



November 22, 2022

MEMORANDUM FOR: Heads of Contracting Activity

FROM: H. Katrina Brisbon //s//
Acting Deputy Assistant Secretary for the Office of Acquisitions
Senior Procurement Executive

SUBJECT: Federal Acquisition Regulation (FAR) Class Deviation (2022-01)
Regarding Requirements for Nonavailability Determinations Under the
Buy American Act

EFFECTIVE DATE: Immediately

EXPIRATION DATE: This class deviation is effective upon signature and remains in effect until the statutory change is incorporated in the FAR or this deviation is rescinded.

PURPOSE: This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) to implement the Memorandum titled "[Improving the Transparency of Made in America Waivers](#)," dated 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).

BACKGROUND: Civilian Agency Acquisition Council (CAAC) Letter 2022-01, implementation of the Memorandum titled "[Improving the Transparency of Made in America Waivers](#)," dated 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), with regards to waivers under the Buy American statute. Note: the MIAO memo refers to the existing written "determinations" of the nonavailability exception under the Buy American statute in the FAR as "Made in America waivers." 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, in turn, 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 become effective on **November 16, 2021**, for agencies subject to the Chief Financial Officers Act¹ and on January 1, 2022, for all other agencies. Agencies should be aware that page 3 of the MIAO memo also includes instructions for their internal protocols as they pertain to nonavailability waiver determinations.

AUTHORITY: This class deviation is issued under the authority of the Federal Acquisition Regulation FAR 1.404 and the Department of Health and Human Services Acquisition Regulation HHSAR 301.401. CAAC Letter 2022-01, CAAC Consultation to Issue a Class Deviation from the Federal Acquisition Regulation Regarding Requirements for Nonavailability Determinations Under the Buy American Statute, issued November 16, 2021 (Attachment 1) by the Chair of the Civilian Agency Acquisition Council (CAAC), constitutes consultation with the Chair of the CAAC as required by FAR 1.404(a)(1).

DEVIATION: This class deviation amends the FAR text at FAR 25.102(b) and other conforming changes throughout FAR Part 25 is provided consistent with the MIAO memo and the FAR council memo.

ATTACHMENTS:

Attachment 1: CAAC Letter 2022-01- Federal Acquisition Regulation (FAR) Class Deviation (2022-01) Regarding Requirements for Nonavailability Determinations Under the Buy American Act (Attachment – Deviation to FAR text included)

(Class Deviation 2022-01)