJECT: DoC Class Deviation From Federal Acquisition Circular 97-21
(Final Rule FAR Case 1999-010, Contractor Responsibility)

This procurement memorandum transmits the attached Commerce class deviation for immediate implementation by contracting personnel. This deviation is being issued because the 30-day implementation period is considered too short a period to prepare the Department's contracting staff to address the rule's many new responsibilities and complexities.

The class deviation pertains to the final rule published in the Federal Register on December 20, 2000 (Federal Acquisition Circular (FAC) 97-21, Federal Acquisition Regulation (FAR) Case 1999-010, Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings, 65 FR 80255).

Implementation of this final rule within the Department of Commerce is immediately suspended. The suspension is in effect until July 19, 2001 or until issuance of an appropriate FAR change whichever occurs first. Instructions for contracting officers are included in the class deviation.

This PM is being distributed via the recently established DoC AcquisitionCommunity LISTSERV. For additional information regarding how the LISTSERV works, including how to register to receive it, see http://oamweb.osec.doc.gov/app/listserve.htm . This PM will also be posted on OAM's website at http://oamweb.osec.doc.gov/.

Please refer any questions to Nancy Barrere in Acquisition Policy and Programs at (202) 482-5519 or Nbarrere@doc.gov.

Attachment

U.S. DEPARTMENT OF COMMERCE

CLASS DEVIATION FROM
FEDERAL ACQUISITION CIRCULAR 97-21
(Final Rule FAR Case 1999-010,
Contractor Responsibility, Labor
Relations Costs, and Costs Relating to
Legal and Other Proceedings)

Action: A final rule was published in the Federal Register on December 20, 2000 (Federal Acquisition Circular (FAC) 97-21, Federal Acquisition Regulation (FAR) Case 1999-010, Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings, 65 FR 80255).

Implementation of this final rule within the Department of Commerce is immediately suspended. The suspension is in effect until July 19, 2001 or until issuance of an appropriate FAR change whichever occurs first.

Use of the previous FAR text including certification language is immediately restored. Contracting Officers are directed to amend solicitations already issued that incorporated a certification provision from that final rule. Instead, the previous version of the certification is to be used. Amended solicitations should use the March 1996 edition of 52.209-5, or for commercial items, the October 2000 edition of 52.212.3(h), as appropriate. An electronic version of the FAR as it existed before FAC 97-21 is posted under "FAR (Archived) HTML" for FAC 97-20 at: http://www.arnet.gov/far/ .

The following FAR sections were affected: 9.103(b), 9.104-1(d), 9.104-3 new paragraph (c), 14.404-2(i), 15.503(a), 31.205-21, 31.205-47(a) and (b), 52.209-5, and 52.212-3(h).

Rationale: The final rule, among other things, revised the FAR guidance for making responsibility determinations and added a new certification requirement requiring the prospective contractor to certify regarding certain violations adjudicated within the last three years. An affirmative responsibility determination must be made before the award of every contract. The certification applies to all procurements over $100,000.

The Business Roundtable, the Chamber of Commerce, the National Association of Manufacturers, the Associated General Contractors of America, Inc., and the Associated Builders and Contractors, Inc., filed a lawsuit in the United States District Court for the District of Columbia on December 22, 2000, seeking to overturn the final rule.

The Administrative Procedure Act, 5 U.S.C. 705, gives authority for a stay of the final rule: "When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." In the interest of justice, the Department of Commerce believes implementation of the final rule should be voluntarily stayed.

The FAR Council has received letters from industry and Congress requesting an effective date extension from January 19, 2001, to July 19, 2001.

Based on these concerns and other concerns expressed within the Federal Government, I have determined that the 30-day effective date did not give Federal contractors and the Federal Government sufficient time to meet the new obligations and responsibilities imposed by the December 20, 2000, final rule.

Consultation: In accordance with FAR 1.404 and 31.101, I have consulted with the Civilian Agency Acquisition Council Chairman before approving this class deviation to the FAR, who agrees with this deviation as does the Civilian Agency Acquisition Council. The appropriate consultation and approval have been accomplished under the authority granted to the civilian agencies under Civilian Agency Acquisition Letter 2001-1.

Approved: _____ Date: 2/14/01

Michael S. Sade
Director for Acquisition Management
and Senior Procurement Executive