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

JUN 21 2004

DAR Tracking Number:
2004-00003

ACQ FYI 04-020

MEMORANDUM FOR DISTRIBUTION

Subj: CLASS DEVIATION-EXEMPTION FROM LIMITATIONS ON PROCUREMENT OF FOREIGN INFORMATION TECHNOLOGY THAT IS A COMMERCIAL ITEM

Encl: (1) DPAP memo dtd May 18, 2004

Enclosure (1) is provided for your immediate implementation and action, as appropriate. The Director of Defense Procurement and Acquisition Policy has authorized a class deviation from the Defense Federal Acquisition Regulation Supplement (DFARS) requirements to apply the Buy American Act or Balance of Payments Program to the acquisition of information technology that is a commercial item. The deviation authorizes contracting officers to not use the DFARS provisions and clauses, 252.225-7000, 252.225-7001, 252.225-7035, and 252.225-7036 when using fiscal year 2004 funds to acquire information technology that is a commercial item.

This class deviation is effective immediately, and remains in effect until incorporated in the DFARS or until otherwise rescinded.

Please forward the enclosed memorandum to appropriate contracting personnel.

M. F. Haggard
Chief of Staff/Policy
for DASN (ACQ MGMT)

Distribution:
See next page

Subj: CLASS DEVIATION-EXEMPTION FROM LIMITATIONS ON PROCUREMENT OF FOREIGN INFORMATION TECHNOLOGY THAT IS A COMMERCIAL ITEM

DISTRIBUTION:
NAVAIRSYSCOM (2.0)
NAVFACENGCOM (ACQ 02)
NAVSEASYSCOM (02)
NAVSUPSYSCOM (02)
SPAWARSYSCOM (02)
MARCORSYSCOM (CT)
NAVICP (02)
ONR (02)
CMC (LB)
MSC (N10)
SSP (SPN)

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MAY 18 2004

DPAP(DAR)

In reply refer to
DAR Tracking Number: 2004-O0003

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY ASSISTANT SECRETARY OF THE ARMY,
(POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY AND
SUPPLY DIRECTORATE (DLA)

SUBJECT: Class Deviation–Exemption from Limitations on Procurement of Foreign Information Technology that is a Commercial Item

When using fiscal year 2004 funds to acquire information technology that is a commercial item, do not use any of the following Defense Federal Acquisition Regulation Supplement (DFARS) provisions and clauses as prescribed at DFARS 225.1101(1), (2), (9), and (10) or the associated FAR clauses which they otherwise replace:

- 252.225-7000, Buy American Act—Balance of Payments Program Certificate.
- 252.225-7001, Buy American Act and Balance of Payments Program.
- 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.
- 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

The Buy American Act does not apply to these acquisitions of foreign information technology because Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199) provides exemption (Atch 1). "Information technology" is defined at 40 U.S.C. 11101 (Atch 2).

ENCLOSURE(1)

When applicable, continue to use the Trade Agreements provision and clause at 252.225-7020 and 252.225-7021, as prescribed at 225.1101(5) and (6).

This class deviation is effective upon signature, and remains in effect until incorporated in the DFARS or until otherwise rescinded.

Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated

cc:
DSMC, Ft. Belvoir

SUBTITLE III—INFORMATION TECHNOLOGY MANAGEMENT [5]

CHAPTER	Sec.
111. GENERAL	11101
113. RESPONSIBILITY FOR ACQUISITIONS OF INFORMATION TECHNOLOGY	11301
115. INFORMATION TECHNOLOGY ACQUISITION PILOT PROGRAM	11501
117. ADDITIONAL INFORMATION RESOURCES MANAGEMENT MATTERS	11701

CHAPTER 111—GENERAL

Sec.
11101. Definitions.
11102. Sense of Congress.
11103. Applicability to national security systems.

§ 11101. Definitions

In this subtitle, the following definitions apply:

(1) COMMERCIAL ITEM.—The term "commercial item" has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(2) EXECUTIVE AGENCY.—The term "executive agency" has the meaning given that term in section 4 of the Act (41 U.S.C. 403).

(3) INFORMATION RESOURCES.—The term "information resources" has the meaning given that term in section 3502 of title 44.

(4) INFORMATION RESOURCES MANAGEMENT.—The term "information resources management" has the meaning given that term in section 3502 of title 44.

(5) INFORMATION SYSTEM.—The term "information system" has the meaning given that term in section 3502 of title 44.

(6) INFORMATION TECHNOLOGY.—The term "information technology"—

(A) with respect to an executive agency means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) of that equipment; or

[5] Subtitle III was contained in division E of the Clinger-Cohen Act of 1996 (P.L. 104-106) before being revised, codified, and reenacted without substantive change as such subtitle by Public Law 107-217.

(ii) of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(B) includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources; but

(C) does not include any equipment acquired by a federal contractor incidental to a federal contract.

§ 11102. Sense of Congress

It is the sense of Congress that, during the five-year period beginning with 1996, executive agencies should achieve each year through improvements in information resources management by the agency—

(1) at least a five percent decrease in the cost (in constant fiscal year 1996 dollars) incurred by the agency in operating and maintaining information technology; and

(2) a five percent increase in the efficiency of the agency operations.

§ 11103. Applicability to national security systems

(a) DEFINITION.—

(1) NATIONAL SECURITY SYSTEM.—In this section, the term "national security system" means a telecommunications or information system operated by the Federal Government, the function, operation, or use of which—

(A) involves intelligence activities;

(B) involves cryptologic activities related to national security;

(C) involves command and control of military forces;

(D) involves equipment that is an integral part of a weapon or weapons system; or

(E) subject to paragraph (2), is critical to the direct fulfillment of military or intelligence missions.

(2) LIMITATION.—Paragraph (1)(E) does not include a system to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

(b) IN GENERAL.—Except as provided in subsection (c), chapter 113 of this title does not apply to national security systems.

(c) EXCEPTIONS.—

(1) IN GENERAL.—Sections 11313, 11315, and 11316 of this title apply to national security systems.

(2) CAPITAL PLANNING AND INVESTMENT CONTROL.—The heads of executive agencies shall apply sections 11302 and 11312 of this title to national security systems to the extent practicable.

(3) APPLICABILITY OF PERFORMANCE-BASED AND RESULTS-BASED MANAGEMENT TO NATIONAL SECURITY SYSTEMS.—

(A) IN GENERAL.—Subject to subparagraph (B), the heads of executive agencies shall apply section 11303 of this title to national security systems to the extent practicable.