



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

PROCUREMENT MEMORANDUM 2022-02

ACTION

MEMORANDUM FOR: Senior Bureau Procurement Officials

FROM: *for:* Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

SUBJECT: Federal Acquisition Regulation (FAR) Class Deviation:
Requirements for Nonavailability Determinations Under the Buy
American Statute

Background

A memorandum titled “[*Improving the Transparency of Made in America Waivers*](#)” was issued on October 26, 2021, by the Made in America Office (MIAO) within the Office of Management and Budget (OMB) and the Office of Federal Procurement Policy (OFPP). The memorandum issued jointly by the MIAO and OFPP (MIAO memo) provides specific guidance to agencies on the use of a new dedicated portal (MadeinAmerica.gov) regarding waivers under the Buy American statute. The MIAO memo builds on the guidance in OMB Memorandum M-21-26, [*Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws*](#), dated June 11, 2021. OMB Memo M-21-26 outlined initial management steps to help agencies prepare for and support a centralized strategic waiver review process as required by Executive Order (EO) 14005, [*Ensuring the Future Is Made in All of America by All of America's Workers*](#) (86 FR 7475, January 28, 2021).

The MIAO memo prescribes certain requirements pertaining to posting of individual nonavailability waiver determinations under the Buy American statute for agencies. Those requirements became effective on November 16, 2021.

The posting requirements in the MIAO memo are not reflected in the FAR’s coverage at 25.103(b)(2) of individual nonavailability waiver determinations under the Buy American statute. Further, FAR coverage at 25.103(b)(3) requires conformance with the requirements prescribed in the MIAO memo.

Purpose

This class deviation is issued in accordance with FAR 1.404 and pursuant to Civilian Agency Acquisition Council (CAAC) Letter 2022-01 to revise FAR text at FAR 25.103(b) and other conforming changes throughout FAR Part 25 to implement the requirements of the MIAO memo.

Required Actions

Contracting officers shall comply with the deviated FAR text. The approval authorities identified in Commerce Acquisition Manual (CAM) 1301.70, *Delegations of Authority*, as they pertain to waiver determinations shall remain unchanged and not be further delegated.

Effective Date

This deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR.

Questions

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

Attachment A – FAR Deviation Text