

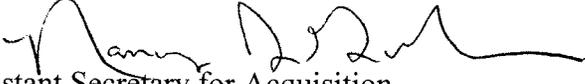


DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Washington, D.C. 20201

December 3, 2009

TO: Heads of Contracting Activity

FROM: Nancy J. Gunderson 
Associate Deputy Assistant Secretary for Acquisition

SUBJECT: Class Deviation from FAR 13.5 – Extension of Test Program for Certain Commercial Items

The “Test Program for Certain Commercial Items” under Federal Acquisition Regulation (FAR) Subpart 13.5 will expire on January 1, 2010. Section 816 of the Fiscal Year 2010 National Defense Authorization Act (NDAA) extends this test program until January 1, 2012. Thus, effective immediately, we hereby grant a Department-wide class deviation from FAR 13.500(d) to extend the test program’s expiration date to January 1, 2012. This class deviation remains in effect until implemented in the FAR.

FAR 1.404, “Class Deviation,” requires HHS and other civilian agencies to consult with the Chair of the Civilian Agency Acquisition Council (CAAC) regarding class deviations. The December 1, 2009 memorandum (attached) from Al Matera, the CAAC Chair, satisfies that consultation requirement. The memorandum states that an expedited FAR case is being processed to revise FAR 13.500(d) to implement Section 816 of the Fiscal Year 2010 NDAA. The final FAR rule will extend the authority to January 1, 2012.

As a result of this class deviation, HHS contracting officers may continue issuing solicitations and awarding contracts under FAR Subpart 13.5, pending issuance of the FAR rule that will change the test program’s expiration date from January 1, 2010 to January 1, 2012.

If you have any questions on this class deviation, please contact Cheryl Howe of my staff. Cheryl may be reached on (202) 690-5552 or at cheryl.howe@hhs.gov.

Attachment



GSA Office of Governmentwide Policy

CIVILIAN AGENCY ACQUISITION LETTER 2009-04

DEC 01 2009

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM: *Edward J. Matera*
AL MATERA
CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR)
13.5, Test Program for Certain Commercial Items

This memorandum serves as consultation for the extension of the test program discussed in FAR 13.5. The current test program will expire on January 1, 2010.

An expedited FAR case is being processed to change the date of expiration for the program in FAR 13.500(d). This final rule will amend the FAR to revise 13.500(d) to implement Section 816 of the National Defense Authorization Act of Fiscal Year 2010 (NDAA FY 2010). Section 816 of the NDAA FY 2010 strikes out "2010" in subsection (e) as amended by Section 822 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110—181) and inserts "2012." Subpart 13.5 authorizes as a test program, the use of simplified procedures for the acquisition of certain commercial items in amounts greater than the simplified acquisition threshold, but not exceeding \$5.5 million, including options, if the contracting officer can reasonably expect that offers will include commercial items. Subpart 13.500(d) authorizes the contracting officer to issue solicitations under this Subpart until January 1, 2010. The final rule will extend this authority to January 1, 2012.

Pending issuance of a final rule effecting that change, it is recommended that civilian agencies authorize a class deviation in accordance with FAR 1.404 to extend the program.