



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

FAR CLASS DEVIATION
DETERMINATION AND FINDINGS
TO ELIMINATE HARD COPY ORIGINAL DOCUMENTS, SIGNATURES,
NOTARIZATION, SEALS ON BONDS AND OTHER SEALS FOR CERTAIN CONTRACT
REQUIREMENTS
PROCUREMENT MEMORANDUM 2020-09

FINDINGS:

In accordance with Civilian Agency Acquisition Council (CAAC) Letter 2020-04 dated May 1, 2020, which serves as consultation in accordance with FAR 1.404, Federal Agencies are encouraged to authorize this class FAR deviation in response to the Coronavirus Disease 2019 (COVID-19) national emergency.

The deviation will allow 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.

During times of emergency or crisis such as this, it becomes difficult or impossible to obtain the services of notaries public. Social distancing policies and shelter-in-place orders have forced public and private sector employees to work from home, making it difficult for notaries to be present to witness oaths and affirmations and to physically affix their signature and notary stamp on documents. 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 in the current environment. Equally difficult is for vendors and sureties to produce manual signatures and provide their seals on bonds.

The importance of original and notarized documents has dwindled in this electronic age. 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."

In accordance with CAAC Letter 2020-04, contracting officers will be instructed to 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 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.

DETERMINATION:

It is hereby determined that it is in the best interest of the government to authorize issuance of this FAR deviation in support of the COVID-19 emergency. This class deviation is effective upon issuance and remains in effect until cancelled.

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and Director for Acquisition Management