



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION AND
TECHNOLOGY
DP (DAR)In reply refer to
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MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN (RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA (RIXA)/SW-PP
DEPUTY DIRECTOR (ACQUISITION) , DEF~SE LOGISTICS ~GENCY

SUBJECT: Extension to Class Deviation--Special Tooling

I extend the authority for all military departments and defense agencies to use the April 1984 edition of the Special Tooling clause and its related prescriptive language (attached) in Lieu of the clause at 52.245-17 and its prescriptive language at 45.306-5. I also waive that portion of the Government Property (Fixed-Price Contracts) clause at 52.245-2 that states that special tooling is subject to title provisions in the Special Tooling clause. This waiver is necessary because the 1984 edition of the Special Tooling clause does not contain title provisions.

I am extending the class deviation for a one year period ending October 16, 1997, or until the FAR is revised, whichever event occurs first.

Eleanor R. Spector
Director of Defense Procurement

Attachments

45.305 Additional clauses for facilities contracts.

(a)(1) The Contracting officer shall, when contracting by negotiation, insert the clause **at** 52.245-17, Special Tooling, in solicitations and contracts when: a fixed-price contract is contemplated, the contracting officer decides (see 45.306-2(d)) to acquire rights to the contractor's special tooling, and it is not practical to identify the special tooling required.

(2) If the Government does not intend to acquire special tooling from **subcontractors** and an appropriate price reduction is obtained, the contracting officer shall use the clause with its Alternate I.

52.245-17 Special Tooling.

AS prescribed in 45.305(a) (1), when contracting by negotiation, insert the **following** clause in solicitations and contracts when a fixed-price ~~contracting~~ is contemplated, the contracting officer decides to acquire rights to the contractor's special tooling, and **it** is not practical to **identify** the special tooling required:

SPECIAL TOOLING (APR 1984) (DEVIATION)

(a) *Definition.* **'Special tooling'** means jigs, dies, fixtures, molds, **patterns**, taps, gauges, other equipment and manufacturing aids, all components of these items, and **replacement** of these items, that are of such a specialized nature **that** without substantial modification **or** alteration their use is limited to **the** development or production of particular supplies **or** parts thereof or performing particular **services**. It does not include material, special test equipment, facilities (except foundations and **similar** improvements necessary for installing special tooling), general or special machine **tools**, or **similar capital items**. Special **tooling**, for the purpose of this clause, does not include **any** ~~item~~ acquired by the **Contractor** before the effective **date** of this **contract**, or **replacement** of such items, whether **or** not altered or adapted for use in performing this contract, or **items** specifically **excluded** by the Schedule **of** this contract.

(b) *Use of special tooling.* The Contractor agrees to use the special tooling only in performing this contract or as otherwise approved **by** the Contracting Officer.

(c) Initial list **of special** tooling. **If** the Contracting Officer so **requests**, the Contractor shall furnish the Government an initial list of all special tooling acquired or manufactured by the Contractor for **performing** this **contract** (but see paragraph (d) for **tooling** that has **become** obsolete) . **The** list **shall** specify the nomenclature, **tool** number, related product part number **(or service**

performed), and unit or group cost **of the special tooling. The list shall** be furnished within 60 days after delivery of the first production end item under this contract unless a **later** date is prescribed.

(d) Changes **in** design. Changes in the design or specifications of the end items being produced under this contract may affect the **interchangeability** of end item parts. In such an event, unless otherwise agreed to by the Contracting Officer, the Contractor shall notify the Contracting Officer of any part not interchangeable with a new or superseding part. Pending disposition instructions, such usable tooling **shall** be retained and maintained by the Contractor.

(e) **Contractor's offer to retain special tooling.** The Contractor may indicate a desire to retain certain items of special tooling at the time it furnishes a list or notification **pursuant** to paragraphs (c) , (d), or (h) of this clause. The Contractor shall furnish a written offer designating those **items** that it wishes to retain by specifically listing the **items** or **by** listing the particular products, **parts**, or **services** for which the items **were** used or designed. The offer **shall** be **made** on one of the following bases:

(1) **An amount shall be** offered for retention of the **items free** of any Government interest. This **amount should** ordinarily not be less than the **current** fair **value** of the items, considering among other things, the value of the items to the Contractor for use in future work.

(2) Retention maybe requested fora limited **period of** time and under **terms** as may be agreed to **by** the Government and the Contractor. **This** temporary retention is subject to final disposition pursuant to paragraph (i) of this clause.

(f) **Property control records.** The Contractor shall maintain adequate property control records of **all** special tooling in accordance with its normal industrial practice. **The** records shall be made **available** for **Government** inspection at **all** reasonable times. To the extent practicable, the Contractor **shall** identify **all** special **tooling** subject to this clause with an appropriate **stamp**, tag, or other mark.

(g) **Maintenance.** The Contractor **shall** take all reasonable steps necessary to **maintain** the identity and existing condition of usable **items** of special tooling from the date such item are no longer needed **by** the Contractor until **final disposition under** paragraph (i) **of** this clause. These maintenance requirements **do not apply** to those items designated **by** the Contracting Officer for disposal as scrap or identified as of no further interest to the **Government** under paragraph (i)(4) of **this** clause. The Contractor is not required to keep unneeded items of special tooling **in place**.

(h) **Final list of special tooling.** When all or a substantial part of the work under this contract is completed or terminated, the Contractor shall furnish the Contracting Officer a final list of special tooling with the same information as required for the initial list under paragraph (c) of this clause. The final list shall include all items not previously reported under paragraph (c). The Contracting Officer may provide a written waiver of this requirement or grant an extension. The requirement may be extended until the completion of this contract together with the completion of other contracts and subcontracts authorizing the use of the special tooling under paragraph (b) of this clause. Special tooling that has become obsolete as a result of changes in design or specification need not be reported except, as provided for in paragraph (d).

(i) **Disposition instructions.** The Contracting Officer shall provide the Contractor with disposition instructions for special tooling identified in a list or notice submitted under paragraphs (c), (d), or (h) of this clause. The instructions shall be provided within 90 days of receipt of the list or notice, unless the period is extended by mutual agreement. The Contracting Officer may direct disposition by any of the methods listed in subparagraphs (1) through (4) of this paragraph, or a combination of such methods. Any failure of the Contracting Officer to provide specific instructions within the 90 day period shall be construed as direction under subparagraph (i) (3).

(1) The Contracting Officer shall give the Contractor a list specifying the products, parts, or services for which the Government may require special tooling and request the Contractor to transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling that were designed for or used in the production or performance of such products, parts, or services and that were on hand when such production or performance ceased.

(2) The Contracting Officer may accept or reject any offer made by the Contractor under paragraph (e) of this clause to retain items of special tooling or may request further negotiation of the offer. The Contractor agrees to enter into the negotiations in good faith. The net proceeds from the Contracting Officer's acceptance of the Contractor's retention offer shall either be deducted from amounts due the Contractor under this contract or shall be otherwise paid to the Government as directed by the Contracting Officer.

(3) The Contracting Officer may direct the Contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling reported by the Contractor under this clause. The net proceeds of all sales shall either be deducted from amounts due the Contractor under this contract or shall be otherwise paid to the Government as

directed by the Contracting Officer. To the extent **that** the contractor incurs **any** costs occasioned **by compliance** with such directions, for which **it** is not **otherwise compensated**, the **contract Price shall** be equitably adjusted in accordance with the Changes clause **of this contract**.

(4) The Contracting Officer may furnish the Contractor **with a statement disclaiming** further Government interest or rights in any of the special tooling listed.

(j) **Storage or shipment.** The Contractor **shall promptly** transfer to the **Government title** to the special tooling specified by the Contracting Officer and arrange for either the shipment **or the storage** of such tooling in accordance with the final disposition instructions **in** subparagraph (i) (1) **of this** clause. Tooling to be shipped **shall** be properly packaged, packed, **and marked** in accordance with the directions of the Contracting Officer. Tooling to be stored shall be stored pursuant to a storage **agreement** between the Government and the Contractor, and as directed by the Contracting Officer. **Tooling** shipped or **stored shall** be accompanied **by** operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed. **To** the extent that the Contractor incurs costs for authorized storage or shipment under this paragraph **and not otherwise** compensated for, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(k) **Subcontract provisions.** In order to **perform** this contract, the Contractor may place **subcontracts** (including purchase orders) involving the use of special tooling. **If** the **full** cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontracts appropriate provisions to obtain Government rights comparable to the rights of the **Government** under this clause (unless the contractor and the Contracting Officer **agree that** such rights are not of substantial interest to the **Government**). The Contractor agrees to exercise such rights for the benefit of the **Government** as directed by the Contracting Officer.

(End of clause)

Alternate I (Apr 1984). If the **Government** does not intend to acquire special tooling from subcontractors and **an** appropriate price reduction is obtained, delete paragraph (k) **from the basic clause**.