



**U.S. Department
of Transportation**

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

March 18, 2024

MEMORANDUM TO: Department of Transportation (DOT) Chiefs of the Contracting Offices (COCOs)

FROM: Willie H. Smith HERBERT SMITH Digitally signed by WILLIE HERBERT SMITH
Date: 2024.03.20
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Senior Procurement Executive

SUBJECT: Transportation Acquisition Regulation (TAR) Class Deviation (CD) No. 2024-01 – TAR Part 1242, TAR Subpart 1242.3, 1242.302, 1242.302-70, 1242.302-71, and TAR Part 1252, 1252.242-75, 1252.242-76, 1252.242-77, and 1252.242-78

- I. Purpose:** This CD is issued in accordance with TAR 1201.404 to revise the following TAR subparts/sections.
- a. TAR Part 1242 – Contract Administration and Audit Services, to include:
 - (1) Subpart 1242.3 – Contract Administration Office Functions
 - i. Section 1242.302, Contract administration functions.
 - ii. Section 1242.302-70, Contracting for audit services.
 - iii. Section 1242.302-71, Solicitation provisions and contract clauses.
 - b. TAR Part 1252 – Solicitation Provisions and Contract Clauses, to include:
 - (1) Subpart 1252.2 – Text of Provisions and Clauses
 - i. 1252.242-75, Notice of Special Standards of Responsibility
 - ii. 1252.242-76, Compliance with Audit Standards.
 - iii. 1252.242-77, Preaward Transparency Requirements for Firms Offering to Support Department of Transportation Audits—Representation and Disclosure
 - iv. 1252.242-78, Postaward Transparency Requirements for Firms Offering to Support Department of Transportation Audits—Representation and Disclosure

This CD provides policy to implement the Joint Explanatory Statement included in the FY2023 Appropriations Act pertaining to accounting disclosures in DOT contracts.

II. Effective Date: Immediately.

III. Background: Pub. L. 117-828, FY23 Appropriations Act, included a Joint Explanatory Statement (JES) specifying language directed to Department of Transportation about accounting disclosures for public accounting firms contracted to support DOT audits. This class deviation is required to implement, in advance of a proposed rule, important policy regarding contracting for audit services.

IV. Required Actions: For all contract actions, including awards, renewals, and amendments, contracting officers shall require any accounting firm providing financial auditing or audit remediation services, to provide a statement setting forth the details of any disciplinary proceedings occurring within one year of the projected performance period related to noncompliance with rules or laws applying to audit services. COs must use the deviated language in the Attachment A of this CD when incorporating the following provisions/clauses into new solicitations and contracts issued or awarded after the effective date of this CD:

- TAR 1252.242-75 – Notice of Special Standards of Responsibility.
- TAR 1252.242-76 – Compliance with Audit Standards.
- TAR 1252.242-77 – Preaward Transparency Requirements for Firms Offering to Support Department of Transportation Audits—Representation and Disclosure.
- TAR 1252.242-78 – Postaward Transparency Requirements for Firms that Support Department of Transportation Audits.

V. Applicability: This CD applies to the Office of the Secretary of Transportation (OST), the Office of the Inspector General (OIG), and all DOT Operating Administrations (OAs), excluding the Federal Aviation Administration (FAA), when contracting for audit services support from commercial firms.

VI. Expiration Date: This CD remains in effect until the requirements are incorporated into the TAR, or is otherwise rescinded.

VII. Point of Contact: Questions or comments regarding this CD may be directed to DOTAcquisitionPolicy@dot.gov.

Attachments:

- A. TAR Deviation Text

Attachment A: TAR Deviation Text

Transportation Acquisition Regulation (TAR) Class Deviation (CD) No. 2024-01

**– TAR Part 1242, TAR Subpart 1242.3, 1242.302, 1242.302-70, 1242.302-71;
and TAR Part 1252, 1252.242-75, 1252.242-76, 1252.242-77, and 1252.242-78]**

CLASS DEVIATION

TAR Text Baseline is 48 CFR chapter 12 dated March 1, 2024.

Changes to baseline shown as **[bolded, bracketed additions]** and strikethrough deletions.

TAR text unchanged shown as asterisks.

PART 1242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

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Subpart 1242.3 - Contract Administration Office Functions

1242.302 Contract administration functions.

[1242.302-70 Contracting for audit services.]

[1242.302-71 Solicitation provisions and contract clauses.]

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Authority: 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

PART 1242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 1242.3 - Contract Administration Office Functions

1242.302 Contract administration functions. (DEVIATION)

(a) If a cognizant Federal agency has not performed the functions identified in FAR 42.302(a)(5), (9), (11), and (12), then DOT contracting officers are authorized to perform these functions with the assistance of the cognizant government auditing agency, if assigned and available to provide support in a timely manner. ~~If the cognizant government auditing agency is not assigned and/or available in the necessary timeframe, DOT contracting officers may use the audit services of a CPA firm~~

(13) The assignment of contract administration to a Defense Contract Management Agency (DCMA) office by the contracting officer does not affect the designation of the paying office unless a transfer of DOT funds to the agency of the Contract Administration Office (CAO) is effected, and the funds are converted to the CAO agency's account for payment purposes. When the contracting officer proposes to delegate the contract payment function to another agency (e.g., DCMA), the contracting officer shall discuss the transfer of funds procedures with the cognizant OA payment office. The CAO, the contracting officer, or the designated contract specialist in the contracting office shall review and approve the invoices and vouchers under the assigned contracts. The review and approval of invoices under cost-reimbursement and time-and-materials type contracts cannot be delegated to the Contracting Officer's Representative.

[(b) If the cognizant government auditing agency is not assigned and/or available in the necessary timeframe, DOT contracting officers may use the audit services of a CPA firm pursuant to 1242.101. When contemplating contracting with CPA firms to provide audit services, DOT policy requires that contracting officers shall not contract for audit services unless—

(1) The cognizant DOT audit organization determines that expertise required to perform the audit is not available within DOT or the cognizant government audit agency; or

(2) Temporary audit assistance is required to meet audit reporting requirements mandated by law or regulation.]

[1242.302-70 Contracting for audit services. (DEVIATION)

(a) *Approvals.* Contracting Officers may not issue a solicitation for audit services unless the requiring activity provides evidence that the cognizant government audit organization has

approved the statement of work. The requiring activity shall obtain the same evidence of approval for subsequent material changes to the statement of work.

(b) *Transparency requirement for CPA firms used to support audits.*

(1) Certain disclosure requirements provided in this paragraph and paragraphs (2) and (3) apply to accounting firm contractors, or other firms that provide financial auditing or audit remediation services under DOT contract actions, including contracts awards, renewals, orders, and modifications. The accounting firm contractor or offeror shall provide a statement setting forth the details of any disciplinary proceedings, occurring within one year of the projected performance period, related to noncompliance with rules or laws applying to audit services.

(2) This requirement applies to solicitations and contracts for—

(i) Financial statement auditing required under 31 U.S.C. 3521(e); or

(ii) Audit remediation services.

(3) Any firm responding to a solicitation, or awarded a contract, for the acquisition of audit services or audit remediation services on behalf of DOT or as contracted by DOT via an interagency agreement shall represent whether it has been subject to disciplinary proceedings within the last twelve months. If the offeror represents that it has been subject to disciplinary proceedings within this timeframe, the offeror or contractor is required to disclose to DOT before any contract action (including award, renewals, and modifications)—

(i) The details of any disciplinary proceedings, with respect to the firm or its associated persons (including principals and employees), before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by accounting firms or firms other than accounting firms; and

(ii) For subsequent contract actions after contract award, whether there has been any change to previously reported disciplinary proceedings since the last contract action.]

[1242.302-71 Solicitation provisions and contract clauses. (DEVIATION)

(a) Use the provision at 1252.242-75, Notice of Special Standards of Responsibility, in solicitations for audit services.

(b) Use the clause at 1252.242-76, Compliance with Audit Standards, in solicitations and contracts for audit services.

(c) Use the provision at 1252.242-77, Preaward Transparency Requirements for Firms Offering to Support Department of Transportation Audits—Representation and Disclosure, in solicitations, including solicitations using FAR part 12 procedures for the

acquisition of commercial products and commercial services, that include the clause at 1252.242-78, Postaward Transparency Requirements for Firms that Support Department of Transportation Audits.

(d) Use the clause at 1252.242-78, Postaward Transparency Requirements for Firms Offering to Support Department of Transportation Audits—Representation and Disclosure, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that—

(1) Exceed the simplified acquisition threshold; and

(2) Are for the acquisition of financial statement auditing or audit remediation services as described in 1242.302-70, paragraph (b)(2).]

PART 1252 -- SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1252.2—Text of Provisions and Clauses

[1252.242-75 Notice of Special Standards of Responsibility. (DEVIATION)]

As prescribed in 1242.302-71(a), insert the following provision:

**NOTICE OF SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2024)
(DEVIATION)**

(a) To be determined responsible, the Offeror must meet the general standards of responsibility set forth at FAR 9.104-1 and the following criteria, as described in Chapter 3, General Standards, of “Government Auditing Standards” –

- (1) Qualifications;**
- (2) Independence; and**
- (3) Quality Control.**

(b) “Government Auditing Standards,” Stock number 020–000–00243–3, is issued by the Comptroller General of the United States and is available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401.

(c) The apparently successful Offeror, before award, shall give the Contracting Officer evidence that it is licensed by the cognizant licensing authority in the state or other political jurisdiction where the Offeror operates its professional practice.

(End of provision)]

[1252.242-76 Compliance with Audit Standards. (DEVIATION)]

As prescribed in 1242.302-71(b), insert the following clause:

COMPLIANCE WITH AUDIT STANDARDS (MAR 2024) (DEVIATION)

The Contractor, in performance of all audit services under this contract, shall comply with “Government Auditing Standards” issued by the Comptroller General of the United States.

(End of clause)]

[1252.242-77 Preaward Transparency Requirements for Firms Offering to Support Department of Transportation Audits—Representation and Disclosure. (DEVIATION)]

As prescribed in 1242.302-71(c), insert the following provision:

PREAWARD TRANSPARENCY REQUIREMENTS FOR FIRMS OFFERING TO SUPPORT DEPARTMENT OF TRANSPORTATION AUDITS—REPRESENTATION AND DISCLOSURE (MAR 2024) (DEVIATION)

(a) *Representation.* The Offeror represents that within the 1-year period preceding this offer, the Offeror and/or any of its principals or employees have [] have not [] been the subject of disciplinary proceedings before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by the Offeror, that—

- (1) Are not yet fully adjudicated or settled; or
- (2) Were fully adjudicated or settled against the Offeror and/or its principals or employees.

(b) *Disclosure.* If the Offeror checked “have” in the representation in paragraph (a) of this provision, the Offeror shall, at a minimum, disclose for each such proceeding—

- (1) The entity hearing the case;
- (2) The case or file number; and
- (3) The allegation or conduct at issue and, if fully adjudicated or settled, a brief description of the outcome.

(c) *Treatment of statements.* The Government will safeguard and treat as confidential all statements provided pursuant to this provision where the statement has been marked “confidential” or “proprietary” by the Offeror. Statements so marked will not be released by the Government to the public pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552, without prior notification to the Offeror and opportunity for the Offeror to claim an exemption from release. The Government will treat any statement provided pursuant to this provision as confidential to the extent required by any other applicable law.

(End of provision)]

[1252.232-78 Postaward Transparency Requirements for Firms that Support Department of Transportation Audits. (DEVIATION)

As prescribed in 1242.302-71(d), insert the following clause:

POSTAWARD TRANSPARENCY REQUIREMENTS FOR FIRMS THAT SUPPORT DEPARTMENT OF TRANSPORTATION AUDITS (MAR 2024) (DEVIATION)

(a) Prior to each contract action under this contract (including renewal or modification), the Contractor shall disclose the details of any disciplinary proceedings, with respect to the firm and/or its principals or employees, before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by the Contractor, and whether there has been any change with regard to previously reported proceedings since the last contract action.

(b) The disclosure shall, at a minimum, include—

(1) The entity hearing the case;

(2) The case or file number; and

(3) A brief description of the allegation or conduct at issue and, if fully adjudicated or settled, a brief description of the outcome.

(c) The Government will safeguard and treat as confidential all statements provided pursuant to this clause where the statement has been marked “confidential” or “proprietary” by the Contractor. Statements so marked will not be released by the Government to the public pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552, without prior notification to the Contractor and opportunity for the Contractor to claim an exemption from release. The Government will treat any statement provided pursuant to this clause as confidential to the extent required by any other applicable law.

(End of clause)]
