



4/27/2023

GSA Office of Governmentwide Policy

Class Deviation CD-2020-10
Supplement 1

MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

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SUBJECT: Supplement to Clarify Class Deviation CD-2020-10; FAR and GSAR Class Deviation – Eliminating Hard Copy Original Documents, Notarization and Seals for Certain Contract Requirements

On April 15, 2020, I approved the subject class deviation to eliminate the requirement for hard copy original documents, notarization and seals¹.

While this class deviation is focused on supporting COVID response efforts, there is a continued need for this deviation in the absence of a declared COVID emergency.

The vast majority of GSA contracting professionals now work either in a hybrid model or a fully remote model. Based on the way GSA now operates, these flexibilities provide needed administrative efficiencies. Therefore, though the Administration has announced that the COVID National Emergency declaration and Public Health Emergency declaration will end on May 11, 2023, this class deviation continues to remain in effect until rescinded or incorporated into the FAR or GSAR in accordance with Section 5 of the class deviation.

Questions regarding this supplement may be directed to GSARPolicy@gsa.gov.

¹The language addressed within this class deviation supports the implementation of proposed amendments to the Federal Acquisition Regulation (FAR) covered under FAR Case 2021-001.

it requires prior certification of the notary, which requires additional time and money and may be difficult to obtain in the current environment.

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.”

3. Authority.

This class deviation is issued under the authority of FAR 1.404 and General Services Administration Acquisition Manual (GSAM) 501.404. This deviation is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a) and GSAM 501.404(a).

4. Deviation.

Attachments A and B outline changes to the FAR and GSAR that authorize administrative efficiencies for GSA personnel and flexibility for GSA to best support its customer agencies through this deviation. This deviation would still maintain processes in line with most other FAR requirements for submissions of signed documents. The following is an explanation of each change.

When obtaining financial protection against losses under contracts per FAR part 28, contracting officers shall use:

- 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; and
- 52.228-11, Pledges of Assets (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).

When processing assignment of claims per FAR subpart 32.8, contracting officers shall use:

- 32.802(e) allowing the use of a copy of the assignment instrument;
- 32.805(a), (b), (c), and (e) allowing the use of electronically signed documents and a copy of the assignment instrument (reference associated GSAR subparts);
- 532.905-70 not requiring a seal on the GSA Form 1142, Release of Claims, and
- 552.232-23, Assignment of Claims (DEVIATION APR 2020), allowing the use of email and a copy of the assignment instrument, in place of 552.232-23, Assignment of Claims (Sep 1999).

When executing novation agreements and change-of-name agreements per FAR part 42, contracting officers shall use:

- 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.

See Attachment A for the changes in the FAR text as revised by this deviation.

See Attachment B for the changes in the GSAR text as revised by this deviation.

5. Effective Date.

This deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR and GSAR.

6. Point of Contact.

Any questions regarding this deviation may be directed to GSARPolicy@gsa.gov.

Attachments Appendix A – Line-In/Line-Out: FAR Text
Appendix B – Line-In/Line-Out: GSAR Text

**CD-2020-10
APPENDIX A
FAR DEVIATION LINE-IN/LINE-OUT TEXT**

FAR Baseline: FAC 2020-05 effective 03/30/2020

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

Part 28 – Bonds and Insurance
Subpart 28.1 – Bonds and Other Financial Protections

28.106 Administration.

28.106-8 Payment to subcontractors or suppliers.

The contracting officer will only authorize payment to subcontractors or suppliers from an ILC (or any other cash equivalent security) upon a judicial determination of the rights of the parties, a signed ~~notarized~~ statement by the contractor that the payment is due and owed, or a signed agreement between the parties as to amount due and owed.

Subpart 28.2 – Sureties and Other Security for Bonds

28.203 Acceptability of individual sureties.

* * * (b) An individual surety must execute the bond, and the unencumbered value of the assets (exclusive of all outstanding pledges for other bond obligations) pledged by the individual surety, must equal or exceed the penal amount of each bond. The individual surety shall execute **[a signed affidavit containing the information set out in]** the Standard Form 28 **[, except such Standard Form 28 is not required to be sworn and notarized,]** and provide a security interest in accordance with 28.203-1. One individual surety is adequate support for a bond, provided the unencumbered value of the assets pledged by that individual surety equal or exceed the amount of the bond. An offeror may submit up to three individual sureties for each bond, in which case the pledged assets, when combined, must equal or exceed the penal amount of the bond. Each individual must accept both joint and several liability to the extent of the penal amount of the bond.

* * *

* * * * *

28.203-5 Release of lien.

(a) After consultation with legal counsel, the contracting officer shall release the security interest on the individual surety's assets using the Optional Form 90, Release of Lien on Real Property, or Optional Form 91, Release of Personal Property from Escrow, or a similar release as soon as possible consistent with the conditions in subparagraphs (a)(1) and (2) of this subsection. A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized **[written]** authorization of the release **[signed]** by the surety saying that it approves of such release.

* * *

* * * * *

Subpart 32.8 – Assignment of Claims

* * * * *

32.802 Conditions.

* * *(e) The assignee sends a written notice of assignment together with a true copy of the assignment instrument to the-

- (1) Contracting officer or the agency head;
- (2) Surety on any bond applicable to the contract; and
- (3) Disbursing officer designated in the contract to make payment.

* * * * *

32.805 Procedure.

(a) Assignments.

(1) Assignments by corporations shall be-

- (i) Executed **[Signed]** by an authorized representative;
- (ii) Attested **[Signed]** by the secretary or the assistant secretary of the corporation; and
- (iii) ~~Impressed with the corporate seal or accompanied~~ **[Accompanied]** by a true copy of the resolution of the corporation's board of directors authorizing the signing representative to **[sign]** ~~execute~~ the assignment.

* * * (3) Assignments by an individual shall be signed by that individual ~~and the signature acknowledged before a notary public or other person authorized to administer oaths.~~

(b) *Filing.* The assignee shall forward **[by email or other electronic means the notice of assignment and a copy of the instrument of assignment]** to each party specified in 32.802(e). ~~an original and three copies of the notice of assignment, together with one true copy of the instrument of assignment. The true copy shall be a certified duplicate or photostat copy of the original assignment.~~

(c) *Format for notice of assignment.* The following is a suggested format for use by an assignee in providing the notice of assignment required by 32.802(e).

Notice of Assignment

To: _____ **[[Name, address and email address for]** *Address to one of the parties specified in 32.802(e).*

This has reference to Contract No. _____ dated _____, entered into between _____ *[Contractor's name and address]* and _____ *[Government agency, name of office, and address]*, for _____ *[Describe nature of the contract]*.

Monies due or to become due under the contract described above have been assigned to the undersigned under the provisions of the Assignment of Claims Act of 1940, as amended, (31 U.S.C.3727, 41 U.S.C.6305).

A ~~true~~ copy of the instrument of assignment executed by the Contractor on _____ *[Date]*, is attached to the original **[this]** notice.

Payments due or to become due under this contract should be made to the undersigned assignee.

~~Please return to the undersigned the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and signed by the person acknowledging~~ **[acknowledge]** receipt on behalf of the

addressee **[by return email or other electronic means to the undersigned]**.

Very truly yours,

_____ *[Name of Assignee]*

By _____ *[Signature of Signing Officer]*

_____ *[Title of Signing Officer]*

_____ *[Address of Assignee]*

[_____ *[Email Address of Assignee]*]

— Acknowledgement

— Receipt is acknowledged of the above notice and of a copy of the instrument of assignment. They were received _____ (a.m.) (p.m.) on _____, 20____.

[Signature]

_____ *[Title]*

_____ On
behalf of

_____ *[Name of Addressee of this Notice]*

* * *

(e) Release of assignment.

* * * (2) The assignee, under a further assignment or reassignment, in order to establish a right to receive payment from the Government, must ~~file with~~ **[send to]** the addressees listed in 32.802(e) a-

(i) Written notice of release of the contractor by the assigning financing institution;

(ii) Copy of the release instrument;

(iii) Written notice of the further assignment or reassignment; and

(iv) Copy of the further assignment or reassignment instrument.

(3) If the assignee releases the contractor from an assignment of claims under a contract, the contractor, in order to establish a right to receive payment of the balance due under the contract, must **[send]** ~~file~~ a written notice of release together with a ~~true~~ copy of the release of assignment instrument ~~with~~ **[to]** the addressees noted in 32.802(e).

* * * * *

42.1204 Applicability of novation agreements.

* * * * *

(f) Except as provided in paragraph (g) of this section, the contractor shall submit to the responsible contracting officer one copy of each of the following documents, as applicable, as the documents become available:

(1) ~~An authenticated~~ copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree.

(2) A ~~certified~~ copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

(3) A ~~certified~~ copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.

(4) An ~~authenticated~~ copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

* * *

(i)

* * *

NOVATION AGREEMENT

* * *

(b)* * *

* * *

(9) The contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

United States of America,

By _____

Title _____

ABC Corporation,

By _____

Title _____

~~— [Corporate Seal]~~

XYZ Corporation,

By _____

Title _____

~~— [Corporate Seal]~~

Certificate

I, _____, certify that I am the Secretary of ABC Corporation, that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand ~~and the seal of this corporation~~ this day of _____ 20 ____.

By _____

~~— [Corporate Seal]~~

Certificate

I, _____, certify that I am the Secretary of XYZ Corporation, that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand ~~and the seal of this corporation~~ this day of _____ 20 ____.

By _____

~~— [Corporate Seal]~~

* * *

42.1205 Agreement to recognize contractor's change of name.

* * *

(b)* * *

CHANGE-OF-NAME AGREEMENT

* * *

(b) In consideration of these facts, the parties agree that-

(1) The contracts covered by this Agreement are amended by substituting the name "ABC Corporation" for the name "XYZ Corporation" wherever it appears in the contracts; and

(2) Each party has executed this Agreement as of the day and year first above written.

United States of America,

By _____

Title _____

ABC Corporation,

By _____

Title _____

—~~[Corporate Seal]~~

Certificate

I, _____, certify that I am the Secretary of ABC Corporation; that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this _____ day of _____ 20____.

By _____

—[Corporate Seal]

* * * * *

Part 52 – Solicitation Provisions and Contract Clauses

* * * * *

52.228 [Reserved].

* * * * *

52.228-11 Pledges of Assets.

As prescribed in 28.203-6, insert the following clause:

Pledges of Assets (Aug 2018)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond -

(1) Pledge of assets; and

(2) [A signed affidavit containing the information set out in] Standard Form 28, Affidavit of Individual Surety[, except that the Standard Form 28 is not required to be sworn and notarized].

(b) Pledges of assets from each person acting as an individual surety shall be in the form of -

* * *

* * * * *

CD-2020-10
APPENDIX B
GSAR DEVIATION LINE-IN/LINE-OUT TEXT

GSAR Baseline: Change 106 effective 02/19/2020

- Additions to baseline made by deviation are indicated by **[bold text in brackets]**
- Deletions to baseline made by deviation are indicated by ~~strikethroughs~~
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Part 532 – Contract Financing
Subpart 532.9 – Prompt Payment

532.905-70 Final payment—construction and building service contracts.

*** (b) Contracting officers may not process the final payment on construction or building service contracts until the contractor submits a properly executed GSA Form 1142, Release of Claims, **[except that a seal is not required]** and except as provided in paragraph (c) of this section

Part 552 – Solicitation Provisions and Contract Clauses
Subpart 552.2 – Text of Provisions and Clauses

Part 552.232 [Reserved]

552.232-23 Assignment of Claims.

As prescribed in 532.806, insert the following clause:

Assignment of Claims (Sep 1999)

Because this is a requirements or indefinite quantity contract under which more than one agency may place orders, paragraph (a) of the Assignment of Claims clause (FAR 52.232-23) is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, the Contractor shall not assign any claim(s) for amounts due or to become due under this contract. However, the Contractor is permitted to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as "the Act"), all amounts due or to become due under any order amounting to \$1,000 or more issued by any Government agency under this contract. Any such assignment takes effect only if and when the assignee files **[transmits by electronic means]** written notice of the assignment together with a true copy of the instrument of assignment ~~with~~ **[to]** the contracting officer issuing the order and the finance office designated in the order to make payment. Unless otherwise stated in the order, payments to an assignee of any amounts due or to become due under any order assigned may, to the extent specified in the Act, be subject to reduction or set-off.

(End of clause)

* * * * *