



Homeland
Security

April 8, 2020

MEMORANDUM FOR: Heads of the Contracting Activities

FROM: Soraya Correa
Chief Procurement Officer

SUBJECT: Federal Acquisition Regulation (FAR) Class Deviation
(Number 20-03) Flexibilities for the Suspending or Debarment
Official's Correspondence with Contractors (FAR 9.4)

Purpose: This class deviation is issued to provide DHS Suspension and Debarment Officials (SDOs) more flexibility in corresponding with contractors being suspended, proposed for debarment, or debarred under the procedures of FAR 9.4.

Effective Date: Immediately.

Background: FAR 9.4 prescribes policies and procedures governing the debarment and suspension of contractors by federal agencies. FAR 9.406-3 and 9.407-3 currently require agencies notify contractors of suspension, proposed debarment, or debarment actions via certified mail, return receipt requested. As written, the FAR precludes any other type of notification such as an electronic means of notification that may be beneficial during time of emergency or crisis such as those presented by the Novel Coronavirus 2019 (COVID-19) pandemic. FAR 9.406-3 provides the contractor an opportunity to present matters in opposition in person. Due to the current crisis, this is not feasible and the change will allow for the contractor to present matters in opposition via telephone or internet.

To provide federal agencies with greater flexibilities on certain suspension and debarment procedures, the chair of the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2020-01 on April 1, 2020. The CAAC letter also satisfies the requirement of FAR 1.404 that requires agencies consult with the CAAC chair before issuing a FAR class deviation.

Deviation: This class deviation provides DHS SDOs with greater flexibility by allowing for a means of electronic delivery of notices of suspension, proposed debarment, and debarment to contractors in addition to certified mail, return receipt requested as required by FAR 9.406-3 and 9.407-3. This class deviation also allows for greater flexibility in allowing contractors to make presentations via telephone or internet. The areas of the FAR that are amended by this class deviation are 9.406-3(b)(1), (c), and (e) and 9.407-3(b)(1), (c) and (d)(4). The attached CAAC letter 2020-01 provides the deviated FAR text.

Applicability: This class deviation applies to all DHS suspension and debarment proceedings conducted under FAR 9.4.

Expiration Date: This deviation remains in effect until rescinded.

Coordination with DHS SDO: This deviation was coordinated with the acting DHS Suspension and Debarment Official on April 3, 2020.

Attachment: CAAC Letter 2020-01 dated April 1, 2020.

Additional Information: Questions or comments on this class deviation may be directed to Ellen Murray at 202 447-5311 or Ellen.Murray@hq.dhs.gov.