

U.S. ARMY
PROCUREMENT POLICY
ALERT BULLETIN

NO. 96-011

November 15, 1996

The enclosed document is forwarded for your information and any necessary implementation in advance of formal publication of a Federal Acquisition Circular (FAC), or Defense Acquisition Circular (DAC). There will be no Department of the Army-level supplementation or implementing instructions.

ENCLOSURES:

1. **Committee for Purchase From People Who Are Blind or Severely Disabled, Subject: Authorized Distributors of JWOD Program Office Supplies, September 5, 1996.**
2. **DPP Memorandum, Subject: 10 U.S.C. 2403 Weapon System Warranties, September 16, 1996.**
3. **DPP Memorandum, Subject: Extension to Class Deviation -- Special Tooling, October 9, 1996.**
4. **Deputy Secretary of Defense Memorandum, Subject: Consolidation of Contract Requirements, 28 Oct 1996.**

This bulletin is issued by the U.S. Army Contracting Support Agency. Comments or Questions should be referred to the Policy and Procedures Division, SFAE-CSA-PP, 5109 Leesburg Pike, Suite 916, Falls Church, Virginia 22041.

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Bulletin 96-011 consists of 13 pages.

Release Approved By: RCL

**COMMITTEE FOR PURCHASE FROM
PEOPLE WHO ARE BLIND OR SEVERELY HANDICAPPED**

September 5, 1996

MEMORANDUM TO: PROCUREMENT EXECUTIVES

DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION
REFORM

SUBJECT: AUTHORIZED DISTRIBUTORS OF JWOD PROGRAM OFFICE SUPPLIES

The Javits-Wagner-O'Day (JWOD) Program, a required source of supply as stipulated by FAR Part 8.7, generates employment and training opportunities for people who are blind or who have other severe disabilities through Federal purchases of supplies and services. Through recent changes in the Committee's regulations and a new GSA Multiple Award Schedule for next-day desktop delivery of office supplies, there are now several authorized distributors of JWOD (often called NIB/NISH) mandatory source products, including certain commercial vendors. These changes provide your small purchasing specialists and Governmentwide IMPAC Purchase Card holders with several convenient and economical choices for ordering office supplies.

GSA's Federal Supply Service remains the JWOD Program's primary distributor of office supplies, as well as many other items such as cleaning products, flashlights, etc. There are currently three basic ways to order JWOD and other items distributed by GSA, providing access to the entire JWOD product line and allowing payment by IMPAC Card or interfund billing.

- GSA Stock Program (wholesale)
- GSA Customer Supply Centers (retail)
- GSA *Advantage!* On-Line Shopping Service

If your agency would like more information about the above GSA ordering methods, contact your local GSA Customer Service Director, or call the GSA National Help Line at (800) 488-3111.

Under GSA Schedule 75 III A, Federal customers can now receive next-day desktop delivery of office supplies and be assured of meeting all their JWOD Program requirements. Five commercial vendors currently have contracts to provide this service nationwide, and have been authorized by the Committee as JWOD product distributors. The vendors have agreed to exclude from Federal sales any products which are essentially the same as JWOD mandatory source items, which will assist Government officials in complying with the JWOD Act.

An Independent Agency of the United States Government Established by the Javits-Wagner-O'Day Act.

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For more information about next-day desktop delivery, you may contact the Schedule 75 III A vendors directly. Enclosed is a chart showing each vendor's status with respect to having catalogs printed which include JWOD supplies and taking customer orders for such items.

- Boise Cascade Office Products (888) 505-FEDS (3337)
- BT Office Products International (800) 759-4466 Ext. 8332
- Corporate Express (800) 826-3421
- Office Depot (800) 890-4914
- Staples National Advantage (800) 538-2728

The Committee believes that our partnership with GSA and the above vendors will reward Federal customers with a wide variety of products to be purchased quickly, conveniently and at a great value. Like other Federal agencies, we are continually implementing reforms to better serve our customer.

Please provide the information in this letter to your personnel with purchasing authority. If they have any questions about ordering JWOD Products (including SKILCRAFT items) through any method, or if you would like more information on the Program and our product line in general, they may contact Kimberly Putnam or Robert Hartt of the Committee staff at (703) 603-7740.

September 5, 1996

Status of Schedule 75 III A Vendors

| Vendor | Authorized JWOD Distributor | Prices or Catalog Printed | Accepting Federal Orders for 24-hour Delivery |
|----------------------------------|-----------------------------|---------------------------------|---|
| Boise Cascade Office Products | Yes | Yes | Yes |
| BT Office Products International | Yes | Will print soon | Estimated on or before Nov. 1, 1996 |
| Corporate Express | Yes | Will print soon | Estimated on or before Nov. 1, 1996 |
| Office Depot | Yes | Catalog currently being printed | Yes |
| Staples National Advantage | Yes | Yes | Yes |



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000



September 16, 1996

DP/DSPI

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

DIRECTOR, PROCUREMENT POLICY, ASA (RD&A)/SARD-PP

DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

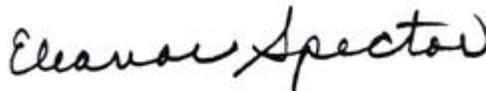
Subject: 10 U.S.C. 2403 Weapon System Warranties

Recently the GAO completed a review of weapon system warranties required by 10 U.S.C. 2403 (GAO/NSIAD-96-88). The GAO recommended to Congress that this law should be repealed. The GAO also made some recommendations to the Department which identify actions needed to ensure we only obtain cost-effective warranties.

Warranties should not be obtained if they are not cost-effective or are inconsistent with the national defense. It is imperative that a cost-benefit analysis be accomplished to determine the cost-effectiveness of the warranty. DFARS 246.770-2 and 246.770-7 provide guidance on cost-benefit analyses. The cost-benefit analysis should consider government administrative costs and realistically reflect the likelihood of warranty claims. It should also consider the present warranty costs versus future expected benefits.

In-process and post-award assessments provide information needed to determine the overall effectiveness of a warranty. These assessments sometimes have not been accomplished and, when accomplished, have not always been considered in follow-on cost benefit analyses. It is important that the Department use these tools and consider the effectiveness of prior contract warranties in follow-on cost-benefit analyses.

Statute stipulates that weapon system warranty waivers must be approved at a level no lower than the Assistant Secretary of Defense or the Military Departments and requires Congressional notification. The GAO recognized these statutory requirements discourage pursuit of warranty waivers, but also provided one example of a very cumbersome internal waiver approval process. Please review your waiver approval process to ensure it is efficient.



Eleanor R. Spector
Director, Defense Procurement

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000



October 9, 1996

DP(DAR)

In reply refer to
DAR Tracking Number: 96-00009

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

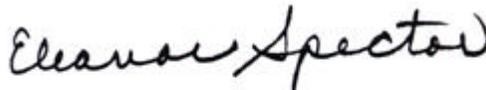
DIRECTOR, PROCUREMENT POLICY, ASA (RD&A)/SARD-PP

DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Extension to Class Deviation -- Special Tooling

I extend the authority for all military departments and defense agencies to use the April 1984 edition of the Special Tooling clause and its related prescriptive language (attached) in lieu of the clause at 52.245-17 and its prescriptive language at 45.306-5. I also waive that portion of the Government Property (Fixed-Price Contracts) clause at 52.245-2 that states that special tooling is subject to title provisions in the Special Tooling clause. This waiver is necessary because the 1984 edition of the Special Tooling clause does not contain title provisions.

I am extending the class deviation for a one-year period ending October 16, 1997, or until the FAR is revised, whichever event occurs first.



Eleanor R. Spector
Director, Defense Procurement

Attachments

45.305 Additional clauses for facilities contracts.

(a) (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.245-17, Special Tooling, in solicitations and contracts when: a fixed-price contract is contemplated, the

contracting officer decides (see 45.306-2 (d)) to acquire rights to the contractor's special tooling, and it is not practical to identify the special tooling required.

(2) If the Government does not intend to acquire special tooling from subcontractors and an appropriate price reduction is obtained, the contracting officer shall use the clause with its Alternate I.

52.245-17 Special Tooling.

As prescribed in 45.305 (a) (1), when contracting by negotiation, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated, the contracting officer decides to acquire rights to the contractor's special tooling, and it is not practical to identify the special tooling required:

SPECIAL TOOLING (APR 1984) (DEVIATION)

(A) *Definition.* "Special tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, that are of such a specialized nature that without substantial modification or alteration their use is limited to the development of production of particular supplies or parts thereof or performing particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items. Special tooling, for the purpose of this clause, does not include any item acquired by the Contractor before the effective date of this contract, or replacement of such items, whether or not altered or adapted for use in performing this contract, or items specifically excluded by the Schedule of this contract.

(b) *Use of special tooling.* The Contractor agrees to use the special tooling only in performing this contract or as otherwise approved by the Contracting Officer.

(c) *Initial list of special tooling.* If the Contracting Officer so requests, the Contractor shall furnish the Government an initial list of all special tooling acquired or manufactured by the Contractor for performing this contract (but see paragraph (d) for tooling that has become obsolete). The list shall specify the nomenclature, tool number, related product part number (or service performed), and unit or group cost of the special tooling. The list shall be furnished within 60 days after delivery of the first production end item under this contract unless a later date is prescribed.

(d) *Changes in design.* Changes in the design or specifications of the end items being produced under this contract may affect the interchangeability of end item parts. In such an event, unless otherwise agreed to by the Contracting Officer, the Contractor shall notify the Contracting Officer of any part not interchangeable with a new or superseding part. Pending disposition instructions, such usable tooling shall be retained and maintained by the Contractor.

(e) *Contractor's offer to retain special tooling.* The Contractor may indicate a desire to retain certain items of special tooling at the time it furnishes a list or notification pursuant to paragraphs (c), (d), or (h) of this clause. The Contractor shall furnish a written offer designating those items that it wishes to retain by specifically listing the items or by listing the particular products, parts, or services for which the items were used or designed. The offer shall be made on one of the following bases:

(1) An amount shall be offered for retention of the items free of any Government interest. This amount

should ordinarily not be less than the current fair value of the items, considering among other things, the value of the items to the Contractor for use in future work.

(2) Retention may be requested for a limited period of time and under terms as may be agreed to by the Government and the Contractor. This temporary retention is subject to final disposition pursuant to paragraph (i) of this clause.

(f) *Property control records.* The Contractor shall maintain adequate property control records of all special tooling in accordance with its normal industrial practice. The records shall be made available for Government inspection at all reasonable times. To the extent practicable, the Contractor shall identify all special tooling subject to this clause with an appropriate stamp, tag, or other mark.

(g) *Maintenance.* The Contractor shall take all reasonable steps necessary to maintain the identity and existing condition of usable items of special tooling from the date such items are no longer needed by the Contractor until final disposition under paragraph (i) of this clause. These maintenance requirements do not apply to those items designated by the Contracting Officer for disposal as scrap or identified as of no further interest to the Government under paragraph (i) (4) of this clause. The Contractor is not required to keep unneeded items of special tooling in place.

(h) *Final list of special tooling.* When all or a substantial part of the work under this contract is completed or terminated, the Contractor shall furnish the Contracting Officer a final list of special tooling with the same information as required for the initial list under paragraph (c) of this clause. The final list shall include all items not previously reported under paragraph (c). The Contracting Officer may provide a written waiver of this requirement or grant an extension. The requirement may be extended until the completion of this contract together with the completion of other contracts and subcontracts authorizing the use of the special tooling under paragraph (b) of this clause. Special tooling that has become obsolete as a result of changes in design or specification need not be reported except as provided for in paragraph (d).

(i) *Disposition instructions.* The Contracting Officer shall provide the Contractor with disposition instructions for special tooling identified in a list or notice submitted under paragraphs (c), (d), or (h) of this clause. The instructions shall be provided within 90 days of receipt of the list or notice, unless the period is extended by mutual agreement. The Contracting Officer may direct disposition by any of the methods listed in subparagraphs (1) through (4) of this paragraph, or a combination of such methods. Any failure of the Contracting Officer to provide specific instructions within the 90 day period shall be construed as direction under subparagraph (i) (3).

(1) The Contracting Officer shall give the Contractor a list specifying the products, parts, or services for which the Government may require special tooling and request the Contractor to transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling that were designed for or used in the production or performance of such products, parts, or services and that were on hand when such production or performance ceased.

(2) The Contracting Officer may accept or reject any offer made by the Contractor under paragraph (e) of this clause to retain items of special tooling or may request further negotiation of the offer. The Contractor agrees to enter into the negotiations in good faith. The net proceeds from the Contracting Officer's acceptance of the Contractor's retention offer shall either be deducted from amounts due the Contractor under this contract or shall be otherwise paid to the Government as directed by the Contracting Officer.

(3) The Contracting Officer may direct the Contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling reported by the Contractor under this clause. The net proceeds of all sales shall either be deducted from amounts due the Contractor under this contract or shall be otherwise paid to the Government as directed by the Contracting Officer. To the extent that the Contractor incurs any costs occasioned by compliance with such directions, for which it is not otherwise compensated, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(4) The Contracting Officer may furnish the Contractor with a statement disclaiming further Government interest or rights in any of the special tooling listed.

(j) *Storage or shipment.* The Contractor shall promptly transfer to the Government title to the special tooling specified by the Contracting Officer and arrange for either the shipment or the storage of such tooling in accordance with the final disposition instructions in subparagraph (i) (1) of this clause. Tooling to be shipped shall be properly packaged, packed, and marked in accordance with the directions of the Contracting Officer. Tooling to be stored shall be stored pursuant to a storage agreement between the Government and the Contractor, and as directed by the Contracting Officer. Tooling shipped or stored shall be accompanied by operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed. To the extent that the Contractor incurs costs for authorized storage or shipment under this paragraph and not otherwise compensated for, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(k) *Subcontract provisions.* In order to perform this contract, the Contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontracts appropriate provisions to obtain Government rights comparable to the rights of the Government under this clause (unless the Contractor and Contracting Officer agree that such rights are not of substantial interest to the Government). The Contractor agrees to exercise such rights for the benefit of the Government as directed by the Contracting Officer.

(End of clause)

Alternate I (Apr 1984). If the Government does not intend to acquire special tooling from subcontractors and an appropriate price reduction is obtained, delete paragraph (k) from the basic clause.



DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON

WASHINGTON, DC 20301-1010

28 OCT 1996



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Consolidation of Contract Requirements

The Department of Defense (DoD) recognizes the critical role small, small disadvantaged, and women-owned small businesses play in DoD's ability to accomplish its mission. Thus, DoD is committed to fostering the use of the small business community in every aspect of its vendor base.

When we plan for the consolidation of several contracts or requirements into a single larger contract, we must consider the impact on small, small disadvantaged, and women-owned small businesses. I would like to emphasize the policy considerations that must be taken into account when contracts or requirements of a kind suitable for performance by small business are proposed for consolidation:

1. Requirements shall be packaged so as not to preclude performance by small, small disadvantaged, and women-owned small business concerns as prime contractors unless the consolidation will result in significant benefits in terms of reduced life cycle costs, improved services, or both. Any such determination shall be supported by market research analysis. The proposed consolidated procurement must be reviewed by the Small Business Administration procurement center representative in accordance with the Federal Acquisition Regulation (FAR) 19.202-1 (e) if it is not

set aside for small business. Any disagreements between the contracting officer and the procurement center representative should be resolved pursuant to FAR 19.505. Savings solely in the Department's cost of awarding or administering contracts is not sufficient basis for consolidation.

2. Solicitations for goods and services that would have previously been set aside for small or small disadvantaged businesses shall be reviewed for set aside under the order of precedence requiring consideration of award under section 8 (a), or set aside under section 15 of the Small Business Act, prior to being included in a consolidated requirement.< BR>
3. Prior to contracting for a new requirement or a follow-on to an existing requirement, particularly for professional and technical services, the contracting officer shall conduct an analysis to determine if consolidation provides significant benefits. Prior to the exercise of an option, the contracting officer shall conduct such an analysis if the analysis was not conducted at the time of initial award. For each circumstance, if the analysis indicated consolidation will not provide significant benefits, the contracting officer shall break out tasks for competition. The awards shall be consistent with the order of precedence in the Defense Federal Acquisition Regulation Supplement (DFARS).
4. If it has been determined that consolidation of tasks will result in significant benefits, small, small disadvantaged, and women-owned small business firms shall be afforded the maximum opportunity to participate as direct awardees (particularly when multiple awards are anticipated) of portions of the proposed consolidated requirement. When establishing subcontract goals for the consolidated contract, the contracting officer shall consider the proportion, type, and level of sophistication of work previously awarded to small, small disadvantaged, and women-owned small business firms. The extent of small, small disadvantaged, and women-owned small business participation in contract performance shall be addressed during source selection, consistent with DFARS 215.605. The contracting officer shall consider using the incentive and award fee provisions in DFARS 219.708 to maximize both the magnitude and level of sophistication of work subcontracted to small, small disadvantaged, and women-owned small businesses.
5. This policy statement supersedes the policy statement signed by the Deputy Secretary of Defense, dated 1 June 1982, subject, "Consolidation and Small Business".