



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
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IN REPLY
REFER TO

MMPPP
PROCLTR 97-15

MAY 09 1997

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

**SUBJECT: New Clause at DLAD 52.212-9000, Mandatory Provisions and Clauses --
Commercial Items, and Provision at 52.233-9000, Agency Protests (E. O. 12979)**

This PROCLTR adds guidance at DLAD 12.301(90) prescribing a new, mandatory clause at DLAD 52.212-9000, Mandatory Provisions and Clauses -- Commercial Items (see attachment). This new clause has been developed to provide a means of invoking any DLAD provisions and clauses -- current or future -- that are determined appropriate for mandatory use when acquiring commercial items. This PROCLTR addresses one of these provisions -- DLAD 52.233-9000, Agency Protests. The application of other mandatory DLAD provisions and clauses to acquisitions of commercial items will be addressed in forthcoming PROCLTRS.

Clauses that apply to commercial items based on statutes or Executive Orders are supposed to be reflected in the clause at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items. Agencies normally may not require the use of any provisions or clauses other than those prescribed in Part 12, except as necessary to implement agency unique statutes or as approved by the agency Senior Procurement Executive (SPE) or FAR Council representative, without power of delegation (FAR 12.301(f)). In the case of E.O. 12979, however, a decision was made that a FAR level clause would not be developed and that each agency would issue its own clause. The Executive Order does not exclude commercial items, therefore use of the provision at DLAD 52.233-9000, Agency Protests, must be made mandatory for acquisitions of commercial items. Accordingly, DLAD 52.212-9000 cites the provision at DLAD 52.233-9000 and instructs the contracting officer to either attach the text of the provision or indicate where the provision may be viewed. SPE or FAR Council representative approval is not required in this instance, because agencies had no choice but to issue a mandatory clause to implement the Executive Order. Application of the Executive Order to commercial items is clearly appropriate in any event, because it requires agencies to provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests as an alternative to formal GAO protest procedures.

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This PROCLTR is effective immediately and expires upon incorporation in the DLAD, but in no event later than one year from its date of issue. The point of contact is Anne Burleigh, DSN 427-1358, anne_burleigh@hq.dla.mil.

Attachment



ROBERT L. MOLINO
Executive Director
(Procurement)

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12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(90) The contracting officer shall insert the clause at 52.212-9000 in all acquisitions of commercial items. This clause shall not be tailored.

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52.212-9000 Mandatory Provisions and Clauses.

As prescribed at 12.301(90), insert the following clause:

MANDATORY PROVISIONS AND CLAUSES - COMMERCIAL ITEMS (APR 1997) - DLAD

The following DLAD provision applies [Contracting Officer shall attach text of provision or identify where provision may be viewed.]:

52.233-9000, Agency Protests (AUG 1996)

(End of clause)

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