




Washington, D.C. 20530

March 23, 2001

MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS

FROM: H.B. Myers 
Assistant Director
Procurement Policy and Review

SUBJECT: DOJ Procurement Guidance Document 01-1

Class Deviation from FAC 97-21 Changes to Contractor Responsibility Criteria

Attached is a class deviation from the Federal Acquisition Regulation (FAR) which suspends the implementation of FAC 97-21. The following FAR sections are 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). See the attached deviation for complete information and additional guidance. This deviation will remain in effect until further notice from the FAR Council.

Please make sure your personnel are aware of this change. If you have any questions concerning this class deviation please call Larry Silvis at 202/616-3754.

Attachment



Washington, D.C. 20530

MAR 19 2001

MEMORANDUM FOR THE ASSISTANT ATTORNEY GENERAL FOR
ADMINISTRATION

FROM: Janis A. Sposato *Janis Sposato*
Deputy Assistant Attorney General,
Law and Policy

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 FAR sections 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) is requested. The Chairman, Civil Agency Acquisition Council (CAAC), issued an authorizing Memorandum No. 2001-1 on January 31, 2001 which allows agencies, on a voluntary basis, to deviate from the FAR changes which were effective under Federal Acquisition Circular (FAC) 97-21.

FAC 97-21 revised the FAR guidance for contracting officers to use when making contractor responsibility determinations and added a new and broader certification requirement requiring prospective contractors to certify regarding certain violations adjudicated within the last three years. This FAC was published in the Federal Register December 30, 2000 with an effective date of January 19, 2001. The CAAC Chairman has, based on concerns expressed by members of Congress and industry, determined that the 30 day period between the issuance of FAC 97-21 and the effective date did not allow the Federal Government and Federal contractors sufficient time to meet the new obligations and responsibilities imposed by the final rule.

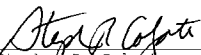
The Business Roundtable, the Chamber of Commerce, the National Association of Manufacturers, the Associated General Contractors of America, Inc., and the Associated Builders and Contractors, Inc., filed a lawsuit in the United States

District Court for the District of Columbia on December 22, 2000, seeking to overturn the final rule.

This deviation request would immediately restore the previous FAR text including certification language. Contracting Officers shall amend solicitations already issued that incorporate a certification provision from FAC 97-21. 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. Electronic versions of the FAR as it existed before FAC97-21 is posted under "FAR (Archived) HTML" for FAC 97-20 at <http://www.arnet.gov/far/>.

The deviation shall remain in effect until the issues associated with FAC 97-21 are resolved at the FAR Council level. The CAAC letter serves as evidence of consultation with the Chairperson as provided in FAR 1.404 and as approval by the CAAC as provided in FAR 31.101.

Approved: _____


Stephen R. Colgate
Assistant Attorney General
for Administration

Date: 3/19/01

Disapproved: _____

Stephen R. Colgate
Assistant Attorney General
for Administration

Date: _____