



MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

FROM: JEFFREY A. KOSES JEFFREY KOSES Digitally signed by JEFFREY KOSES
Date: 2020.06.17 10:34:00 -04'00'
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: Supplement to Extend Exception Authority provided in SPE Memo SPE-2020-11

1. Purpose. The purpose of this supplement to SPE Memo SPE-2020-11 is to extend the exception authority for an additional month (i.e., from July 1, 2020 to August 1, 2020).
2. Background. On April 13, 2020, the Senior Procurement Executive issued a class Determination & Findings (D&F) via SPE Memorandum, SPE-2020-11. The D&F provides an exception to the Trade Agreements and the Buy American statute clauses for several Federal Supply Classes (FSC) (see Attachment 1 - List of Applicable Federal Supply Classes) to support America's response to COVID-19.

The time period provided for the use of this exception authority is July 1, 2020¹. Based on the supporting documentation provided by FAS Regions 6 and 7 Heads of Contracting Activities, the SPE has determined there is a need to extend this exception authority to continue support of America's response to COVID-19. Specifically, the SPE has determined the FSCs identified in the memorandum are still not available in sufficient supply from Trade Agreement and Buy America statute compliant sources. Altogether, the SPE will continue to evaluate the need for this exception authority and will extend such exception authority, as determined necessary.

3. Period of Extension. Unless otherwise extended further, the exception authority provided in SPE-2020-11 is hereby extended from July 1, 2020 to August 1, 2020².
4. Additional Amendments. The following are additional amendments to SPE-2020-11 as provided under this supplement:

(i) Section 8.b. is revised as follows:

FROM: "no later than June 30, 2020"

¹See Section 6 entitled "Conditions of the Exception of this Determination."

²The extension provided under this supplement revises all instances of "July 1, 2020" with "August 1, 2020".

TO: “no later than one calendar day prior to the end date of the exception authority.”

(ii) Footnote [2] is revised as follows:

FROM: “National Interest Action (NIA) code established for COVID-19 ends July 1, 2020 (See <https://www.fpds.gov/fpdsng/cms/index.php/en/newsroom/156-nia-code-covid-19-p20c.html>)”

TO: “See <https://www.fpds.gov/> for information on the end date prescribed for the National Interest Action (NIA) code established for COVID-19.”

5. Point of Contact. Questions regarding this supplement may be directed to GSARPolicy@gsa.gov.



April 3, 2020

GENERAL SERVICES ADMINISTRATION
APPLICABLE TO ALL GSA CONTRACTING ACTIVITIES

Class Determination and Findings (D&F) in accordance with Federal Acquisition Regulation (FAR) subpart 1.7.

Nature and/or description of the action being approved

Buying for America - Exception for Non-availability for Trade Agreements and Buy American Statute Clauses.

Citation of the appropriate statute and/or regulation upon which the D&F is based

The legal basis for this exception determination is one or more of the following:

- Trade Agreements: FAR 25.403(c) insufficient quantity (19 U.S.C. 2512(a)(2));
- Buy American: FAR 25.103(b) (41 U.S.C. 8302(a)(2)).

FINDINGS

1. The United States is under attack from COVID-19 and actions are being taken to protect all Americans. President Trump declared a National Emergency Concerning the COVID-19 Outbreak on March 13, 2020. The health and safety of the American people is the U.S. government's top priority.

2. At present, American lives and way of life face a grave challenge. Agencies across the federal government are taking unprecedented actions to mitigate the impact of COVID-19. To support this effort, the GSA must ensure other agencies are able to function and preserve the lives of their workers, to ensure federal buildings and hospitals are clean and safe, and that necessary supplies are on hand.

3. Learning from previous historical events, such as Hurricane Katrina, GSA is taking an unusual step to make sufficient resources available. The needs of all levels of government both U.S. and worldwide have increased greatly for certain critical and essential supply items. GSA has determined that there is not a sufficient available supply of these items from trade agreement^[1] compliant sources. Nor is there sufficient availability under the Buy American statute clause.

DETERMINATION

1. As the Senior Procurement Executive, I am determining for the purpose of application of the trade agreements that certain supplies are temporarily unavailable in sufficient quantity or satisfactory quality.

2. I am also making the exception determination under the Buy American statute that the supply items affected by this exception determination are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

3. Therefore, in order to preserve American lives and the American way of life, these supplies may be procured notwithstanding that they: (i) are not otherwise from a designated country or the United States, and (ii) would not otherwise satisfy the component or other Buy American statute requirements. I am issuing this exception determination for the limited period of the emergency, and to meet the Government's requirements during the emergency.

4. This exception determination applies to GSA contracts (and the orders placed against GSA contracts); GSA procedures do not require agencies using the GSA contracts under this determination to make a separate non-availability determination.

5. I reserve the right to amend this exception determination based on changing conditions or in response to additional information. For example, this determination may be narrowed (e.g. ending it early, and/or narrowing the applicable supply items), or may be broadened (e.g., extending the ending date and/or broadening the supply items). Amendments to this exception determination will be done as an addendum to this determination.

6. Conditions of the Exception Determination.

a. Time period for authority to use this determination: From the date this determination is signed through July 1, 2020^[2].

b. Federal Supply Classes covered by this determination: See Attachment 1.

c. Purchase dollar values to which this applies: All, at any dollar value.

d. Countries in which the supply item may be manufactured: any except those listed in FAR subpart 25.7 (e.g. most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea).

7. Head of Contracting Activity (HCA) Responsibilities.

The Head of Contracting Activities (HCAs) in the Federal Acquisition Service Regions 6 and 7 provided fact-specific and researched information to support non-availability determinations for critical cleaning supplies and personal protective equipment. These items are essential for protecting Americans from COVID-19, and are not available to meet the requirements arising from the present emergency.

Based on the information provided by the HCA, I am issuing this exemption determination, to apply to GSA contracts for these items.

The HCAs for FAS Regions 6 and Region 7 must update the research monthly and inform me when there is a sufficient quantity of product available from U.S. or designated end countries. HCAs should anticipate vendors and other interested stakeholders may wish to provide updated information on product availability.

I anticipate that as the response continues there may not be a sufficient quantity of other products available.

To have an additional FSC added, as an addendum, to this GSA non-availability determination in response to COVID-19, GSA HCAs must do the following:

a. Submit to me their non-availability determination identifying the FSC(s) for which there is both a government need and no sources available in sufficient quantity or satisfactory quality from U.S. or designated end countries. I reserve the right to decide whether a GSA wide determination is in the best interest of the Government.

b. For FSCs that are covered by this determination, the HCA must update the research monthly and inform me when a sufficient quantity of product is available from U.S. or designated end countries. HCAs should anticipate interested parties may wish to provide updated information on product availability.

8. Contracting Officer Responsibilities.

a. Federal Supply Schedules (FSS). For award of Federal Supply Schedule Contracts, more detailed implementation policies are addressed by the FAS Office of Policy and Compliance.

Only items included in Attachment 1, or a subsequent addendum are eligible to be added, temporarily, to FSS Contracts. Due to the very short duration of this authority, it will be more effective to modify existing schedule contracts than to award new ones. New schedule contracts should not be awarded for non-TAA compliant items.

Product addition modifications shall include language making clear that the item is on contract only through July 1 2020, unless this non-availability determination is extended.

Orders placed against FSS contracts shall be for as short a period as feasible to ensure that an adequate supply of items is obtained, and must comply with the Conditions of the Exception Determination paragraph above.

Activities with authority to place DO or DX rated orders may do so for non-trade-agreement-compliant items under this non-availability determination.

b. Non-Federal Supply Schedules. Any contract awarded, or contract modification issued, using this exception determination authority must be signed no later than June 30, 2020. Any such contracts, orders, or other agreements shall be for as short of a duration as feasible to ensure an adequate supply is obtained.^[3]

9. Pricing.

This determination is making no changes to pricing policies.

10. Other Considerations.

Other clauses in the contract remain in effect, such as FAR 52.203-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, and FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

When the Trade Agreements clause exception is used^[4], the Buy American statute will not apply in its place. When the exception determination is not in effect (expired, or not applied to certain supply items), the Trade Agreements clause^[5] or Buy American clause^[6] in the contract will apply.

The procurement priorities at FAR part 8 continue to apply (e.g. mandatory sources such as the AbilityOne Procurement List). Any lack of availability of AbilityOne products will be addressed separately.

EFFECTIVE DATE

This D&F is effective on the date of signature. The authority to use the exception determination is effective during the dates listed in the "Conditions of the Exception Determination" paragraph above.

JEFFREY
KOSES

Digitally signed by
JEFFREY KOSES
Date: 2020.04.03
14:38:15 -04'00'

JEFFREY KOSES

SENIOR PROCUREMENT EXECUTIVE

Attachment 1 - List of Applicable Federal Supply Classes

^[1] World Trade Organization Government Procurement Agreement, Free Trade Agreements, and other agreements listed at FAR 25.400(a)

^[2] National Interest Action (NIA) code established for COVID-19 ends on July 1, 2020 (See https://www.fpds.gov/fpdsng_cms/index.php/en/newsroom/156-nia-code-covid-19-p20c.html)

^[3] Activities with authority to place DO or DX rated orders may do so for non-trade-agreement-compliant items under this non-availability determination.

^[4] See FAR 25.403(c), 52.225-5(b) and 52.225-6(c)

^[5] See FAR 52.225-5

^[6] See FAR 52.225-1 and 52.225-3

ATTACHMENT 1 - List of Applicable Federal Supply Classes

The “Class Determination and Finding for Buying for America - Exception for Non-availability and Unusual and Compelling Urgency for Trade Agreements and Buy American Statute Clauses” applies to the following Federal Supply Classes (FSCs):

<u>FSC</u>	<u>General Products Purchased</u>	<u>Determination Applicability Begin Date</u>	<u>Determination Applicability End Date</u>
FSC 4240	N95 masks	04/03/2020	07/01/2020
FSC 6810	Sodium Hypochlorite (bleach)	04/03/2020	07/01/2020
FSC 6840	Disinfectants includes, cleaners, sprays and wipes	04/03/2020	07/01/2020
FSC 7930	Cleaners including sanitizing surface and floor cleaners	04/03/2020	07/01/2020
FSC 8520	Hand Sanitizers, soaps and dispensers.	04/03/2020	07/01/2020