



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2022-O0004

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Requirements for Nonavailability Waiver Determinations Under
the Buy American Statute

Effective November 16, 2021, in accordance with the memorandum titled “Improving the Transparency of Made in America Waivers,” dated October 26, 2021, issued by the Made in America Office (MIAO) within the Office of Management and Budget (OMB) and the Office of Federal Procurement Policy (OFPP), prior to contract award, contracting officers shall—

- In lieu of the exception at Federal Acquisition Regulation (FAR) 25.103(b)(3), execute an individual nonavailability waiver determination if no offer for a domestic end product is received in response to an acquisition that was conducted using full and open competition and synopsisized in accordance with FAR 5.201;
- Submit all proposed individual nonavailability waiver determinations to be made in accordance with FAR 25.103(b)(2), or in lieu of the exception at FAR 25.103(b)(3) as described above, digitally to [MadeinAmerica.gov](https://www.madeinamerica.gov) via System for Award Management ([SAM.gov](https://www.sam.gov)) for MIAO review, unless one of the following exceptions applies—
 - The acquisition is conducted under reduced competition due to urgency (see FAR 6.302-2 and 13.106-1(b) and DFARS 206.302-2) or where the contracting officer is obligated by law to act more quickly than the MIAO nonavailability waiver determination review timeframes allow. In these instances, contracting officers shall report such waivers through the digital waiver portal accessed via [SAM.gov](https://www.sam.gov) within 30 days of award. The MIAO will not make a determination on these individual nonavailability waiver determinations; or

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- The acquisition is for products that have been determined to be nonavailable on a class basis and are listed in FAR 25.104; and
- In lieu of the of exception in paragraph (C) of the prescription at DFARS 225.1101(2)(i), insert the DFARS clause 252.225-7001, Buy American and Balance of Payments Program, instead of the clause at FAR 25.225-1, Buy American—Supplies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is for supplies for use within the United States and an exception, in the form of an individual nonavailability waiver determination, to the Buy American statute applies.

Upon submission of a proposed individual nonavailability waiver determination to the MIAO for review, contracting officers shall not make an award until receiving confirmation that the MIAO—

- Completed its review of the proposed nonavailability waiver determination; or
- Waived its review of the proposed nonavailability waiver determination.

When posting the proposed individual nonavailability waiver determination for MIAO review, contracting officers must input information into a digital waiver, in accordance with the Made in America Digital Waiver Portal User Guide at SAM.gov. The digital waiver requires the the standardized nonavailability waiver determination information listed in the Attachment to the OMB Memorandum M-21-26, dated June 11, 2021.

Certain information from the individual nonavailability waiver determination will be available to the public at MadeinAmerica.gov immediately upon posting of the proposed waiver and prior to review by MIAO. The digital waiver and the Made in America Digital Waiver Portal User Guide identify those fields that are public and those fields that are for government use only. Contracting officers shall not enter source selection information (see FAR 2.101 and 3.104) in any digital waiver field. In addition, contracting officers must not enter in a public digital waiver fields any information that cannot be made public.

The final decision to execute an individual nonavailability waiver determination shall be approved in accordance with DFARS 225.103(b)(ii).

This class deviation implements the requirements of the memorandum titled “Improving the Transparency of Made in America Waivers,” dated October 26, 2021, and OMB Memorandum M-21-26, Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws, dated June 11, 2021. OMB Memorandum M-21-26 outlined initial process management steps to help agencies prepare for and support a centralized strategic nonavailability waiver determination review process as required by Executive Order 14005, Ensuring the Future Is Made in All of America by All of America’s Workers (86 FR 7475, January 28, 2021). Together, these documents work to establish a more transparent Federal marketplace that demonstrates a priority to support Made in America purchasing, increase public trust and confidence in the Federal Government’s commitment to an expanded U.S.

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manufacturing base, and establish a domestic supplier base that is more robust and resilient to market volatility and manipulation.

This class deviation remains in effect until incorporated into the FAR or DFARS or otherwise rescinded. My point of contact is Mr. Jeff Grover, who is available at 703-697-9352 or jeffrey.c.grover.civ@mail.mil.

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting