



Homeland  
Security

March 10, 2004

**MEMORANDUM FOR:** All Heads of Contracting Activities (HCA's)

**FROM:** Gregory D. Rothwell  
Chief Procurement Officer *Gregory D. Rothwell*

**SUBJECT:** Class Deviation from FAR 36.201, 36.604, 53.236-1(b) and  
53.236-2(d) Using the NIH Contractor Performance System (CPS)

**Purpose:** To issue a class deviation from the requirements of Federal Acquisition Regulation (FAR) when using the National Institute of Health's (NIH) Contractor Performance system (CPS) for evaluation purposes. This deviation will effect the following: FAR 36.201 Evaluation of contractor performance, FAR 36.604 Performance evaluation, FAR 53.236-1(b) Standard Form (SF) 1420 and FAR 53.236-2(d) Standard Form (SF) 1421.

**Effective Date:** Immediately

**Background:** This class deviation is regarding the use of the SF 1420 and the SF 1421 for construction and Architect-Engineer (A-E) contracts.

FAR 36.201 requires the use of SF 1420, Performance Evaluation (Construction) when evaluating a contractor's performance under a construction contract. FAR 36.604 requires the use of SF 1421, Performance Evaluation (Architect-Engineer), when evaluating a contractor's performance under an architect-engineer contract.

NIH's CPS system provides a Contractor Performance Insert Form (evaluation form) for both construction and architect-engineer contracts. The CPS Contractor Performance Insert Forms include all the data elements required by the SF 1420 and SF 1421, therefore it is not necessary to complete the SF 1420 and SF 1421.

**Expiration Date:** This class deviation will remain in effect until implemented in the FAR, or otherwise rescinded.

## **Determination and Findings**

Under the authority granted by the Civilian Agency Acquisition Council (CAAC) Letter 2001-03, the Department of Homeland Security is authorized a class deviation from the requirements of the Federal Acquisition Regulation (FAR) 36.201, Evaluation of Contractor Performance, 36.604 Performance Evaluation, 53.236-1(b), SF 1420 and 53.236-2(d), SF 1421, when using the National Institute of Health (NIH) Contractor Performance System (CPS).

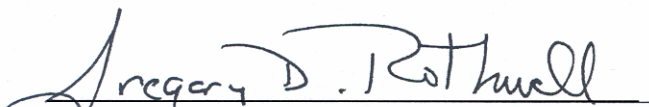
### **Findings**

FAR 36.201 requires the use of SF1420, Performance Evaluation (Construction) when evaluating a contractor's performance under a construction contract. FAR 36.604 requires the use of the SF 1421, Performance Evaluation (Architect-Engineer), when evaluating a contractor's performance under an architect-engineer contract.

NIH's CPS system provides a Contractor Performance Insert Form (evaluation form) for both construction and architect-engineer contracts. These CPS Contractor Performance Insert Forms include all the data elements required by the SF 1420 and SF 1421, therefore it is not necessary to complete the SF 1420 and SF1421.

### **Determination**

In accordance with FAR 1.404, I have issued this class deviation. Consultation and approval for this deviation is granted under CAAC Letter 2001-03. This class deviation shall remain in effect until implemented in the FAR, or otherwise rescinded.



Gregory D. Rothwell  
Chief Procurement Officer  
Department of Homeland Security

3/10/2004

Date