



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF FINANCE AND OPERATIONS

June 21, 2021

ACQUISITION ALERT 2021-02

TO: Heads of Contracting Activities
Office of Finance and Operations/Contracts and Acquisitions Management
Federal Student Aid/Federal Student Aid Acquisitions
Executive Officers

FROM: Phillip R. Juengst
Deputy Assistant Secretary for Acquisition and Grants Administration
Senior Procurement Executive

SUBJECT: New Education Acquisition Regulation (EDAR) Class Deviations:
(1) Cybersecurity Requirements for Contractors
(2) Contractor Personnel Security Requirements

- Purpose:** The purpose of this alert is to issue class deviations to implement separate provisions and clauses for the Department's cybersecurity requirements and personnel security requirements. The separate provisions and clauses will reduce burden on Contracting Officers, improve clarity of requirements for contractors, and ensure active contracts, solicitations, and future contracts include ED's current cybersecurity and personnel security screening requirements for contractors and prospective contractors. This alert rescinds Acquisition Alert (AA) 2020-01, dated December 10, 2019.
- Deviated Language:** EDAR Part 3404 – Administrative and Information Matters, EDAR Part 3439 – Acquisition of Information Technology, and EDAR Part 3452 Solicitation Provisions and Contract Clauses
- Applicability:** The cybersecurity deviation applies as follows:

The contracting officer must include the provision at 3452.239-71 (DEVIATION) (JUN 2021) "Notice to Offerors of Department Security and Privacy Requirements for Information Technology Procurements" in solicitations and clause at 3452.239-72 (DEVIATION) (JUN 2021) "Department Security and Privacy Requirements for Information Technology Procurements" in contracts when it is anticipated that contractors will have access to ED Information Technology (IT) systems and/or contractor systems operated with ED data or interfacing with ED systems.

The contractor personnel security requirements deviation applies as follows:
The contracting officer must include the provision at 3452.204-71 "Notice to Offerors of

Contractor Security Vetting Requirements” (DEVIATION) (JUN 2021) in solicitations and clause at 3452.204-72 (DEVIATION) (JUN 2021) “Contractor Security Vetting Requirements” in contracts when it is anticipated that contractor employees will have access to proprietary or sensitive ED information including “Controlled Unclassified Information” as defined in 32 CFR Part 2002.4(h), ED Information Technology (IT) systems, contractor systems operated with ED data or interfacing with ED systems, ED facilities/space, and/or perform duties in a school or in a location where children are present.

4. **Background:** Subsequent to the issuance of AA 2020-01 on December 10, 2019, ED’s cybersecurity requirements have increased and are expected to continue to evolve in the future, whereas, ED’s personnel security requirements have remained fairly consistent. Because ED’s cybersecurity requirements are expected to continually evolve, the December 2019 (reference AA 2020-01) clause deviation is insufficient to ensure that contractors are in compliance with ED’s current cybersecurity standards. Additionally, because the personnel security requirements have remained fairly consistent, it is more appropriate to separate the clauses into two. Accordingly, the Acting Chief Acquisition Officer has approved the attached class deviations – one for cybersecurity and one for personnel security.

Note that both clause deviations, 3452.239-72 Department Security and Privacy Requirements for Information Technology Procurements (DEVIATION) (JUN 2021) and 3452.204-72 Contractor Security Vetting Requirements (DEVIATION) (JUN 2021), contain a link to <http://www.ed.gov/fund/contract/about/bsp.html>. This link is a nexus to the Department’s detailed contractual requirements for cybersecurity and contractor personnel security.

The Office of Acquisition and Grants Management will notify Heads of Contracting Activities any time a (non-administrative) update is posted to <http://www.ed.gov/fund/contract/about/bsp.html>. As of today’s date, June 18, 2021, the linked version of the posted cybersecurity requirements document is dated September 29, 2020. However, an update, which introduces additional cybersecurity security requirements, is expected to be released in late August/early September. Also, as of today’s date, the posted version of the personnel security document has been revised from the November 1, 2019 version to a January 19, 2021 version. The revisions to the personnel security requirements document were typographical and administrative only.

An important distinction between deviated clause 3452.239-72 (i.e., the cybersecurity deviation) and 3452.204-72 (i.e., the personnel security deviation), is that the cybersecurity deviation includes the following text:

“The successful offeror and any of its future subcontractors shall, *at all times*, maintain compliance with the *most current version* of Department of Education requirements....”

The personnel security clause deviation does not include this text. These words were inserted into 3452.239-72 to alleviate the Contracting Officer from having to execute recurring bilateral modifications every time the Department revises or strengthens its cybersecurity requirements with which it needs contractors to comply.

5. **Effective Date:** June 18, 2021
6. **Expiration Date:** Effective until incorporated into the EDAR or otherwise rescinded.
7. **Required Actions:** Contracting officers shall:
 - Modify all applicable active contracts to include clause 3452.239-72 Department Security and Privacy Requirements for Information Technology Procurements (DEVIATION) (JUN 2021), in accordance with the HCA's implementation plan.
 - Include provision 3452.239-71 Notice to Offerors of Department Security and Privacy Requirements for Information Technology Procurements (DEVIATION) (JUN 2021) and clause 3452.239-72 Department Security and Privacy Requirements for Information Technology Procurements (DEVIATION) (JUN 2021) in all solicitations and contracts issued after June 18, 2021.
 - Continue to include provision 3452.239-71 Notice to Offerors of Department Security and Privacy Requirements for Information Technology Procurements (DEVIATION) (JUN 2021) and clause 3452.239-72 Department Security and Privacy Requirements for Information Technology Procurements (DEVIATION) (JUN 2021) in new solicitations and resultant contracts until further notice. (It is envisioned that at some future point the cybersecurity provision and clause will no longer be needed as it is expected that tailored cybersecurity requirements will be incorporated into the PWS.)
 - Include, by modification, the new stand-alone personnel security clause deviation 3452.204-72 Department Contractor Vetting Requirements (DEVIATION) (JUN 2021), when applicable, in active contracts and in accordance with the HCA's implementation plan.
 - Include both the stand-alone personnel security provision 3452.204-71 Notice to Offerors of Department Contractor Security Vetting Requirements (DEVIATION) (JUN 2021) and clause, 3452.204-72 Department Contractor Security Vetting Requirements (DEVIATION) (JUN 2021), when applicable, in new solicitations and resultant contracts starting June 18, 2021.
8. **Additional Information: Strategic Acquisition Management Initiatives Division, [SAMI Policy@ed.gov](mailto:SAMI_Policy@ed.gov)**
9. **Attachments:**
 - A. Class Deviation – Cybersecurity Requirements with Deviated EDAR Language Attached
 - B. Class Deviation – Personnel Security Requirements with Deviated EDAR Language Attached
 - C. MS WORD copy of EDAR prescription, provision, and clause for cybersecurity requirements
 - D. MS WORD copy of EDAR prescription, provision, and clause for cybersecurity requirements for contractor personnel security requirements
 - E. Frequently Asked Questions