



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

OCT 19 2010

PROCUREMENT MEMORANDUM 2011-01

ACTION

MEMORANDUM FOR: BUREAU PROCUREMENT OFFICIALS
HEADS OF CONTRACTING OFFICES

FROM: Helen Hurcombe 
Senior Procurement Executive
and Director for Acquisition Management

SUBJECT: FAR Class Deviation: Replacement of FAR Clause 52.209-8
Updates of Information Regarding Responsibility Matters

Background

A final FAR rule published in FAC 2005-40 on March 23, 2010, and effective on April 22, 2010, implemented the Federal Awardee Performance and Integrity Information System (FAPIIS). The final rule included FAR clause 52.209-8 *Updates of Information Regarding Responsibility Matters (APR 2010)*. Subsequently, Public Law 111-212, enacted on July 29, 2010, required that information in FAPIIS, except past performance reviews, reside on a publicly available website. This requirement is in conflict with the current clause. Therefore, it is necessary to deviate from the use of the current clause in order to ease transition to public availability of information in FAPIIS.

Purpose

The purpose of this memorandum is to issue a class deviation in accordance with FAR 1.404 to require that contracting officers insert the attached replacement to FAR clause 52.209-8 entitled *Updates of Information Regarding Responsibility Matters (DEVIATION) (OCT 2010)* as prescribed in FAR subpart 9.104-7(c) in covered solicitations and contracts issued on or after October 20, 2010.

Required Action

Contracting officers shall insert the attached replacement clause 52.209-8 *Updates of Information Regarding Responsibility Matters (DEVIATION) (OCT 2010)* as prescribed in FAR subpart 9.104-7(c) in covered solicitations and contracts issued on or after October 20, 2010.

Effective Date

This class deviation is effective on October 20, 2010 and remains in effect until publication of the Federal Acquisition Circular incorporating this requirement into the FAR in or about December 2010.

My point of contact for this matter is Lori Donovan, 202-482-1716 or ldonovan@doc.gov.

cc: Acquisition Community
Acquisition Council

CLASS DEVIATION FROM THE FEDERAL ACQUISITION REGULATION

Reference FAR Subpart 9.1 – Responsible Prospective Contractors

Determination and Findings

The Department of Commerce is authorizing a class deviation which requires contracting officers to replace FAR clause 52.209-8 with the attached version of the clause entitled *52.209-8 Updates of Information Regarding Responsibility Matters (DEVIATION) (OCT 2010)* for the prescription contained in FAR subpart 9.104-7(c) in all solicitations and contracts issued on or after October 20, 2010.

Findings

1. A final FAR rule published in FAC 2005-40 on March 23, 2010, and effective on April 22, 2010, implemented the Federal Awardee Performance and Integrity Information System (FAPIIS). The final rule included FAR clause 52.209-8 *Updates of Information Regarding Responsibility Matters (APR 2010)*.
2. Subsequently, Public Law 111-212, enacted on July 29, 2010, required that information in FAPIIS, except past performance reviews, reside on a publicly available website. This requirement is in conflict with the current clause. Therefore, it is necessary to deviate from the use of the current clause in order to ease transition to public availability of information in FAPIIS.
3. The Chairman of the Civilian Agency Acquisition Council issued a memorandum dated October 14, 2010, providing the effect of consultation for class deviation to allow agencies to require incorporation of the deviation to FAR clause 52.209-8 entitled *Updates of Information Regarding Responsibility Matters (DEVIATION) (OCT 2010)* as soon as possible.
4. An interim rule addressing prescription of the replacement clause will include instructions to contracting officers on modifying existing contracts that contain the current FAR clause. The interim rule is expected to be published in December 2010.
5. This class deviation is necessary to comply with Public Law 111-212 as soon as possible. The deviation has the effect of reducing the number of contracts that will be awarded containing the current FAR clause, which will then require modification, thus reducing the administrative burden on contracting officers.

Determination

In accordance with FAR 1.404, I hereby authorize this class deviation requiring contracting officers to insert the clause 52.209-8 *Updates of Information Regarding Responsibility Matters (DEVIATION) (OCT 2010)* as prescribed in FAR subpart 9.104-7(c) issued on or after October 20, 2010. This determination is based on analysis of the findings described herein.

This class deviation will remain in effect until issuance of the Federal Acquisition Circular incorporating the requirements herein, in or about December 2010.



Approved:

Helen Hurcombe

Senior Procurement Executive and

Director for Acquisition Management



Date:

Class Deviation - Public Access to FAPIIS

52.209-8 Updates of Information Regarding Responsibility Matters (DEVIATION).

As prescribed at 9.104-7(c), insert the following clause:

UPDATES OF INFORMATION REGARDING RESPONSIBILITY MATTERS (DEVIATION)
(OCT 2010)

(a) (1) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the Central Contractor Registration database at <http://www.ccr.gov> (see 52.204-7).

(2) At the first semi-annual update on or after April 15, 2011, the Contractor shall post again any required information that the Contractor posted prior to April 15, 2011.

(b) (1) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(2) The Contractor will have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.*, for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) Public access to information in FAPIIS. (i) Public requests for system information that was submitted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(ii) As required by section 3010 of Public Law 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(End of clause)