



U.S. Department of Justice
Justice Management Division

Washington, D.C. 20530

MEMORANDUM

TO: Lee J. Lofthus
Head of Contracting Activity

FROM: Michael H. Allen
Senior Procurement Executive

SUBJECT: Request for Approval of a Class Deviation from Certain Provisions of the
Suspension and Debarment Regulations of the Federal Acquisition
Regulation (FAR)

Purpose

To assist you in rendering a decision pursuant to 48 C.F.R. §§ 1.404 & 2801.404 on a request for a class deviation from the suspension and debarment regulations of the FAR.

Discussion

The suspension and debarment regulations, specifically 48 C.F.R. §§ 9.406-3 and 9.407-3, currently require agencies to notify contractors of suspensions, proposed debarments or other debarment actions via certified mail, return receipt requested. This precludes notifications by electronic mail or any other means that might be more effective during times such as these associated with the COVID-19 pandemic. The Justice Acquisition Regulation (JAR) requires the Department to comply with the FAR in this respect, but only a deviation from the FAR, not the JAR, is necessary and being requested.

The FAR contains procedures under which agencies may implement both individual and class deviations. 48 C.F.R. §§ 1.403, 1.404. Individual deviations apply to a single contract action, while class deviations affect more than one contract action. While I may recommend class deviations, they must be approved by you. 48 C.F.R. §§ 1.404 & 2801.404.

According to the FAR and the JAR, before submitting a request for a class deviation to you, I must consult with the Chairperson of the Civilian Agency Acquisition Council (CAAC). *Id.* On April 1, 2020, however, the CAAC issued a letter to all Civilian Agencies that serves as the required consultation in accordance with FAR 1.404. CAAC Letter 2020-01 (Attached). While not self-executing, the CAAC communication allows

agencies to authorize a class deviation from the suspension and debarment regulations to permit more flexibility in corresponding and communicating with contractors during the suspension and debarment process, without having to engage in further consultation with the CAAC. Attached to the letter, the CAAC provides pre-approved revisions to the text of the relevant regulatory provisions. *See* Attachment A to CAAC Letter 2020-01.

Specifically, the CAAC's proposed revisions, which constitute the substance of the deviation I am requesting, allow for suspension and debarment correspondence to be sent via methods other than certified mail, return receipt requested, including the use of electronic mail. *See* Attachment A. Additionally, the proposed deviation text explicitly allows contractors to present matters in opposition to any proposed agency action via telephone or internet connection. *Id.*

These additional flexibilities will allow much more efficient communication with contractors during this time when the more traditional means of communication via certified mail, return receipt requested is being severely hindered by the COVID-19 pandemic. If you approve the class deviation, approved by the CAAC, I will so notify the FAR Regulatory Secretariat, in accordance with FAR §1.404.

RECOMMENDATION: That you approve this request for a class deviation of FAR §§ 9.406-3 and 9.407-3 as outlined in the CAAC Letter 2020-01 and its Attachment A.

APPROVE: _____

DISAPPROVE: _____

OTHER: _____

Attachment