

Date: October 27, 2022

From: Executive Director, Office of Acquisition and Logistics (003A), and Senior Procurement Executive

Subj: Class Deviation from the Federal Acquisition Regulation to Provide Time for the System Implementation of Federal Acquisition Circular 2022-08

To: Heads of the Contracting Activities

1. Purpose. To issue a class deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, to utilize new policies in the Federal Acquisition Circular (FAC) 2022-08 (87 FR 58218) published on September 23, 2022, with an effective date of October 28, 2022. This deviation allows VA to use the new policies while the Integrated Award Environment (IAE) updates the Federal e-business systems (i.e., the System for Award Management (SAM)). Federal agencies are authorized by the Civilian Agency Acquisition Council letter [2023-01](#), dated October 19, 2022, to issue a class deviation.

2. FAR Parts Impacted. FAR parts 19 and 52.

3. Effective Date. October 28, 2022.

4. Expiration Date. This deviation expires when the FAR changes are implemented in SAM.gov, hereinafter referred to as “SAM.”

5. Applicability. This class deviation applies to all solicitations.

6. Current FAR Policy. FAC 2022-08 publishes three final rules amending the FAR to align with the Small Business Administration regulations regarding mentor-protégé joint ventures, the Historically Underutilized Business Zone (HUBZone) Program, and the certification of economically disadvantaged women-owned business (EDWOSB) concerns and women-owned small business (WOSB) concerns.

7. Need for Deviation. The FAR cases in FAC 2022-08 make changes to entity representations in SAM (i.e., FAR provisions 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services, at paragraph (c) and 52.219-1, Small Business Program Representations, also at paragraph (c). Starting October 28, 2022, the new version of these two provisions will be shown on eCFR and acquisition.gov, but will not appear on SAM. Until the SAM system is updated, contracting officers cannot rely on certain representations in SAM. Therefore, it is recommended that contracting officers follow the procedures in paragraph 7 below.

Contracting officers are reminded that VAAR subpart 819.70, the VA Veterans First Contracting Program, takes precedence where applicable (see 819.7003(c)), pursuant to 38 U.S.C. 8127.

8. Required Action. Contracting Officer Procedures—

Offer-by-Offer Representations for Small Business Joint Ventures and SDVOSB Joint Ventures

Beginning October 28, 2022, the FAR provisions 52.212-3 and 52.219-1, at paragraph (c), will include new representations for small business joint ventures and service-disabled veteran-owned (SDVOSB) small business joint ventures. SAM.gov will not include the new representations until the changes are implemented by IAE. Therefore, contracting officers cannot use SAM for these two new joint venture representations in SAM. Under the existing authority of FAR 52.204-8(d) and 52.212-3(b), offerors may make representations on an offer-by-offer basis. As a best practice, it is highly recommended that CO's:

1) Include a statement in solicitation notices to remind small business joint ventures to submit their socioeconomic status as a small business joint venture or a SDVOSB joint venture as provided in 52.212-3(c) and 52.219-1(c) on an offer-by-offer basis in accordance with the authority of FAR 52.204-8(d) and 52.212-3(b); and

2) Check for these offer-by-offer representations in accordance with FAR 4.1201(c).

These procedures are not necessary for 8(a) or HUBZone joint ventures because representations for those joint ventures already appear in SAM.gov.

Where to check status as a WOSB or EDWOSB concern eligible under the WOSB Program

Within the WOSB Program: Beginning October 28, 2022, FAR 19.1503(b) will be updated to require offerors to be designated in SAM as a certified WOSB or EDWOSB to be eligible for WOSB or EDWOSB set-aside and sole-source awards under the WOSB Program. The SAM representation for certified WOSB and EDWOSB concerns requires system updates that will not be available on October 28, 2022. Therefore, contracting officers must deviate from the FAR and temporarily use SBA's Dynamic Small Business Search (DSBS) to determine the certification status of WOSB or EDWOSB concerns, rather than checking the status on SAM.

Outside the WOSB Program: For self-representing women-owned small businesses for acquisitions outside of the WOSB Program, the representations in SAM can still be used.

Joint ventures within the WOSB Program: Additionally, FAR 19.1503(d) will be updated to require contracting officers to use SAM to verify a joint venture's eligibility as a

certified WOSB or EDWOSB under the WOSB Program. Per 13 CFR 127.506, at least one participant of the joint venture must be a certified WOSB or EDWOSB in the WOSB Program for the joint venture to qualify as a certified WOSB or EDWOSB joint venture. Therefore, contracting officers must deviate from the FAR and temporarily use SBA's DSBS to verify at least one party to the joint venture is certified as a WOSB or EDWOSB concern, rather than checking SAM.

Where to check status as a HUBZone Small Business Concern

Beginning October 28, 2022, FAR 19.1303(b) will be updated to require firms to be designated in SBA's DSBS and SAM as a HUBZone small business concern to be eligible for HUBZone preferences. SAM will continue to reflect the current HUBZone certification status from SBA. Therefore, even though the language of the representation in SAM will not align with the language in the updated FAR 52.212-3(c) and 52.219-1(c) provisions, the SAM representation for HUBZone certification is accurate and may be used to determine the status of HUBZone small businesses.

Contracting officers should continue to use SAM and DSBS to determine the current status of HUBZone small businesses.

8. Additional information. Direct questions or concerns regarding this deviation to the Office of Acquisition and Logistics (003A), Procurement Policy and Warrant Management Service (003A2A) at va.procurement.policy@va.gov.

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