



DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
RESEARCH, DEVELOPMENT AND ACQUISITION  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000

MAY 6 2008

MEMORANDUM FOR DISTRIBUTION

Subj: PLAN FOR RESTRICTING GOVERNMENT-UNIQUE CONTRACT CLAUSES ON  
COMMERCIAL CONTRACTS

Encl: (1) DPAPSS memo of March 17, 2008

Enclosure (1) reiterates existing policy on use of clauses or provisions for commercial item acquisitions, and directs that we report if any contracting activity has issued commercial contracts in fiscal year 2007 or 2008 which include unique clauses or supplemental and local provisions which may be otherwise inconsistent with established policy. We must provide the supporting rationale justifying inclusion of the unique clauses or provisions. Finally, we need to establish a specific plan of action to restrict, and the procedures to control, the number of unique contract clauses that may be included in contracts for commercial items. Our report to DoD is due by July 17, 2008.

To assist us in preparing this report, please perform the following:

1. To the extent necessary, canvass all contracting offices and acquire the information to respond to Parts 1(a) and (b) of enclosure (1). Submit this information to my action officer by close of business on June 13, 2008.
2. Identify an individual from your staff who will collaborate with this office on a fast-track working group that will develop the proposed plan of action to restrict the number of unique clauses and define the procedures needed to properly manage use of such clauses in our commercial item acquisitions. This working group will work primarily via conference calls, but may meet in person, if necessary. The deadline for completion of this working group's effort will be June 30, 2008. Submit the name and telephone number of your working group member to my action officer by close of business on May 7, 2008.

My action officer for this requirement is Evelyn Ortiz. Please address any questions regarding this memorandum to her at (703) 614-9640, email [evelyn.ortiz@navy.mil](mailto:evelyn.ortiz@navy.mil).

A handwritten signature in black ink, appearing to read "M. A. Vassard".

Chief of Staff/Policy  
for DASN (A&LM)

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ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

MAR 17 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (SENIOR PROCUREMENT EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (SENIOR PROCUREMENT EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(POLICY AND PROCUREMENT), ASA (ALT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION & LOGISTICS MANAGEMENT),  
ASN (RDA)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DIRECTORS, DEFENSE AGENCIES  
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Plan for Restricting Government-Unique Contract Clauses on Commercial  
Contracts

Section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (Public Law 110-181), directs the Under Secretary of Defense for Acquisition, Technology and Logistics to develop and implement a plan to minimize the number of government-unique contract clauses used in commercial contracts by restricting the clauses to those (1) Government-unique clauses authorized by law or regulation, or (2) any additional clauses that are relevant and necessary to a specific contract. Commercial contracts are defined as those contracts awarded by the federal government for procurement of a commercial item as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

In addition, FAR 12.301(a), requires, to the maximum extent practicable, only those clauses that are (1) required to implement provisions of law or executive orders applicable to the acquisition of commercial items, or (2) determined to be consistent with customary commercial practice may be included in contracts for commercial items.

It is the Department's policy to limit the number of contract clauses consistent with the stated statutory and regulatory requirements. Unique clauses or instructions incorporated into solicitations and contracts for commercial items by contracting activities in addition to those prescribed in the FAR and DFARS shall not be used, unless



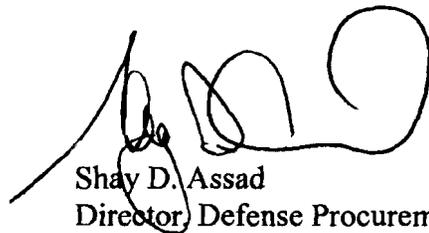
**ENCLOSURE(1)**

the contracting activity can demonstrate that inclusion of such instruction or clause is essential.

Not later than 120 calendar days from the date of this memorandum, please survey contracting activities under your cognizance and provide the following information:

1. Have contracting activities under your cognizance issued commercial contracts during FY'07 or FY'08? If so:
  - a. Have these activities issued commercial contracts that have included FAR/DFARS clauses that would typically be inconsistent with customary commercial practice, commercial items acquisition procedures, or that are otherwise not specifically essential? If so, please provide supporting rationale for inclusion of these clauses.
  - b. Have these activities issued commercial contracts that have included supplemental, local, or additional instruction or guidance other than that specifically promulgated in the FAR/DFARS? If so, please provide supporting rationale for inclusion of this additional information.
2. A specific plan of action to restrict the number of unique clauses that may be included in contracts for commercial items. Also, please identify specific procedures that will be put in place to ensure appropriate oversight, and senior level approval for the inclusion of any unique clauses in contracts for commercial items.

My point of contact for this subject is Mr. Anthony E. Cicala at (703)693-7062, or email: [anthony.cicala@osd.mil](mailto:anthony.cicala@osd.mil).



Shay D. Assad  
Director, Defense Procurement,  
Acquisition Policy, and  
Strategic Sourcing