



May 11, 2020

MEMORANDUM FOR: Heads of Contracting Activity

FROM: David R. Dasher //s//
Deputy Assistant Secretary for the Office of Acquisitions
Senior Procurement Executive

SUBJECT: Class Deviation (2020-04) from the Federal Acquisition Regulation to eliminate hard copy original documents, signatures, notarization, seals on bonds and other seals for certain contract requirements

EFFECTIVE DATE: Immediately

EXPIRATION DATE: This FAR class deviation is effective upon signature and remains in effect until further notice. HHS will consider whether to cancel the deviation after the COVID-19 emergency passes.

PURPOSE: This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) to authorize flexibility, in response to the Coronavirus Disease 2019 (COVID-19) national emergency, with regard to requiring hard copy original documents, original signatures, notarization, seals on bonds and other seals for certain contract requirements.

BACKGROUND: The Civilian Agency Acquisition Council (CAAC) has issued CAAC Letter 2020-04, dated May 1, 2020, allowing agencies to authorize a class deviation, in response to the Coronavirus Disease 2019 (COVID-19) national emergency. This deviation allows greater flexibility by eliminating the requirement for hard copy original documents, original signatures, notarization, seals on bonds and other scenarios confronting the acquisition workforce in connection with the COVID-19 pandemic.

Contracting officers shall use the following changes:

When obtaining financial protection against losses under contracts per FAR part 28:

- 28.101-3(c) allowing the use of electronic means is moved to an added section at 28.002 to apply the same flexibilities to all of part 28;
- 28.106-1 adding an exception to stamping a corporate seal on bonds;
- 28.106-8 allowing a signed statement by the contractor that the payment is due

Attachment

and owed;

- 28.203(b) not requiring the Standard Form 28 to be sworn and notarized;
- 28.203-5 allowing a written authorization of the release signed by the surety saying that it approves of such release;
- 52.228-11, Pledges of Assets (Aug 2018)(DEVIATION APR 2020), not requiring the Standard Form 28 to be sworn and notarized, in place of 52.228-11, Pledges of Assets (Aug 2018);
- 52.228-15, Performance and Payment Bonds—Construction (OCT 2010) (DEVIATION APR 2020), not requiring the seal when executing the standard forms required by the clause; and

- 52.228-16, Performance and Payment Bonds—Other than Construction (NOV 2006) (DEVIATION APR 2020), not requiring the seal when executing the standard forms required by the clause.

When processing assignment of claims per FAR subpart 32.8:

- 32.802(e) allowing the use of a copy of the assignment instrument; and
- 32.805(a), (b), (c), and (e) allowing the use of electronically signed documents and a copy of the assignment instrument.

When executing novation agreements and change-of-name agreements per FAR part 42:

- 42.1204(f) allowing the use of a copy of the documents;
- 42.1204(i) not requiring a seal on the Novation Agreement; and
- 42.1205(b) not requiring a seal on the Change-of-Name Agreement.

AUTHORITY: This class deviation is issued under the authority of FAR 1.404 and HHSAR 301.4. This deviation is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a) and the HHS Senior Procurement Executive in accordance with HHSAR 301.401.

DEVIATION: The areas of the FAR being amended by this class deviation are shown in the Attachment to this Memorandum.

APPLICABILITY: This class deviation applies to all solicitations and contracts.

CAAC CONSULTATION: The attached memorandum from the Chairman of the Civilian Agency Acquisition Council constitutes the consultation required by FAR 1.404 for class deviations.

Questions or comments pertaining to this class deviation may be directed to Shari Shor, Office of Acquisition Policy at 202-731-3382 or Shari.Shor@hhs.gov.

Attachment: CAAC LETTER 2020-04, including Attachment – FAR Deviation Text.
Baseline - FAR FAC 2020-05, Effective March 30, 2020

Attachment

(Class Deviation 2020-04)