



Washington, D.C. 20530

SEP 24 2003

MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS

FROM: Lee J. Lofthus
Procurement Executive

SUBJECT: DOJ Procurement Guidance Document 03-3
Class Deviation Exempting Expert Witnesses and Litigative Consultants from
Central Contractor Registration

Attached is a class deviation from the proposed Federal Acquisition Regulation (FAR) subparts 4.1102 and 4.1103 which requires virtually all contractors to be registered in the government-wide Contractor Central Registration (CCR) system. This deviation, which is effective as of the date of issuance, only applies to Expert Witness and Litigative Consultants who refuse to register as a condition for providing their services. We should continue to ask all prospective contractors to register, even in sole source situations.

For procuring services in sole source situations other than for the types of services exempted above, where the contractor refuses to register, we should use an individual deviation, signed by the Head of the Contracting Activity, to allow for the contract award. The requirements for individual deviations from FAR coverage are found in FAR 1.403 and the Justice Acquisition Regulation at Subpart 2801.403 which requires that a copy of the deviation be placed in the contract file and that a copy be provided to the Procurement Executive.

The proposed FAR Case 2002-018, was implemented in the Department with the issuance of Procurement Guidance Document 03-2, June 10, 2003. As a reminder, there are other significant exemptions to the CCR registration in the proposed FAR Case. Purchases using the Government-wide commercial purchase card are exempt as well as classified contracts or purchases when registration could compromise the safeguarding of classified information or national security. It also exempts contracts to support unusual or compelling needs (see FAR 6.302-2).

If you have any questions on the use of this class deviation, please call Larry Silvis on (202) 616-3754.

Attachment



Washington, D.C. 20530

MEMORANDUM FOR THE ASSISTANT ATTORNEY GENERAL
FOR ADMINISTRATION

FROM:

Lee J. Lofthus
Procurement Executive

SUBJECT:

Class Deviation from the Federal Acquisition Regulation

In accordance with the Federal Acquisition Regulation (FAR) 1.404(a) and the Justice Acquisition Regulation 2801.404, your approval to deviate from the requirements in proposed FAR subparts 4.1102 and 4.1103 is requested. The Chairperson, Civilian Agency Acquisition Council (CAAC) has given written concurrence for the issuance of this class deviation as required in FAR 1.404.

FAR Case 2002-018, Central Contractor Registration (CCR) Proposed Rule, was published for comment on April 3, 2003. In brief, it mandates that virtually all of our proposed contractors register in the CCR database prior to award of a contract or agreement and also requires the registration of existing contractors whose contracts may extend beyond September 30, 2003. This FAR revision is to be effective October 1, 2003. To allow time for our contractors to be registered by that date, we implemented this requirement Department-wide through Procurement Guidance Document 03-2 on June 13, 2003.

The proposed rule provides that when a prospective contractor is not registered in the CCR and we can afford the delay, we are to advise the offeror of the number of days allowed for their registration. If they do not register by that date we are to award to the next otherwise successful registered offeror. In situations where we can not afford the delay we are to proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer. The CCR rules are clear that we are to bypass offerors if they are not registered in the CCR.

Our procurement personnel are now experiencing, on a large scale, severe difficulties in registering Expert Witnesses and Litigative Consultants. These specialized sources are infrequent business partners engaged for specific, often one time, case support. They are frequently the only sources available for the specialized testimony or analysis sought in specific cases. While the CCR provisions are well suited to normal federal business acquisitions applicable to multiple offerors, the provisions are less suited to the realm of experts and litigative consultants. There have been widespread refusals to register from experts who do not perceive

their services as being similar to the routine business arrangements with vendors. Being a CCR registrant is critical to those business firms which have ongoing business with the federal government, but registration has no appeal to an expert who will not be a federal business partner on a recurring basis. The experts are often the only sources available to provide the required services and the outcome of important cases can hinge on their expert consultation or testimony. Bypassing these critical experts, as the CCR rules contemplate, is not a feasible option for the government's litigative position. These individuals work in the private sector, medical professions, and academia and often have to be coaxed into working on our cases. The CCR registration process is adding a significant hurdle to obtaining these critical services. There is no current exception from the proposed FAR requirement for these sole source situations.

We have learned the CCR rule will be issued in final shortly with essentially no changes. To ensure we do not compromise our ability to support the government's position in critical litigation, we recommend that we provide the means to award contracts for sole source Expert Witnesses and Litigative Consultants via the issuance of a class deviation from this proposed FAR requirement. This memorandum serves as that request for a class deviation. This deviation shall remain in effect until rescinded or FAR coverage is issued which would eliminate the need for this deviation. Your approval below will permit us to issue the class deviation notice to our procurement and litigative offices.

Approved: _____



Paul R. Cortis
Assistant Attorney General
for Administration

Date: 9-10-03