PROCUREMENT MEMORANDUM 2022-02

ACTION

MEMORANDUM FOR: Senior Bureau Procurement Officials

FROM: Barry E. Berkowitz for: Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

SUBJECT: Federal Acquisition Regulation (FAR) Class Deviation:
Requirements for Nonavailability Determinations Under the Buy
American Statute

Background

A memorandum titled “Improving the Transparency of Made in America Waivers” was issued on
October 26, 2021, by the Made in America Office (MIAO) within the Office of Management and
Budget (OMB) and the Office of Federal Procurement Policy (OFPP). The memorandum issued
jointly by the MIAO and OFPP (MIAO memo) provides specific guidance to agencies on the use
of a new dedicated portal (MadeinAmerica.gov) regarding waivers under the Buy American
statute. The MIAO memo builds on the guidance in 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 Memo M-21-26 outlined initial management steps to help
agencies prepare for and support a centralized strategic waiver review process as required by
Executive Order (EO) 14005, Ensuring the Future Is Made in All of America by All of America’s
Workers (86 FR 7475, January 28, 2021).

The MIAO memo prescribes certain requirements pertaining to posting of individual
nonavailability waiver determinations under the Buy American statute for agencies. Those
requirements became effective on November 16, 2021.

The posting requirements in the MIAO memo are not reflected in the FAR’s coverage at
25.103(b)(2) of individual nonavailability waiver determinations under the Buy American statute.
Further, FAR coverage at 25.103(b)(3) requires conformance with the requirements prescribed
in the MIAO memo.

Purpose
This class deviation is issued in accordance with FAR 1.404 and pursuant to Civilian Agency
Acquisition Council (CAAC) Letter 2022-01 to revise FAR text at FAR 25.103(b) and other
conforming changes throughout FAR Part 25 to implement the requirements of the MIAO
memo.
**Required Actions**
Contracting officers shall comply with the deviated FAR text. The approval authorities identified in Commerce Acquisition Manual (CAM) 1301.70, *Delegations of Authority*, as they pertain to waiver determinations shall remain unchanged and not be further delegated.

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This deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR.

**Questions**
Please direct any questions regarding this Procurement Memorandum to OAM_Mailbox@doc.gov.

Attachment A – FAR Deviation Text