

June 28, 2024

Class Deviation – Regarding Agriculture Acquisition Regulation (AGAR) Clause 452.204-70

Purpose: This memorandum approves a class deviation from the AGAR to update clause 452.204-70.

Authority: This class deviation is issued under the authority of AGAR 401.404 with written approval from the Senior Procurement Executive (SPE).

Background: This AGAR class deviation implements the following changes:

- 1) Updates the current AGAR class deviation, *Modification for Contract Closeout* (JULY 2022).
- 2) Adds a process for contract closeout for contracts utilizing anything other than cost reimbursement when unliquidated funds more than \$1000 remain on the contract.

Deviation: As prescribed in USDA's Contracting Desk Book 404.804, 413.302-5, and 416.102, insert the following clause:

AGAR 452.204-70, Modification for Contract Closeout (DEVIATION JUNE 2024)

"Upon contract closeout for contracts utilizing anything other than cost reimbursement:

(a) If unliquidated funds in the amount of \$1000 or less remain on the contract, the Contracting Officer (CO) shall issue a unilateral modification for deobligation. The contractor will receive a copy of the modification but will not be required to provide a signature. The CO shall immediately proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment.

(b) Upon contract closeout for contracts utilizing SAP: if unliquidated funds of more than \$1000 remain on the contract, the CO shall issue a bilateral modification for deobligation. The contractor will receive a copy of the modification and will be required to provide a signature. (The CO may also request a "Contractor Release of Claims" be completed by the contractor, although not required for contracts and orders using SAP.) If the bilateral modification and/or Release of Claims are not returned to the CO within 60 days, the CO shall release the modification as unilateral and proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment.

(c) Upon contract closeout for contracts utilizing anything other than cost reimbursement, if unliquidated funds of more than \$1000 remain on the contract, the CO shall issue a bilateral modification for deobligation. The contractor will receive a copy of the modification and a "Contractor Release of Claims" and will be required to provide a signature on both forms. If the bilateral modification and Release of Claims are not returned to the CO within 120 days, the CO shall release the modification as unilateral and proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment."

(End of clause)

Action: Contracting Officers shall use the AGAR clause 452.204-70 in all new solicitations and contracts that use anything other than cost reimbursement.

Effective Date: This deviation is effective immediately and remains in effect until it is incorporated in the

AGAR or otherwise rescinded.

Point of Contact: Questions regarding this deviation may be directed to Procurement.Policy@usda.gov.

Attachment

Attachment

AGAR Deviation Text

Baseline is AGAR latest version, date July 2022.

Deviations are shown by **bold additions** and ~~strikeouts~~.

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452.204-70, Modification for Contract Closeout

As prescribed in USDA's Contracting Desk Book 404.804 and 413.302-5, and **416.102** insert the following clause:

Modification for Contract Closeout (DEVIATION ~~JULY 2022~~ **JUNE 2024**)

"Upon contract closeout for contracts utilizing **anything other than cost reimbursement**: ~~Simplified Acquisition Procedures (SAP) according to FAR part 13,~~

(a) If ~~unobligated~~ **unliquidated** funds in the amount of \$1000 or less remain on the contract, the Contracting Officer (CO) shall issue a unilateral modification for deobligation. The contractor will receive a copy of the modification but will not be required to provide a signature. The CO shall immediately proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment.

(b) Upon contract closeout for contracts utilizing SAP: if ~~unobligated~~ **unliquidated** funds of more than \$1000 remain on the contract, the CO shall issue a bilateral modification for deobligation. The contractor will receive a copy of the modification and will be required to provide a signature. (The CO may also request a "Contractor Release of Claims" be completed by the contractor, although not required for contracts and orders using SAP.) If the bilateral modification and ~~or~~ Release of Claims are not returned to the CO within 60 days, the CO shall release the modification as unilateral and proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment.

(c) Upon contract closeout for contracts utilizing **anything other than cost reimbursement**, if **unliquidated funds of more than \$1000 remain on the contract**, the CO shall issue a bilateral modification for deobligation. The contractor will receive a copy of the modification and a "Contractor Release of Claims" will be required to provide a signature on both forms. If the bilateral modification and Release of Claims are not returned to the CO within 120 days, the CO shall release the modification as unilateral and proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment."

(End of clause)