Subpart 201.4 - DEVIATIONS FROM THE FAR

Parent topic: Part 201 - FEDERAL ACQUISITION REGULATIONS SYSTEM

201.402 Policy.

(1) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPCAP), is the approval authority within DoD for any individual or class deviation from—

(i) FAR 3.104, Procurement Integrity, or DFARS 203.104 , Procurement Integrity;

(ii) FAR Subpart 27.4, Rights in Data and Copyrights, or DFARS Subpart 227.4, Rights in Data and Copyrights;

(iii) FAR Part 30, Cost Accounting Standards Administration, or DFARS Part 230, Cost Accounting Standards Administration;

(iv) FAR Subpart 31.1, Applicability, or DFARS Subpart 231.1, Applicability (contract cost principles);

(v) FAR Subpart 31.2, Contracts with Commercial Organizations, or DFARS Subpart 231.2, Contracts with Commercial Organizations; or

(vi) FAR Part 32, Contract Financing (except Subparts 32.7 and 32.8 and the payment clauses prescribed by Subpart 32.1), or DFARS Part 232, Contract Financing (except Subparts 232.7 and 232.8).

(2) Submit requests for deviation approval through department/agency channels to the approval authority in paragraph (1) of this section, 201.403 , or 201.404 , as appropriate. Submit deviations that require OUSD(A&S)DPCAP approval through the Director of the DAR Council via email at osd.pentagon.ousd-a-s.mbx.dfars@mail.mil. At a minimum, each request must—

(i) Identify the department/agency, and component if applicable, requesting the deviation;

(ii) Identify the FAR or DFARS citation from which a deviation is needed, state what is required by that citation, and indicate whether an individual or class deviation is requested;

(iii) Describe the deviation and indicate which of paragraphs (a) through (f) of FAR 1.401 best categorizes the deviation;

(iv) State whether the deviation will have a significant effect beyond the internal operating procedures of the agency and/or a significant cost or administrative impact on contractors or offerors, and give reasons to support the statement;

(v) State the period of time for which the deviation is required;

(vi) State whether approval for the same deviation has been received previously, and if so, when;

(vii) State whether the proposed deviation was published (see FAR Subpart 1.5 for publication requirements) in the Federal Register and provide analysis of comments;

(viii) State whether the request for deviation has been reviewed by legal counsel, and if so, state results; and

(ix) Give detailed rationale for the request. State what problem or situation will be avoided, corrected, or improved if request is approved.

201.403 Individual deviations.

(1) Individual deviations, except those described in 201.402 (1) and paragraph (2) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304 (4).

(2) Contracting officers outside the United States may deviate from prescribed nonstatutory FAR and DFARS clauses when—

(i) Contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations; and

(ii) Such governments or organizations will not agree to the standard clauses.

201.404 Class deviations.

(b)(i) Except as provided in paragraph (b)(ii) of this section, OUSD(A&S)DPCAP is the approval authority within DoD for any class deviation.

(ii) The senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency, the Defense Contract Management Agency, and the Defense Logistics Agency, may approve any class deviation, other than those described in 201.402 (1), that does not—

(A) Have a significant effect beyond the internal operating procedures of the department or agency;

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

(C) Diminish any preference given small business concerns by the FAR or DFARS; or

(D) Extend to requirements imposed by statute or by regulations of other agencies such as the Small Business Administration and the Department of Labor.