



PROCUREMENT MEMORANDUM 2023-09

ACTION

MEMORANDUM FOR: Senior Bureau Procurement Officials

FROM: Olivia J. Bradley
Senior Procurement Executive and
Director for Acquisition Management

SUBJECT: Federal Acquisition Regulation (FAR) Class Deviation to Eliminate Hard Copy Original Documents, Signatures, Notarization, Seals on Bonds and other Seals for Certain Contract Requirements

Background

On May 1, 2020, the Civilian Agency Acquisition Council (CAAC) issued Letter 2020-04 to serve as consultation in accordance with FAR 1.404, allowing agencies to authorize a class deviation in response to the Coronavirus Disease 2019 (COVID-19) national emergency. On April 10, 2023, the President signed into law Public Law 118-3, which had been House Joint Resolution 7, which terminates the national emergency related to the COVID-19 pandemic.

On May 12, 2023, the CAAC issued a Supplement 1 to CAAC letter 2020-04 to update the rationale and noted that the importance of original and notarized documents continues to dwindle in this electronic age, and the need to eliminate hard copy original documents, signatures, notarization, seals on bonds and other seals for certain contract requirements continues to exist. Remote online notarization is not approved in many states. Where approved, it requires prior certification of the notary, which requires additional time and money and may be difficult to obtain. Equally difficult is for vendors and sureties to produce manual signatures and provide their seals on bonds.

Currently, FAR 2.101 defines "signature" or "signed" to include electronic signatures, and FAR 4.502(d) expressly authorizes agencies to "accept electronic signatures and records in connection with government contracts."

Purpose

The Department of Commerce is re-issuing this FAR deviation to continue to allow greater flexibility by eliminating the requirement for hardcopy original documents, original signatures, notarization, seals on bonds and other scenarios.

Required Action

Contracting officers shall use the following changes:

- A. 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 and owed;
 - 28.203-1(b) not requiring the Standard Form 28 to be sworn and notarized;
 - 28.203-3 allowing a written authorization of the release signed by the surety saying that it approves of such release;
 - 52.228-11, Individual Surety- Pledge of Assets (Feb 2021) (DEVIATION MAY 2023), 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 (JUN 2020) (DEVIATION MAY 2023), 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 MAY 2023), not requiring the seal when executing the standard forms required by the clause.
- B. 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.
- C. 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.

Attachment A provides the changes to the FAR text as revised by this deviation.

Effective Date

This class deviation supersedes the deviation in Procurement Memorandum 2020-09 and is effective immediately and remains in effect until rescinded or incorporated into the FAR. Procurement Memorandum 2020-09 is hereby rescinded.

Questions

Please direct any questions regarding this Procurement Memorandum to OAM_Mailbox@doc.gov.

Attachment A – FAR Deviation Text