DEPARTMENT OF THE ARMY PLAN FOR CONTROL OF NONSTANDARD CLAUSES

September 3, 2014

1. PURPOSE. The purpose of this plan is to implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed in the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) as required in DFARS 201.304(4). This plan supersedes the July 31, 2009, update.

2. DEFINITIONS.

a. Clause – The term "clause" includes solicitation provisions and means a term or condition of the type set forth in FAR part 52 and DFARS part 252.

b. Deviation – The term "deviation" includes any clause that is inconsistent with the FAR or DFARS.

c. Regulation – The term "regulation" includes any contracting supplement, policy letter, clause book, automated system, acquisition instruction (AI), or similar regulatory instrument.

3. REVIEW AND APPROVAL OF NONSTANDARD CLAUSES. Army contracting activities coordinate all nonstandard clauses with the Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) Policy and Programs Directorate in accordance with Army Federal Acquisition Regulation Supplement (AFARS) 5101.304(1)(i). The ODASA(P) Policy and Programs Directorate coordinates with the Office of the Army General Counsel during review of nonstandard clauses.

a. Director of Defense Procurement and Acquisition Policy (DPCAP) Clause Approval –

(1) Obtain DPCAP approval to use clauses that have a significant effect beyond the internal operating procedures of the Army or impose a significant cost or administrative impact on contractors or offerors (DFARS 201.304(1)). Included are class deviations from the FAR or DFARS (DFARS 201.404(b)) and the six categories of individual deviations set forth in DFARS 201.402(1).

(2) Coordinate with the ODASA(P) Policy and Programs Directorate to publish clauses requiring DPCAP approval in the *Federal Register*, conduct analysis to ensure compliance with the Paperwork Reduction Act and the Regulatory Flexibility Act (FAR 1.301(c)), and analyze public comments. Submit the clause and all analysis through the Defense Acquisition Regulations (DAR) Council Director (DFARS 201.304(5) and AFARS 5101.301(b)).

b. Other than DPCAP Clause Approval –

(1) Obtain Deputy Assistant Secretary of the Army (Procurement) (DASA(P)) approval to use clauses that do not require DPCAP approval and do not require publication in the *Federal Register* for public comment, but are included in contracting activity AIs or clause books.

(2) Obtain Army Principal Assistant Responsible for Contracting (PARC) approval for individual deviations as defined at FAR 1.403, other than those specified in paragraph 3.a.(1) and 3.b.(1), as required in AFARS 5101.403(1), and forward a copy to the ODASA(P) Policy and Programs Directorate. One-time use clauses (including Section H clauses) are individual deviations.

(3) Obtain Army PARC (or their designee) approval for contracting activity and local clauses that implement FAR or DFARS clauses that permit "substantially the same as" use prior to using them. This review is necessary to determine that tailoring is required and to ensure that the tailored clause is not materially different from the parent clause.

4. CLAUSE NUMBERING. Adhere to the numbering and identification requirements of FAR subpart 52.1, as supplemented by DFARS subpart 252.1 when prescribing clauses in an Army regulation:

a. Number clauses with the Army prefix of 51 (AFARS 5101.303(a)(i)), except see paragraph 4.c. regarding one-time use clauses;

b. Assign 9000 numbers as an extension to clauses approved for Army-wide use for incorporation into the AFARS, to clauses approved for specific command use for incorporation into Command Supplements, and to clauses approved for subordinate commands or contracting offices (DFARS 252.101 and AFARS 5152.101(b)(2)(ii)(B)); and

c. Do not number one-time use clauses but identify them by the title, date, and name of the organization that developed it (FAR 52.103).

5. CONTROLS.

a. Army contracting activities review nonstandard clauses as part of their pre-solicitation, pre-award and legal reviews.

b. Procurement management review teams address non-standard clauses as a special review item.

6. CLAUSE CONTROL PLAN RESPONSIBILITIES. The Army DAR Council policy member is the Army's action officer responsible for clause control. Please send any questions to the Office of the DASA(P) (ODASA(P)), e-mail usarmy.pentagon.hqda-asa-alt.list.saal-pp-staff@mail.mil, through your chain-of-command, as appropriate. Include "Clause Control" in the "Subject" block.

DEPARTMENT OF THE ARMY

PLAN FOR CONTROL OF NONSTANDARD CLAUSES

CENTCOM- JOINT THEATER SUPPORT CONTRACTING COMMAND (C-JTSCC) ADDENDUM

1. PURPOSE. The purpose of this addendum is to implement an expedited nonstandard clause approval process for C-JTSCC.

2. UNITED STATES CENTRAL COMMAND (CENTCOM) – JOINT THEATER SUPPORT CONTRACTING COMMAND (C-JTSCC) EXPEDITED PROCESS:

   a. When the Deputy Assistance Secretary of the Army (Procurement) determines that urgent and compelling circumstances make compliance with the review and approval process set forth in the Department of the Army Plan for Control of Nonstandard Clauses impracticable (see TAB A), C-JTSCC may incorporate clauses in its solicitations and contracts concurrent with the review and approval process (41 U.S.C. 1707(d)). In these instances, the clause will have the same force and effect as if the cognizant approving official had approved it until such time that the Army and/or DPAP completes the review and approval process and an approved clause replaces the unapproved clause.

   b. C-JTSCC shall follow the process set forth in Tab B of this addendum to expedite approval of nonstandard clauses under urgent and compelling circumstances.

[C-JTSCC LETTERHEAD]

In rely refer to
[Clause Title and number]

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)

SUBJECT: DETERMINATION OF URGENCY

I have determined that the following urgent and compelling reasons exist to publish this clause prior to affording the public an opportunity to comment.

[Insert a factual description of the urgent and compelling circumstances that justify this action, for example: The current changing threat environment, such as X and Y/circumstances relating to demobilization or X and Y/challenges requiring immediate action to avoid harm including A and B].

This clause [resolves the situation by accomplishing X and Y/provides necessary guidance/clarifies existing guidance/to ensure that X and Y do not occur]. Furthermore, it clarifies that [insert descriptive language].

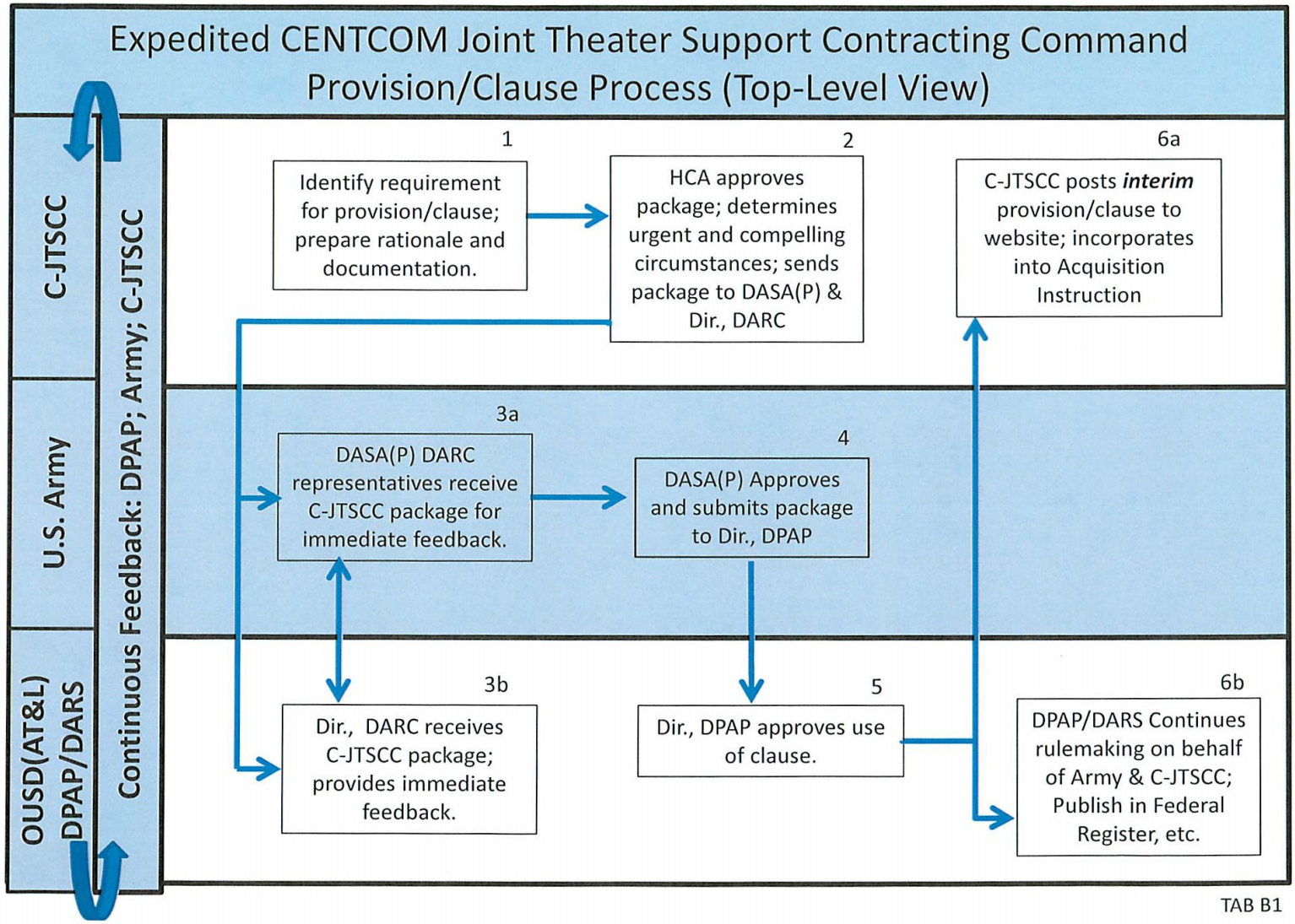
Public comment will be obtained by publication of this clause in the Federal Register.

[Insert name]
Head of Contracting Activity
CENTCOM – Joint Theater Support
Contracting Command

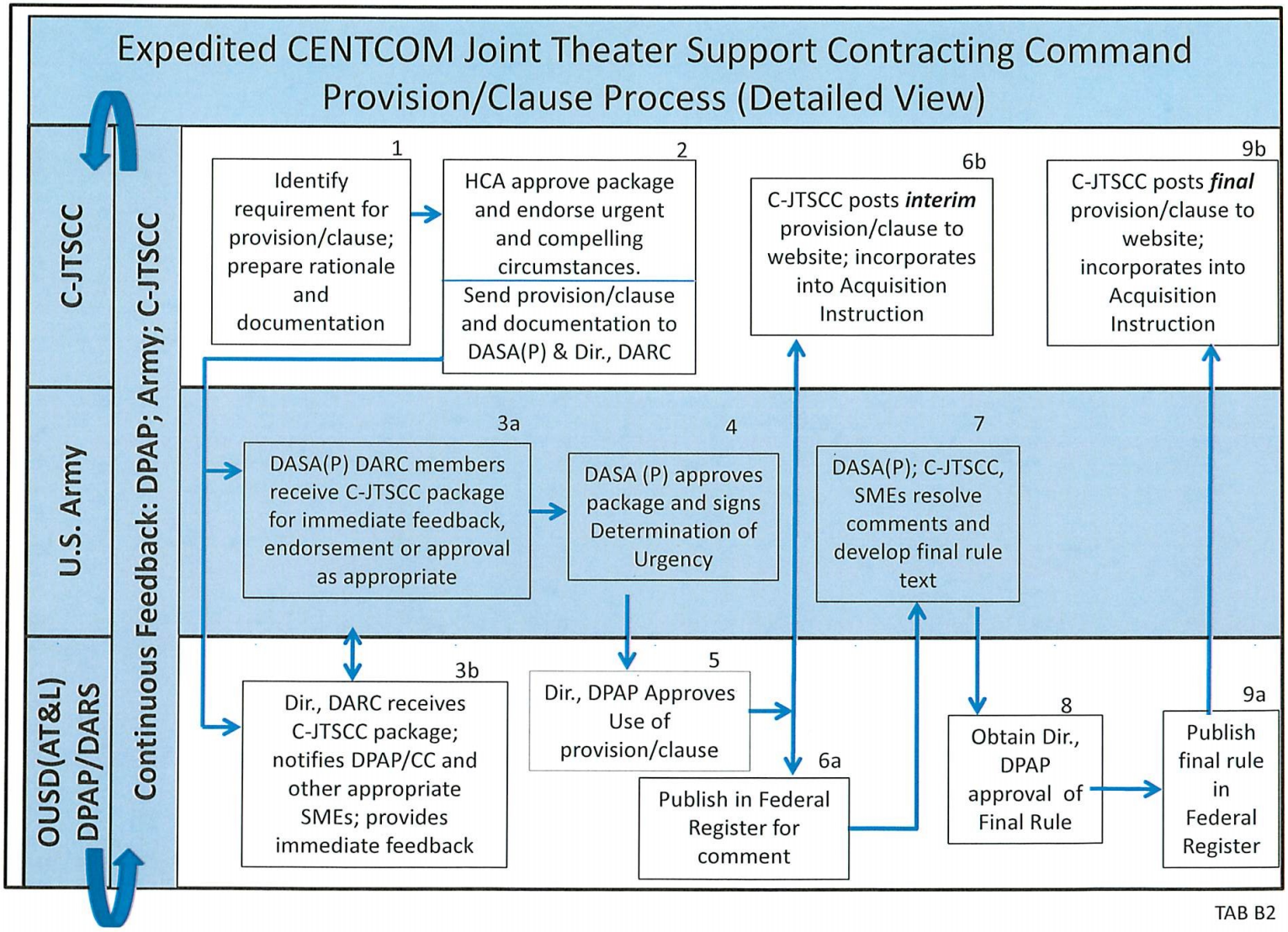
SAAL-ZP [Insert date]

Pursuant to 41 U.S.C. 1707 and based upon the facts presented above, I have determined that urgent and compelling circumstances exist that require publishing this clause prior to affording the public an opportunity to comment. I am, therefore, authorizing issuance of this clause for immediate use.

Harry P. Hallock
Deputy Assistant Secretary
of the Army (Procurement)


Expedited CENTCOM Joint Theater Support Contracting Command
Provision/Clause Process (Top-Level View)
C-JTSCC
U.S. Army
OUSD(AT&L)
DPAP/DARS
Continuous Feedback: DPAP; Army; C-JTSCC
1
Identify requirement for provision/clause; prepare rationale and documentation.
2
HCA approves package; determines urgent and compelling circumstances; sends package to DASA(P) & Dir., DARC
6a
C-JTSCC posts *interim* provision/clause to website; incorporates into Acquisition Instruction
3a
DASA(P) DARC representatives receive C-JTSCC package for immediate feedback.
4
DASA(P) Approves and submits package to Dir., DPAP
3b
Dir., DARC receives C-JTSCC package; provides immediate feedback.
5
Dir., DPAP approves use of clause.
6b
DPAP/DARS Continues rulemaking on behalf of Army & C-JTSCC; Publish in Federal Register, etc.

TAB B1


Expedited CENTCOM Joint Theater Support Contracting Command Provision/Clause Process (Detailed View)
C-JTSCC
U.S. Army
OUSD(AT&L) DPAP/DARS
Continuous Feedback: DPAP; Army; C-JTSCC
1
Identify requirement for provision/clause; prepare rationale and documentation
2
HCA approve package and endorse urgent and compelling circumstances.
Send provision/clause and documentation to DASA(P) & Dir., DARC
6b
C-JTSCC posts *interim* provision/clause to website; incorporates into Acquisition Instruction
9b
C-JTSCC posts *final* provision/clause to website; incorporates into Acquisition Instruction
3a
DASA(P) DARC members receive C-JTSCC package for immediate feedback, endorsement or approval as appropriate
4
DASA (P) approves package and signs Determination of Urgency
7
DASA(P); C-JTSCC, SMEs resolve comments and develop final rule text
3b
Dir., DARC receives C-JTSCC package; notifies DPAP/CC and other appropriate SMEs; provides immediate feedback
5
Dir., DPAP Approves Use of provision/clause
6a
Publish in Federal Register for comment
8
Obtain Dir., DPAP approval of Final Rule
9a
Publish final rule in Federal Register

TAB B2