

**TAC 96-01**

## **TRANSPORTATION ACQUISITION CIRCULAR**

**DATE ISSUED: July 31, 1996**

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### **TRANSPORTATION ACQUISITION CIRCULAR (TAC) 96-01 SUMMARY OF ITEMS**

TAC 96-01 is issued under the authority of the Transportation Acquisition Regulation (TAR) and, unless otherwise specified, all material contained in this TAC is effective on the date issued. The TAR is hereby amended as specified below:

**Item I--Editorial corrections to TAR**

The TAR cites at 1.403 and 1.404 are corrected to read "1201.403" and "1201.404". This change specifies chapter 12 as the Department's chapter for acquisition regulations.

*Replacement page: 1201-5.*

**Item II--Change to add coverage pertaining to the Department of Transportation (DOT) training service requirements**

(TAR) 48 CFR 1213 is added to: (1) clarify the applicability of the Standard Form 182 to the DOT policy of acquiring training services found at (TAR) 48 CFR 1237.7000; and (2) prescribe a solicitation provision ((TAR) 48 CFR 1252.237-71, Certification of Data) and contract clause ((TAR) 48 CFR 1252.237-72, Prohibition on Advertising) for use in solicitations and requests for quotations when acquiring DOT training services.

*Replacement pages: TOC, 1213-1.*

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**Item III--Cancellation of TAR Notice 91-09**

TAR Notice (TN) 91-09, Mailing Labels for Expedited Handling of Offers, is cancelled because it was implemented with a slight modification in FAR as Optional Form 17, Offer Label.

*Replacement page: None.*

**Item IV--Releasing proposals outside the Government**

Section 1215.413-2(f) was modified to delete the judgmental word "most" and the word "available" since they are considered unnecessary.

*Replacement pages: 1215-1 & 1215-2.*

**Item V--Change to add the DOT policy and procedures for acquiring DOT training services**

(TAR) 48 CFR 1237 is changed to: (1) add DOT policy (and its applicability) for acquiring training services; (2) require contracting officers to obtain certified information pertaining to company qualifications, background, etc.; and (3) prescribe a solicitation provision and contract clause for use when acquiring DOT training services.

*Replacement pages: TOC, 1237-1*

**Item VI--Change to correct administrative error to TAR clause 1252.217-81, Guarantee**

TAR clause 1252.217-81, paragraph (b) was changed to correct "90" day period to "60" day period to coincide with the "60" day period in paragraph (a) of the clause.

*Replacement pages: 1252-13 & 1252-14.*

**Item VII--Changes to add a solicitation provision and contract clause to implement policy on acquiring DOT training services and to make editorial corrections**

(TAR) 48 CFR 1252.237 is changed to incorporate (TAR) 48 CFR 1252.237-71, Certification of Data, and (TAR) 48 CFR 1252.237-72, Prohibition on Advertising, for the purposes of implementing DOT policy on acquiring DOT training services. Editorial corrections to U.S.C. and TAR citations as published in the Federal Register on January 5, 1996, are also made.

*Replacement pages: TOC; 1252-21 thru 1252-22, TAR Matrix, pages 3 & 4.*

**Item VIII--Changes to the TAR Matrix**

Part 1252, TAR Matrix, located at the end of the part is amended to permit the incorporation of designated TAR clauses by reference and to adhere to the Federal Acquisition Regulation requirement for incorporating clauses by reference to the maximum practical extent.

*Replacement pages: Part 1252, TAR Matrix, 1 thru 4.*

**Item IX--Editorial correction to Part 1253, Subpart 1253.3**

Corrected the title of 1253.303-4220.45 in the Table of Contents to read "Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts."

*Replacement page: TOC*

TAC 96-01 FILING INSTRUCTIONS

Remove Pages

1201-5

Reserved page, Part 1213

TAR NOTE (TN) 91-09,  
Parts 1214 and 1215

1215-1 & 1215-2

TOC, Part 1237  
1237-1

1252-13 & 1252-14

TOC, Part 1252  
1252-21 & 1252-22

Part 1252, TAR Matrix,  
1 thru 4

TOC, Part 1253

Insert Pages

1201-5

TOC, Part 1213  
1213-1

None

1215-1 & 1215-2

TOC, Part 1237  
1237-1

1252-13 & 1252-14

TOC, Part 1252  
1252-21 thru 1252-22

Part 1252, TAR Matrix,  
1 thru 4

TOC, Part 1253

(Original signed by)

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and be selected for their superior expertise and acquisition knowledge. Further coordination (e.g., Offices of the Inspector General and General Counsel) beyond the TAR Council System may be recommended by the TAR Council to the SPE as deemed appropriate.

(b) Operating administration-unique regulations will not be processed through the TAR Council System, but shall be reviewed by operating administration legal counsel and submitted to M-60 for review and approval. (See (TAR) 48 CFR 1252.101 for additional instructions pertaining to provisions and clauses.)

## **SUBPART 1201.470--DEVIATIONS FROM THE FAR AND TAR**

### **1201.403 Individual deviations.**

Individual deviations from the FAR and (TAR) 48 CFR chapter 12 may be granted in writing by the Head of the Contracting Activity within the operating administration.

### **1201.404 Class deviations.**

Class deviations from the FAR and (TAR) 48 CFR chapter 12 may be granted in writing by the Senior Procurement Executive unless (FAR) 48 CFR 1.405(e) is applicable.

## **SUBPART 1201.6--CONTRACTING AUTHORITY AND RESPONSIBILITIES**

### **1201.602-3 Ratification of unauthorized commitments.**

(b) *Policy.* It is the policy of DOT that all procurements are to be made only by Government officials having authority to make such acquisitions. Procurements made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of the employee making an unauthorized commitment. Consideration will be given to initiating disciplinary action against an employee who makes an unauthorized commitment.

### **1201.603-1 General.**

Each DOT operating administration is responsible for appointing its contracting officers.

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## **PART 1213**

### **SIMPLIFIED ACQUISITION PROCEDURES**

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##### **SUBPART 1213.71--DEPARTMENT OF TRANSPORTATION PROCEDURES FOR ACQUIRING TRAINING SERVICES**

1213.7100 Applicability.

1213.7101 Solicitation provision  
and contract clause.

**PART 1213**

**SIMPLIFIED ACQUISITION PROCEDURES**

**SUBPART 1213.71--DEPARTMENT OF TRANSPORTATION PROCEDURES FOR ACQUIRING TRAINING SERVICES**

**1213.7100 Applicability.**

(a) DOT policy at (TAR) 48 CFR 1237.7000 also applies to the Standard Form (SF) 182, Request, Authorization, Agreement and Certification of Training, which may be used to acquire training services; however, the policy does not apply to training services acquired by the Government purchase/credit card. The Government purchase/credit card can only be used to acquire training services valued at \$2,500 or less.

(b) As reflected in (TAR) 48 CFR 1237.7002, this policy does not apply to training attended by DOT employees which is scheduled and conducted by Government sources of supply, educational institutions, or private entities where DOT does not control or sponsor the training. Examples of when the policy does and does not apply include:

(1) When SF 182s are issued for three DOT employees to attend a one week course at a university or other private entity, the policy does not apply. DOT does not control this course because the university or private entity has a contract in place with the training provider and DOT is placing an order under an existing contract; and

(2) When DOT awards a contract to a university or other private entity to provide training for DOT and/or other Government personnel, the policy applies. DOT controls this course; therefore, no soliciting or advertising of private non-Government training while conducting the contracted-for training is permitted.

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## **1213.7101 Solicitation provision and contract clause.**

(a) Contracting officers shall insert the provision at (TAR) 48 CFR 1252.237-71, Certification of Data, in all solicitations and requests for quotations, and the clause at (TAR) 48 CFR 1252.237-72, Prohibition on Advertising, in solicitations, requests for quotations, and all contracts (e.g., purchase orders, SF 182s) for training services when the content and/or presentation of the training is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be incorporated by reference, if the contracting officer determines it contains sufficient descriptive information (i.e., dated material such as resumes, company and/or personnel qualifications) to reliably describe the certified data submitted.

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## PART 1215

### CONTRACTING BY NEGOTIATION

#### SUBPART 1215.1--GENERAL REQUIREMENTS FOR NEGOTIATION

##### 1215.106 Contract clauses.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.215-70, Key Personnel and/or Facilities, in solicitations and contracts when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel and/or facilities.

#### SUBPART 1215.4--SOLICITATION AND RECEIPT OF PROPOSALS AND QUOTATIONS

##### 1215.407 Solicitation provisions.

(i) The provision at (FAR) 48 CFR 52.215-35, Annual Representations and Certifications - Negotiation, shall be included when applicable.

##### 1215.413 Disclosure and use of information before award.

###### 1215.413-1 Alternate I.

The alternate procedures at (FAR) 48 CFR 15.413-2 shall be used in lieu of the alternate procedures prescribed at (FAR) 48 CFR 15.413-1.

###### 1215.413-2 Alternate II.

(e) The notice at (FAR) 48 CFR 15.413-2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. The cite(s) under the first paragraph of the notice shall include, as a minimum, (TAR) 48 CFR 1215.413-2(f) and the cite of any OA implementing procedures.

(f) Proposals may be released outside of the Government if it is necessary to receive competent technical and/or management evaluation as long as the requirements of (FAR) 48 CFR 15.413-2(f) are met.

#### SUBPART 1215.6--SOURCE SELECTION

##### 1215.612 Formal source selection.

DOT's formal source selection procedures are contained in TAM (Transportation Acquisition Manual which is stocked by the Government Printing Office), Chapter 1215, Appendix A.

#### SUBPART 1215.8--PRICE NEGOTIATION

##### 1215.804 Cost or pricing data.

###### 1215.804-2 Requiring certified cost or pricing data.

(a)(5) When certified cost or pricing data are not required (e.g., the action is below the thresholds at (FAR) 48 CFR 15.804-2 or adequate price competition is expected to exist), the contracting officer may ask for partial/limited data when it is necessary for the Government's analysis (e.g., cost realism). The contracting officer shall not require this data to be certified.

(b) If, after receipt of proposals, the contracting officer determines that adequate price competition does not exist, the contracting officer shall obtain, as appropriate (see (FAR) 48 CFR 15.804-2), certified cost or pricing data.

**1215.804-6 Submission of data.**

The contracting officer may require the submission of DOT Form 4220.44, Contract Pricing Summary, when submitting a proposal that requires a SF 1411.

**SUBPART 1215.9--PROFIT**

**1215.970 Payment of profit or fee under contracts.**

Profit or fee shall only be paid on definitized contracts and modifications. Any profit or fee earned during the undefinitized period shall be paid once the contract and/or modification, as applicable, is definitized.

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1237.7001 Certification of data.

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and contact clause.

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## PART 1237

### SERVICE CONTRACTING

#### SUBPART 1237.1--SERVICE CONTRACTS--GENERAL

##### 1237.110 Solicitation provisions and contract clauses.

Contracting officers shall insert the clause at (TAR) 48 CFR 1252.237-70, Qualifications of Employees, in all solicitations and contracts for services which require contract performance at a Government facility.

#### SUBPART 1237.70--Department of Transportation Procedures for Acquiring Training Services

##### 1237.7000 Policy.

When training services are provided under contract to DOT, it is the policy of DOT that all prospective contractors:

(a) Certify that the data provided concerning company qualifications, background statements, etc., is current, accurate, and complete; and

(b) Agree to not solicit or advertise private, non-Government training while conducting a training course.

##### 1237.7001 Certification of data.

Towards fulfilling DOT's policy at (TAR) 48 CFR 1237.7000(a), contracting officers shall request information from prospective contractors for certification purposes. The type of information requested is dependent upon the criticality of the service and/or any unique or essential qualification requirements.

##### 1237.7002 Applicability.

The policy at (TAR) 48 CFR 1237.7000 applies to all DOT contracts as defined in FAR 2.101 for training services when DOT controls the content and/or presentation of the course. This policy does not apply to courses attended by DOT employees which are offered and sponsored by Government sources of supply, educational institutions, or private entities where DOT does not control the course content or presentation. (See (TAR) 48 CFR 1213.7100 for examples.)

##### 1237.7003 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at (TAR) 48 CFR 1252.237-71, Certification of Data, in solicitations and the clause at (TAR) 48 CFR 1252.237-72, Prohibition on Advertising, in solicitations and contracts for training services when the content and/or presentation of the course is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be incorporated by reference, if the contracting officer determines it contains sufficient descriptive information (i.e., dated material such as resumes, company and/or personnel qualifications) to reliably describe the certified data submitted.

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reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall--

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

(End of clause)

#### **1252.217-77 Title.**

As prescribed at 1217.7000(a) and (b), insert the following clause:

#### **TITLE (OCT 1994)**

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during

performance of the contract, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipments.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

#### **1252.217-78 Discharge of liens.**

As prescribed at 1217.7000(a) and (b), insert the following clause:

#### **DISCHARGE OF LIENS (OCT 1994)**

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or materials furnished under this contract.

(b) If any such lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

#### **1252.217-79 Delays.**

As prescribed at 1217.7000(a) and (b), insert the following clause:

#### **DELAYS (OCT 1994)**

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions

of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

**1252.217-80 Department of Labor Safety and Health Regulations for Ship Repairing.**

As prescribed at 1217.7000(a) and (b), insert the following clause:

**DEPARTMENT OF LABOR SAFETY AND HEALTH REGULATIONS FOR SHIP REPAIR (OCT 1994)**

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with--

- (a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*);
- (b) The Safety and Health Regulations for Ship Repairing (29 CAR part 1915); or
- (c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

**1252.217-81 Guarantee.**

As prescribed at 1217.7000(c), insert the following clause:

**GUARANTEE (JAN 1996)**

(a) In the event any work performed or materials furnished by the contractor prove defective or deficient within 60 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

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interest or inconsistent with the best interest of national security. The Contractor shall fill out, and cause each of its employees on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor's employees shall be fingerprinted. Each employee of the Contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form I-151, or who presents other evidence from the Immigration and Naturalization Service that employment will not affect his/her immigration status.

## 1252.237-71 Certification of data.

As prescribed in (TAR) 48 CFR 1213.7101 and 1237.7003, insert the following provision:

### **CERTIFICATION OF DATA (JAN 1996)**

(a) The offeror represents and certifies that to the best of its knowledge and belief, the information and/or data (e.g., company profile; qualifications; background statements; brochures) submitted with its offer is current, accurate, and complete as of the date of its offer.

(b) The offeror understands that any inaccurate data provided to the Department of Transportation may subject the offeror, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) enforcement action for false claims or statements pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801-3812 and 49 CFR Part 31 and/or; (3) termination for default under any contract resulting from its offer and/or; (4) debarment or suspension.

(c) The offeror agrees to obtain a similar certification from its subcontractors.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Typed Name and Title:  
\_\_\_\_\_

Company Name: \_\_\_\_\_  
\_\_\_\_\_

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(End of provision)

## 1252.237-72 Prohibition on advertising .

As prescribed in (TAR) 48 CFR 1213.7101 and 1237.7003, insert the following clause:

### **PROHIBITION ON ADVERTISING (JAN 1996)**

The contractor or its representatives (including training instructors) shall not advertise or solicit business from attendees for private, non-Government training during contracted-for training sessions. This prohibition extends to unsolicited oral comments, distribution or sales of written materials, and/or sales of promotional videos or audio tapes.

The contractor agrees to insert this clause in its subcontracts.

(End of clause)

**1252.242-70 Dissemination of information - educational institutions.**

As prescribed in (TAR) 48 CFR 1242.203-70(a), insert the following clause:

**DISSEMINATION OF INFORMATION - EDUCATIONAL INSTITUTIONS (OCT 1994)**

(a) The Department of Transportation (DOT) desires widespread dissemination of the results of funded transportation research. The Contractor, therefore, may publish (subject to the provisions of the "Data Rights" and "Patent Rights" clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause must contain acknowledgment of DOT's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DOT. Articles for publication or papers to be presented to professional societies do not require the authorization of the

Contracting Officer prior to release. However, two copies of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Press releases concerning the results or conclusions from the research under this contract shall not be made or otherwise distributed to the public without prior written approval of the Contracting Officer.

(d) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

**1252.242-71 Contractor testimony.**

As prescribed in (TAR) 48 CFR 1242.203-70(b), insert the following clause:

**CONTRACTOR TESTIMONY (OCT 1994)**

All requests for the testimony of the Contractor or its employees, and any intention to testify as an expert witness relating to: (a) any work required by, and/or performed under, this contract; or (b) any information provided by any party to assist the Contractor in the performance of this contract, shall be immediately reported to the Contracting Officer. Neither the Contractor nor its employees shall testify on a matter related to work performed or information provided under this contract, either voluntarily or pursuant to a request, in any judicial or administrative proceeding

unless approved by the Contracting Officer or required by a judge in a final court order.

prior to giving the contractor the notice to proceed. The designation letter will set forth the

(End of clause)

**1252.242-72 Dissemination of contract information.**

As prescribed in (TAR) 48 CFR 1242.203-70(c), insert the following clause:

**DISSEMINATION OF CONTRACT INFORMATION (OCT 1994)**

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.

(End of clause)

**1252.242-73 Contracting officer's technical representative.**

As prescribed in (TAR) 48 CFR 1242.7000, insert the following clause:

**CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (OCT 1994)**

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days

authorities and limitations of the COTR under the contract.

(b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents (i.e., contracts, contract modifications, etc.) that require the signature of the Contracting Officer.

(End of clause)

**1252.245-70 Government property reports.**

As prescribed in (TAR) 48 CFR 1245.505-70, insert the following clause:

**GOVERNMENT PROPERTY REPORTS  
(OCT 1994)**

(a) The Contractor shall prepare an annual report of Government property in its possession and the possession of its subcontractors.

(b) The report shall be submitted to the Contracting Officer not later than September 15 of each calendar year on Form DOT F 4220.43,

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