OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MAY 18 2004

DPAP(DAR)

In reply refer to
DAR Tracking Number: 2004-O0003

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY ASSISTANT SECRETARY OF THE ARMY,
(POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY AND
SUPPLY DIRECTORATE (DLA)

SUBJECT: Class Deviation–Exemption from Limitations on Procurement of Foreign Information Technology that is a Commercial Item

When using fiscal year 2004 funds to acquire information technology that is a commercial item, do not use any of the following Defense Federal Acquisition Regulation Supplement (DFARS) provisions and clauses as prescribed at DFARS 225.1101(1), (2), (9), and (10) or the associated FAR clauses which they otherwise replace:

- 252.225-7000, Buy American Act—Balance of Payments Program Certificate.
- 252.225-7001, Buy American Act and Balance of Payments Program.
- 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.
- 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

The Buy American Act does not apply to these acquisitions of foreign information technology because Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199) provides exemption (Atch 1). "Information technology" is defined at 40 U.S.C. 11101 (Atch 2).

When applicable, continue to use the Trade Agreements provision and clause at 252.225-7020 and 252.225-7021, as prescribed at 225.1101(5) and (6).

This class deviation is effective upon signature, and remains in effect until incorporated in the DFARS or until otherwise rescinded.

Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated

cc:
DSMC, Ft. Belvoir