



U.S. Department of Housing and Urban Development  
Washington, D.C. 20410

CHIEF PROCUREMENT OFFICER

**Class Deviation from the Federal Acquisition  
Regulation (FAR) to Implement an Act to Enhance Whistleblower Protection for  
Contractor Employees.**

On July 5, 2017, the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2017-02. This letter implements 41 U.S.C. 4712 (as amended by Public Law 114-261) to make permanent the 4-year pilot program and clarifies the use of certain Whistleblower Protection clauses. The CAAC letter indicated that its issuance constitutes consultation with the Chair of the CAAC pursuant to FAR Section 1.404(a)(1), allowing agencies to authorize a class deviation.

The current coverage in the FAR states that when the 4-year pilot (41 U.S.C. 4712) expires, the previous whistleblower coverage is back in effect. However, CAAC letter 2017-02 was issued to direct agencies to continue to use the pilot program coverage until the FAR is revised under FAR case 2017-005, Whistleblower Protection for Contractor Employees to make the program permanent.

FAR case 2017-005, Whistleblower Protection for Contractor Employees is not final and the CAAC letter was issued to provide guidance until that revision occurs. HUD is hereby authorizing a class deviation on this matter.

This deviation is issued in accordance with FAR 1.404.

Contracting Officers shall:

- For commercial contracts, because previous guidance was misinterpreted by many agencies, remove the whistleblower protections of 41 U.S.C. 4712 listed in paragraph (r) of deviated clause 52.212-4 and list clause 52.203-17 in deviated clause 52.212-5.
- For other than commercial items, insert clause 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts that exceed the simplified acquisition threshold.
- Revise existing solicitations and contracts for noncommercial items awarded since January 2, 2017 to include clause 52.203-17, if the contract is above the simplified acquisition threshold and has a year or more of performance left.

FAR 3.900 in the attached deviation has been changed to show that paragraph (a) is not in effect, and that paragraph (b) is in effect.

A copy of this deviation will be provided to the FAR Secretariat, General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2<sup>nd</sup> Floor, Washington, DC 20405, Attn. Ms. Joanne Sosa at [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

This deviation shall remain in effect from the date of issuance until rescinded or superseded by a published revision to the FAR. The point of contact is Procurement Analyst Patrick McQuoid at 215-430-6718 or [Pat.McQuoid@hud.gov](mailto:Pat.McQuoid@hud.gov).

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Keith W. Surber  
Chief Procurement Officer

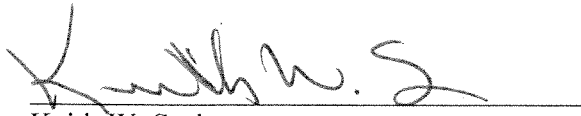
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Date

Attachment

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Keith W. Surber  
Chief Procurement Officer

7/12/17  
Date

Attachment

## DEVIATION

### **PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

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#### **Subpart 3.9—Whistleblower Protections for Contractor Employees**

##### **3.900 Scope of subpart.**

This subpart implements various statutory whistleblower programs. This subpart does not implement 10 U.S.C. 2409, which is applicable only to DoD, NASA, and the Coast Guard.

(a) 41 U.S.C. 4705 (in effect before July 1, 2013). Sections 3.901 through 3.906 of this subpart implemented 41 U.S.C. 4705, applicable to civilian agencies other than NASA and the Coast Guard.

(b) 41 U.S.C. 4712 (in effect on and after July 1, 2013). Section 3.908 of this subpart implements the pilot program, applicable to civilian agencies other than NASA and the Coast Guard, except as provided in paragraph (d) of this section.

(c) Section 743 of Division E, Title VII of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), implemented in 3.909, applicable to all agencies.

(d) Contracts funded by the American Recovery and Reinvestment Act. Section 3.907 of this subpart implements section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 1115), and applies to all contracts funded in whole or in part by that Act.

##### **3.908-9 Contract clause.**

The contracting officer shall insert the clause at 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts that exceed the simplified acquisition threshold, for both commercial items and for other than commercial items.

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## PART 52 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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### **52.212-4 Contract Terms and Conditions-Commercial Items (Deviation 2017-02).**

As prescribed in 12.301(b)(3), insert the following clause; CONTRACT TERMS AND CONDITIONS-COMMERCIAL ITEMS (DEVIATION 2017-02) (JUNE 2017)

(a) \* \* \* \* \*

\* \* \* \* \*

*(r) Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

### **52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Deviation 2017-02).**

As prescribed in 12.301(b)(4), insert the following clause: CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS-COMMERCIAL ITEMS (DEVIATION 2017-02) (JUNE 2017)

\* \* \* \* \*

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

\_\_\_\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

\_\_\_\_ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509)).

\_\_\_\_ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

\_\_\_\_ (4) 52.203-17, Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (April 2014) (41 U.S.C. 4712) relating to whistleblower protections).

**52.301 Solicitation Provisions and Contract Clauses**

**(Matrix)**

PROVISION OR CLAUSE	PRESCRIBED IN		CI
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52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	3.809	(columns not shown)	A
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