



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

MAY - 4 2010

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Approval of DON Control Plan for Component Clauses

On February 2, 2010 the Director, Defense Procurement and Acquisition Policy (DPAP) approved the Department of the Navy (DON) Control Plan for Component Clauses of August 19, 2009. This plan (see attachment) defines a system of controls and approval requirements that governs the use of provisions and clauses in our solicitations and contracts if other than those prescribed in FAR, DFARS or NMCARS. It is in effect for a period of five years from the approval date and subject to periodic review and updating to ensure compliance with changes in policy or authority levels. NMCARS 5201.304, Agency control and compliance procedures, will be revised to align with this plan.

There is increased emphasis by DPAP on ensuring that only properly approved component clauses are used in our solicitations and contracts. This is due to the fact that component clauses requiring publication in the Federal Register for public comments before use are being included in solicitations and contracts without having been published. Within the DON, there are over one thousand component clauses currently being used by our contracting officers that require review to validate compliance with prescribed regulations. Please ensure that your contracting officers are aware of this new plan and adhere to the requirements for component clause approval set forth therein. The plan is effective immediately.

Please address questions regarding this memorandum to my action officer, Evelyn Ortiz, at (703) 614-9640 or [evelyn.ortiz@navy.mil](mailto:evelyn.ortiz@navy.mil).

*Elliott B. Branch*

Elliott B. Branch  
Executive Director  
DASN(A&LM)

Attachment:  
As stated

Distribution:  
See page 2

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DEPARTMENT OF THE NAVY  
CONTROL PLAN FOR COMPONENT CLAUSES

1. Statement of Purpose. The purpose of this plan is to establish for Navy/Marine Corps Contracting Activities a system of controls for the use of clauses other than those prescribed in FAR or DFARS. To the extent practicable, the plan addresses the unique approval requirements for clause use in solicitations and contracts for FAR Part 12 commercial item acquisitions.

2. Definitions.

a. Clause - means a term, condition or provision used in solicitations and contracts that is of the type set forth in FAR Part 52 and DFARS Part 252.

b. Regulation - means any contracting supplement, policy letter, clause book, procedure, automated system, or similar regulatory instrument.

3. Director, Defense Procurement and Acquisition Policy (DPAP) Approval Requirements. Before including in a regulatory document, obtain DPAP approval of the following:

a. All policies, procedures, clauses, or forms that—

(1) Have a significant effect beyond the internal operating procedures of the agency;

or

(2) Have a significant cost or administrative impact on contractors or offerors;

b. Certain categories of individual deviations and class deviations from FAR/DFARS (see DFARS 201.402(1) and DFARS 201.404);

c. Deviations from Component clauses which substantially increase cost or administrative impact on offerors/contractors in competitive procurements;

d. Any deviation required to comply with a treaty or an executive agreement, which is not authorized by FAR 1.405(b) or (c);

e. Department/agency clause control plans covering review and approval of Component clauses and deviations.

4. Review and Approval of Component Clauses.

a. **Clause use in contracts for non-commercial items:** Approval requirements for use of Component clauses in solicitations or contracts for non-commercial items are as follows:

(1) DPAP approval is required of Component clauses meeting the requirements of DFARS 201.304(1)(i) (see paragraph 3a above). Such clauses must be numbered in accordance with Paragraph 6 of this Plan, published in the Federal Register for public comment, and submitted to DPAP for approval, through ASN(RD&A)/DASN(A&LM) Policy and the DAR Council Director. Upon approval these Component clauses will be included in the Navy's electronic repository of clauses.

(2) The Head of the Contracting Activity (HCA), or a designee no lower than the Chief of the Contracting Office (CCO), may approve Component clauses that have no significant effect beyond the internal operating procedures of the agency and no significant cost or administrative impact on contractors or offerors. These clauses must be numbered in accordance with Paragraph 6 of this Plan, be supported by a written analysis justifying clause use, and reviewed by Counsel for legal sufficiency before approval. A copy of these approved clauses shall be provided to ASN(RD&A)/DASN(A&LM)/Policy and will be added to the Navy's electronic repository of clauses.

(3) The HCA, or a designee not lower than one level above the contracting officer, shall approve Component clauses that implement a FAR/DFARS/NMCARS clause that permits "substantially the same as" or other variations. Such clauses must be supported by a written analysis justifying clause use, reviewed by Counsel for legal sufficiency before approval, and numbered following Paragraph 6 of this Plan. Once approved all "substantially the same as" Component clauses that will be used on a repetitive basis for multiple contracts must be provided to ASN (RD&A)/DASN (A&LM)/Policy for inclusion in the Navy's electronic repository of clauses.

(4) The HCA, or a designee not lower than one level above the contracting officer, may approve Component clauses developed to deal with a unique situation with one contractor, except that ASN(RD&A)/DASN(A&LM) is the approving authority for any Component clause which results in a FAR/DFARS/NMCARS deviation.

**b. Clause use in contracts for commercial items.** Attachment (1), Commercial Items Clause Use Approval Matrix, outlines the current sources of approval authority governing inclusion of clauses in solicitations or contracts for commercial item acquisitions. Note: DPAP is the approval authority for any Component-unique clause in solicitations or contracts for commercial items that meets the conditions of DFARS 201.304(1)(i). Such clauses must be numbered in accordance with Paragraph 6 of this Plan, published in the Federal Register for public comment, and submitted to DPAP for approval through ASN(RD&A)/DASN(A&LM) Policy and the DAR Council Director.

5. Review and Approval of Deviations.

a. DPAP is the approval authority of requests for deviations identified in DFARS 201.402 and 201.404. Such requests shall be processed through ASN(RDA)/DASN(A&LM) Policy and the DAR Council Director.

b. ASN(RDA)/DASN(A&LM) is the approval authority for other individual or class deviations from the FAR/DFARS and NMCARS, except:

(1) In the case of a purchase or contract by an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, the HCA, or a designee not lower than one level above the contracting officer, may grant deviations from contract clauses, provided that no change in intent, principle, or substance is made (Note: Contracts with foreign governments frequently require revision of terminology to clarify such terms as "Government", "contractor" or "contracting officer" since both parties to the proposed contract are government entities. Such modifications do not change the substance of the clause and should not require high-level approval); and,

(2) The HCA, or a designee not lower than one level above the contracting officer, is authorized to approve individual and class deviations from Component clauses for use in competitive procurements which do not constitute a deviation from FAR/DFARS/NMCARS and do not have a significant cost or administrative impact on offerors/contractors. All deviations must be reviewed by Counsel before approval.

c. ASN(RDA)/DASN(A&LM)/Policy shall be provided a copy of all deviations approved at the Component level.

6. Clause Numbering: All clauses in the Navy's electronic repository of clauses must adhere to the numbering and identification requirements of FAR 52.1, as supplemented by DFARS Subpart 252.1 and NMCARS Subpart 5252.1.

7. Centralized clause repository. Approved agency/Component clauses will be maintained in electronic format at a web-based central repository.

**Attachment (1): Commercial Items Clause Use Approval Matrix.** The following table summarizes the approval requirements for provision or clause use in Part 12 acquisitions:

Action	Approval Authority	FAR/DFARS citation
Include a provision similar to FAR 52.212-2 containing all evaluation factors required by FAR 13.106, 14.2 or 15.3	Contracting Officer	FAR 12.301(c)(2)
Include in solicitations & contracts other FAR provisions & clauses when their use is consistent with the limitations in FAR 12.302 ( <u>Discretionary use only due to nature of procurement action</u> , e.g. FAR 16.506 clauses for IDIQ contracts; FAR 17.208 when Options included; etc.)	Contracting Officer	FAR 12.301(e)
Tailor FAR provision 52.212-1 or FAR clause 52.212-4 identified in FAR 12.301, <u>after</u> conducting appropriate market research, to adapt to the market conditions for each acquisition ( <i>i.e.</i> tailor only <u>consistent</u> with commercial practices).	Contracting Officer	FAR 12.302(a) FAR 12.301(b)(1) FAR 12.301(b)(3)
Tailor FAR clause 52.212-4 (except as noted in FAR 12.302(b)) in a manner that is <u>inconsistent</u> with customary commercial practice for the item being acquired, if waiver is approved.	HCA; Except ASN(RD&A) approval is required if tailoring results in adding of any new terms or conditions	FAR 12.302(c) DFARS 212.302(c)
Deviate from FAR provision 52.212-3 <u>only</u> in accordance with FAR Subpart 1.4	ASN(RD&A)/DASN(A&LM)	FAR 12.301(b)(2) DFARS 201.4
Supplement provisions & clauses in FAR/DFARS Parts 12/212 with use of additional clauses & provisions <u>only</u> as necessary to reflect agency-unique statutes applicable to acquisition of commercial items.	ASN(RD&A)/DASN(A&LM)	FAR 12.301(f)
Supplement provisions & clauses in FAR/DFARS Parts 12/212 with use of additional clauses & provisions other than those necessary to reflect agency-unique statutes applicable to acquisition of commercial items	Navy Senior Procurement Executive (ASN RD&A) or Director, Defense Procurement and Acquisition Policy (DPAP)* <b>w/o power of delegation</b>	FAR 12.301(f)

*\*Note: Only OUSD(AT&L) DPAP may approve the use of any Component-unique clause or provision that meets the conditions of DFARS 201.304(1)(i).*