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NAVAL FACILITIES ENGINEERING COMMAND
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IN REPLY REFER TO
ACQ 021
27 Sep 99

MEMORANDUM FOR ACQUISITION PERSONNEL

Subj: CLASS DEVIATION—USE AND CHARGES CLAUSE (99-39)

Ref: (a) NAVFAC Policy Memorandum 98-60 of 12 Nov 98

Encl: (1) OASN (RD&A) ABM memo of 7 Sep 99

1. Enclosure (1) is furnished for your information and action, as appropriate.
2. This class deviation supersedes the class deviation provided by reference (a) and is effective until the FAR is revised.

A handwritten signature in black ink, appearing to read "M. F. Howard".

MICHAEL F. HOWARD
Director, Strategic Management/
Community Management Section

DEPARTMENT OF THE NAVY
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DAR Tracking Number:
99-00011
7 September 1999

MEMORANDUM FOR DISTRIBUTION

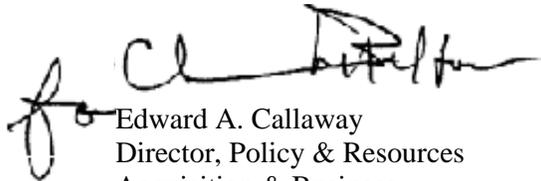
Subj: CLASS DEVIATION--USE AND CHARGES CLAUSE

Encl: (1)  [DP\(DAR\) memo dtd 30 August 1999](#)

Ref: (a) OASN (RD&A) ABM memo dtd 13 Oct 1998

Enclosure (1) is forwarded for your information and immediate implementation, as appropriate. It supersedes the class deviation forwarded by enclosure (2) of reference (a) and provides notification that the subject class deviation is effective immediately.

This class deviation is effective until the FAR is revised.



Edward A. Callaway
Director, Policy & Resources
Acquisition & Business
Management

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ACQUISITION AND
TECHNOLOGY
DP (DAR)

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

August 30, 1999

In reply refer to
DAR Tracking Number: 99-00011

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN (RD&A) / ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
EXECUTIVE DIRECTOR FOR PROCUREMENT MANAGEMENT (DLSC/DLA)

SUBJECT: Class Deviation--Use and Charges Clause

This supersedes the class deviation issued on September 25, 1998, under DAR Tracking Number 98-00010, Subject: Class Deviation--Use and Charges Clause.

I authorize all Department of Defense (DoD) contracting activities to use the attached clause and its related guidance and prescriptive language in lieu of the clause at FAR 52.245-9 and its guidance and prescriptive language at 45.202-1, 45.205(c), 45.302-6(c), and 45.403(a) and (b). Contracting officers may add the clause to existing contracts after the date of this memorandum if adequate consideration is received.

The clause makes the time property is actually used for commercial purposes the rental basis, permits contractors to obtain property appraisals from independent appraisers, permits appraisal-based rentals for all property, and allows contracting officers to consider alternate bases for determining rentals. These rental policy changes are intended to encourage dual use of DoD government property.

This class deviation is effective until the FAR is revised.

Eleanor R. Spector
Director, Defense Procurement

Attachment: P
As stated

cc: DSMC, Ft. Belvoir

ENCLOSURE(1)



SEP 1 1999

PART 45--GOVERNMENT PROPERTY

* * *

45.106 Government property clauses.

* * *

[(h) The contracting officer shall insert the clause at 52.245-9, Use and Charges (Deviation) in (i) fixed-price or labor-hour solicitations and contracts under which the Government will furnish property for performance of the contract; (ii) amendments that furnish government property under fixed-price or labor-hour contracts that do not include the clause at 52.245-9, Use and Charges, or the clause at 52.245-9, Use and Charges (Deviation); or, (iii) all cost-reimbursement and time-and-materials solicitations and contracts.]

* * *

45.202 Evaluation procedures.

45.202-1 Rental equivalents.

If a rental equivalent evaluation factor is used, it shall be equal to the rent allocable to the proposed contract that would otherwise have been charged for the property, as computed in accordance with the clause at 52.245-9, Use and Charges- (§[s]ee 45.205(b) ~~for solicitation requirements.~~) [or 52.245-9, Use and Charges (Deviation), whichever is in the contract.]

* * *

45.205 Solicitation requirements.

* * *

(c) Solicitations shall provide that using Government production and research property (other than as described and permitted in the solicitation (see paragraph (b) above)) will not be authorized under the contract unless such use is approved in writing by the contracting officer cognizant of the property, and either rent calculated in accordance with ~~the clause at~~ 52.249-9, Use and Charges [(Deviation)], is charged, or the contract price is reduced by an equivalent amount. (See 45.203 for postaward requests for special tooling and special test equipment and 45.204(c) for solicitation requirements for special tooling and special test equipment with residual value.)

* * *

45.302-6 Required Government property clauses for facilities contracts.

* * *

(c) The contracting officer shall insert the clause at 52.245-9, Use and Charges [(Deviation)], in solicitations and contracts ~~(i)~~ when a consolidated facilities contract or a facilities use contract ~~(see 45.301), or (ii) a fixed-price contract is contemplated. , and Government production and research property is provided other than on a rent-free basis.~~

* * *

45.403 Rental--Use and Charges clause.

(a) The contracting officer shall charge contractors rent for using Government production and research property, except as prescribed in 45.404 and 45.405. Rent shall be computed in accordance with the clause at 52.245-9, Use and Charges, [or in accordance with the procedures of the clause at 52.245-9, Use and Charges (Deviation), whichever is in the contract]. ~~If the agency head or designee determines it to be in the Government's interest,~~ Under the clause at 52.245-9, Use and Charges, rent for classes of production and research property other than plant equipment identified in item (ii) of Table I of the clause at 52.245-9, Use and Charges, may be charged on the basis of use rather than the rental period, or on some other equitable basis [if the agency head or designee determines it to be in the Government's interest]. In such cases, the clause at 52.245-9, Use and Charges [(Deviation)] ~~, shall be appropriately modified [should be used].~~

(b) The contracting officer cognizant of the Government production and research property shall ensure the collection of any rent due the Government from the contractor.

* * *

45.407 Non-Government use of plant equipment.

* * *

[(d) Charge an appropriate rental (see 45.403) when non-Governmental use is authorized.]

* * *

[52.245-9 Use and Charges (Deviation).

Use the following clause when government property and real property is to be used for commercial purposes:

USE AND CHARGES (APR 1984) (DEVIATION)

(a) Definitions.

As used in this clause--

Acquisition cost means the acquisition cost recorded in the Contractor's property control system or, in the absence of such record, the value attributed by the Government to a government property item for purposes of determining a reasonable rental charge.

Government property means property owned or leased by the Government.

Real property means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

Rental period means the calendar period during which government property is made available for commercial purposes.

Rental time means the number of hours, to the nearest whole hour, rented property is actually used for commercial purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

(b) General.

(1) Rental requests must be submitted to the administrative Contracting Officer, identify the property for which rental is requested, propose a rental period, and calculate an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (c) of this clause.

(2) The Contractor shall not use government property for commercial purposes, including Independent Research and Development, until a rental charge for real property, or

estimated rental charge for other property, is agreed upon. Rented property shall be used only on a noninterference basis.

(c) Rental charge.

(1) Real property and associated fixtures.

(i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for 1 year following the date the appraisal was performed. The Contractor shall submit the appraisal to the administrative Contracting Officer at least 30 days prior to the date the property is needed for commercial use. Except as provided in paragraph (c)(1)(iii) of this clause, the administrative Contracting Officer shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the administrative Contracting Officer has reason to believe the appraisal rental rate is not reasonable, he or she shall promptly notify the Contractor and provide his or her rationale. The parties may agree on an alternate means for computing a reasonable rental charge.

(2) Other government property. The Contractor may elect to calculate the final rental charge using the appraisal method described in paragraph (c)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than 1 hour with portions of hours rounded to the next higher hour--

$$\text{Rental charge} = \frac{(\text{Rental Time in hours}) (.02 \text{ per month}) (\text{Acquisition Cost})}{720 \text{ hours per month}}$$

(3) Alternate methodology. The Contractor may request consideration of an alternate basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(d) Rental payments.

(1) Rent is due at the time and place specified by the Contracting Officer. If a time is not specified, the rental is due 60 days following completion of the rental period. The Contractor shall calculate the rental due, and furnish records or other supporting data in sufficient detail to permit the administrative Contracting Officer to verify the rental time and computation. Unless otherwise permitted by law, payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in this contract or by electronic funds transfer to that office.

(2) Interest will be charged if payment is not made by the specified payment date or, in the absence of a specified date, the 61st day following completion of the rental period. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the Federal Register semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of government property or any other failure to perform this contract according to its terms.

(e) Use revocation. At any time during the rental period, the Government may revoke commercial use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(f) Unauthorized use. The unauthorized use of government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.

(End of clause)