

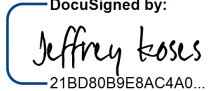


8/6/2020

GSA Office of Governmentwide Policy

Class Deviation CD-2020-15

MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

FROM: JEFFREY A. KOSES 
 SENIOR PROCUREMENT EXECUTIVE
 OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: GSAR Class Deviation for GSA's Lease Acquisitions and CSOs - Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

A. Purpose.

GSA supports the Federal Government's efforts to combat a national security threat posed by certain telecommunications equipment and services identified by Congress in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (the NDAA). The recently published Federal Acquisition Regulation (FAR) Case 2019-009 and the previously-published FAR Case 2018-017 provide implementing guidance for FAR-based contracts. Because the NDAA applies to all Federal contracts, not just to FAR-based contracts, this class deviation applies the FAR representations and reporting requirements to GSA's leasing of real property (lease acquisitions) and commercial solution opening procurements (CSOs).¹

The Office of Government-wide Policy will provide further implementing instructions, including greater clarity on the waiver process and on GSA Supply Chain Risk Management procedures via a separate policy document in the next two to three weeks.

Specifically, this class deviation adds to the General Services Administration Acquisition Regulation (GSAR) requirements that GSA lease acquisitions and CSOs follow the representation and reporting requirements as stated at FAR 4.2105.² Note that this class deviation does not make GSA's lease acquisitions and CSO subject to other FAR provisions.

¹ This class deviation supersedes a previous class deviation, CD-2019-11. As explained in Addendum 1 to CD-2019-11, that class deviation's application of the representation and reporting requirements at FAR 4.2105 to GSA lease acquisitions and CSOs are stayed. The stay of the previous deviation, coupled with the adoption of this class deviation, however, does not affect GSA lease acquisitions or CSOs because this class deviation adopts the previous class deviation's application of the representation and reporting requirements at FAR 4.2105 to GSA lease acquisitions and CSOs.

² FAR 4.2105 was added through FAR Case 2018-017, which was published at 84 FR 40216 on August 13, 2019, and at 84 FR 68314 on December 13, 2019, and updated by FAR Case 2019-009, which was published at 85 FR 42665 on July 14, 2020.

FAR 4.2105 requires insertion of provisions (FAR 52.204-24 and 52.204-26) and a clause (FAR 52.204-25) in solicitations and contracts, and this class deviation requires the inclusion of those same provisions and clause in GSA's lease acquisitions and CSOs. The provision at FAR 52.204-24 requires offerors to represent whether they will provide covered telecommunications equipment or services to the Government and whether they use covered telecommunications equipment or services or any equipment, system, or service that uses covered telecommunications equipment or services. The clause at FAR 52.204-25 requires contractors to report if they identify covered telecommunications equipment or services used during contract performance.

The class deviation also adds to the GSAR and General Services Administration Acquisition Manual (GSAM) requirements that GSA lease acquisitions and CSOs follow GSA's Supply Chain Risk Management procedures at GSAM subpart 504.70.³

B. Background.

The NDAA prohibits executive agencies from either:

(a) Procuring or obtaining, or extending or renewing "a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system"⁴

(b) Entering into (or extending or renewing) a contract with "an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system."

GSA is committed to the most effective and efficient implementation of the prohibitions of the NDAA while maintaining its ability to meet its mission and to support the mission needs of Federal agencies across the Government. Regulations for GSA lease acquisitions and CSOs are found in the GSAR; they are not FAR-based. This class deviation is necessary to require GSA lease acquisitions and CSOs to include the language of the representation and reporting requirements at FAR 4.2105 before the GSAR is revised via rulemaking.

First, this class deviation requires GSA lease acquisitions and CSOs to follow the representation and reporting requirements at FAR 4.2105:

1. Offer-by-Offer Representation: FAR 4.2105(a) was issued through an interim rule for FAR Case 2018-017 and requires the provision at FAR 52.204-24 to be inserted into all solicitations. The provision at FAR 52.204-24 was updated by an interim rule for FAR Case 2019-009 and now requires each offeror to provide two representations. First, that it "will[or] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation" and, second, that it "does[or] does not use

³ GSAM subpart 504.70 was added through GSAM Case 2018-G505, which was published via GSA Order ADM 2800.12B Change 101 on July 17, 2019.

⁴ Covered telecommunications equipment and services is defined at FAR 52.204-25(a).

covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.”

2. Reporting: FAR 4.2105(b) was issued as a part of the same interim rule for FAR Case 2018-017 and requires the clause at FAR 52.204-25 to be inserted into all solicitations and contracts. Paragraph (d) of the clause at FAR 52.204-25 requires contractors that identify that “covered telecommunications equipment or services [was] used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance” to report information required by FAR 52.204-25(d)(2) to the contracting officer.
3. Entity Representation: FAR 4.2105(c) was issued through a second interim rule for FAR Case 2018-017 and requires the provision at FAR 52.204-26 to be inserted into all solicitations.⁵ The provision at FAR 52.204-26 requires each offeror to provide a representation, via the System for Award Management (SAM), that it “does[or] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument”.⁶

Second, this class deviation requires GSA lease acquisitions and CSOs to follow GSA’s Supply Chain Risk Management procedures at GSAM subpart 504.70.

C. Applicability.

1. Deviation Implementation.

a. GSAR Class Deviation.

The GSAR class deviation applies the representation and reporting requirements at FAR 4.2105 to GSA lease acquisitions and CSOs. The GSAR class deviation also applies GSA’s Supply Chain Risk Management procedures at GSAM subpart 504.70 to CSOs. See Attachment A for the GSAR deviation text implementing this class deviation.

b. GSAM Class Deviation.

⁵ Note that if a solicitation includes any of the following, no further action is required (the solicitation does not need to be updated because the provision at FAR 52.204-26 is already included by reference): FAR 52.204-7, System for Award Management (OCT 2018), FAR 52.204-19, Incorporation by Reference of Representations and Certifications (DEC 2014), FAR 52.212-3, Offeror Representations and Certifications - Commercial Items (JUN 2020).

⁶ The provision at FAR 52.204-26 (DEC 2019) will be updated via a future FAR rule to include an additional representation as to whether entities do or do not “use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.” FAR 4.2103 will also be updated by the same FAR rule to allow entities to not provide a response to the provision at FAR 52.204-24 when submitting offers if they have, in response to the provision at FAR 52.204-26, represented that they both do not provide and do not use covered telecommunications equipment or services. Note that if a lease offeror uses the flexibility of Acquisition Letter MV-20-04, which allows lease offerors to submit offers prior to SAM registration (provided that the lease offeror is registered prior to award), any lease offers must include the representation required by the provision at FAR 52.204-24.

The GSAM class deviation applies GSA's Supply Chain Risk Management procedures at GSAM subpart 504.70 to GSA lease acquisitions. See Attachment B for the GSAM deviation text implementing this class deviation.

2. Implementation Timelines.

a. Representation Provision at FAR 52.204-24.

All new lease and CSO solicitations, issued on or after August 13, 2020, shall include the language from the provision at FAR 52.204-24 (AUG 2020).

For lease or CSO solicitations that were issued prior to August 13, 2020 that have not closed, or awards that have not been made by August 13, 2020, the contracting officer shall either amend the solicitation to include the language from the provision at FAR 52.204-24 (AUG 2020) or incorporate it into the award of the apparent successful offeror.

b. Reporting Clause at FAR 52.204-25.

All lease acquisitions and CSOs awarded on or after August 13, 2020 shall include the language from the clause at FAR 52.204-25 (AUG 2020).

All existing lease acquisitions and CSOs shall be modified to include the language from the clause at FAR 52.204-25 (AUG 2020) as they are modified to extend their periods of performance, such as upon the exercise of options.

c. Representation Provision at FAR 52.204-26.

All new lease and CSO solicitations, issued on or after August 13, 2020, shall include the language from the provision at FAR 52.204-26 (DEC 2019).

For lease or CSO solicitations that were issued prior to August 13, 2020 that have not closed, or awards that have not been made by August 13, 2020, the contracting officer shall either amend the solicitation to include the language from the provision at FAR 52.204-26 (DEC 2019) or incorporate it into the award of the apparent successful offeror.

Note that if a solicitation includes any of the following, no further action is required (the solicitation does not need to be updated because the provision at FAR 52.204-26 is already included by reference): FAR 52.204-7, System for Award Management (OCT 2018), FAR 52.204-19, Incorporation by Reference of Representations and Certifications (DEC 2014), FAR 52.212-3, Offeror Representations and Certifications - Commercial Items (JUN 2020).⁷

Once the future FAR rule is published and FAR 52.204-26 (DEC 2019) is updated, follow the FAR rule to again update new and existing solicitations.

⁷ If a lease solicitation includes the provision at GSAM 552.270-33, System for Award Management - Leasing or its Alternate, authorized by Acquisition Letter MV-20-04 for use in lieu of FAR 52.204-7, the solicitation likewise does not be updated.

D. Authority.

This class deviation is issued under the authority of GSAM 501.404.

E. Effective Date.

This class deviation is effective on August 13, 2020, and it remains in effect until rescinded or incorporated into the GSAR. See Section C.2 for implementation timelines.

F. Federal Acquisition Service (FAS) and Public Building Service (PBS) Guidance.

FAS and PBS will revise applicable policies, such as solicitation and ordering guides, issue implementation guidance, revise contract templates, and provide training, as appropriate, to align with this class deviation.

G. Resources.

The following Section 889 resources are available on the “Prohibited Sources and Supply Chain Risk Management (SCRM)” Acquisition Portal Page (<https://insite.gsa.gov/scrm>):

- Link to Information for Industry
- Overview Flyer
- Frequently Asked Questions (FAQs)
- Training for Government-wide acquisition workforce
- Training for GSA acquisition workforce
- Acquisition Letter (MV-20-10) for GSA’s FAR-Based Contracts
 - XX
 - XX
 - XX

H. Points of Contact.

For questions concerning:

- This class deviation, send inquiries to gsarpolicy@gsa.gov
- Leasing implementation, send inquiries to pbsleasingsection889@gsa.gov
- CSO implementation, send inquiries to the appropriate innovation advocate on <https://insite.gsa.gov/acquisitioncontacts>

Attachment A - GSAR Deviation Text

Attachment B - GSAM Deviation Text

ATTACHMENT A**GSAR Deviation Text**

- Additions to baseline made by this class deviation are indicated by **[bold text in brackets]**
- Deletions to baseline made by this class deviation are indicated by ~~strikethroughs~~
- Five asterisks (*****) indicate that there are no revisions between the preceding and following sections
- Three asterisks (***) indicate that there are no revisions between the material shown within a subsection

GSAR Baseline: Change 110 effective 06/24/2020

Part 501—General Services Administration Acquisition Regulation System

Subpart 501.1—Purpose, Authority, Issuance

501.106 OMB approval under the Paperwork Reduction Act.

GSAR Reference	OMB Control No.
***	***
[570.701(a)]	[3090-XXXX]
[571.001]	[3090-XXXX]
***	***

Part 570—Acquiring Leasehold Interests in Real Property

Subpart 570.7—Solicitation Provisions and Contract Clauses

570.701 FAR provisions and clauses.

Include provisions or clauses substantially the same as the FAR provisions and clauses listed below.

If . . .	Then include . . .
(a) the estimated value of the acquisition exceeds the micro-purchase threshold identified in FAR 2.101	52.204-3 Taxpayer Identification. 52.204-6 Data Universal Numbering System (DUNS) Number. 52.204-7 System for Award Management. [52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.]
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Part 571—Pilot Program for Innovative Commercial Items

Subpart 571.1—General

[571.001 Applicability.

Procurements under the CSO Pilot Program must be compliant with the requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, must include the language of the representation and reporting requirements at FAR 4.2105, and must comply with subpart 504.70.]

* * * * *

ATTACHMENT B

GSAM Deviation Text

- Additions to baseline made by this class deviation are indicated by **[bold text in brackets]**
- Deletions to baseline made by this class deviation are indicated by ~~strikethroughs~~
- Five asterisks (*****) indicate that there are no revisions between the preceding and following sections
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GSAM Baseline: Change 110 effective 06/24/2020

Part 570—Acquiring Leasehold Interests in Real Property

Subpart 570.1—General

570.101 Applicability.

(c) The following GSAM provisions apply to acquisitions of leasehold interests in real property. These are in addition to the GSAR requirements identified in [570.101\(b\)](#).

GSAM Applicable to Acquisitions of Leasehold Interests in Real Property			

[504.70]			
