



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2023-O0007

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Verification of Eligibility for the 8(a) Program

Effective immediately, contracting officers shall—

- Use the procedures in this class deviation to verify a concern's eligibility for the 8(a) Program in lieu of using the System for Award Management or presuming acceptance of a requirement by the Small Business Administration (SBA) prior to making an award under the 8(a) Program; and
- Use the attached deviation clause 52.219-18, Notification of Competition Limited to Eligible 8(a) Participants (Class Deviation 2023-O0007), in lieu of the clause at Federal Acquisition Regulation (FAR) 52.219-18, Notification of Competition Limited to Eligible 8(a) Participants; or
- Use the attached deviation clause 252.219-7010, Notification of Competition Limited to Eligible 8(a) Participants—Partnership Agreement (Class Deviation 2023-O0007), in lieu of the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.219-7010.

Notwithstanding FAR 19.804-3 and the SBA and DoD 8(a) Partnership Agreement (see DFARS 219.8), contracting officers shall not make an award to an 8(a) concern unless—

(1) For 8(a) concerns, including the 8(a) partner to the joint venture, they receive from SBA an affirmative response of acceptance of the requirement into the 8(a) Program; or

(2) For 8(a) concerns, including the 8(a) partner to the joint venture, the apparently successful offeror provides a copy of the SBA qualification letter.

This restriction applies to the following actions:

- (1) Competitive or sole-source 8(a) contracts.

(2) 8(a) sole-source orders placed against existing or new 8(a) set-aside multiple-award contracts, including Governmentwide acquisition contracts (GWACS) and Federal Supply Schedule (FSS) contracts.

(3) 8(a) orders placed against existing or new non-8(a) set-aside multiple-award contracts, including GWACS and FSS contracts.

(4) 8(a) orders under blanket purchase agreements or basic ordering agreements.

(5) Out-of-scope modifications and unpriced options under existing 8(a) contracts.

Except as noted above, existing 8(a) contracts are not impacted by this class deviation, and contracting officers may award in-scope modifications and exercise priced options without obtaining SBA acceptance or requiring the contractor to provide a copy of the SBA qualification letter, unless verification of eligibility would otherwise be required (see FAR 19.812(d)). In addition, contracting officers may place competitive 8(a) orders against existing 8(a) set-aside multiple-award contracts, GWACS, and FSS contracts without obtaining SBA acceptance or requiring the contractor to provide a copy of the SBA qualification letter.

The restrictions in this class deviation do not apply to 8(a) entity-owned businesses owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations.

This class deviation implements a court injunction issued by the United States District Court for the Eastern District of Tennessee on July 19, 2023, enjoining the use of the rebuttable presumption of social disadvantage in administering SBA's 8(a) Program, and SBA's memorandum issued on August 18, 2023. Due to the injunction, SBA must determine the eligibility of certain concerns for the 8(a) Program. This requirement is addressed in paragraph (a)(1) of the attached deviation clauses.

This class deviation remains in effect until incorporated into the FAR or DFARS or until otherwise rescinded. My point of contact is Ms. Jeanette Snyder, DPC/DARS, who may be reached at jeanette.m.snyder4.civ@mail.mil.

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting

Attachments:
As stated

52.219-18 Notification of Competition Limited to Eligible 8(a) Participants (DEVIATION 2023-O0007).

The contracting officer shall insert the following clause in competitive solicitations and contracts when the acquisition is accomplished using the procedures of FAR 19.805 and is not processed in accordance with the Partnership Agreement cited in DFARS 219.800. Use the following clause with its Alternate I when competition is to be limited to 8(a) participants within one or more specific SBA districts pursuant to FAR 19.804-2.

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) PARTICIPANTS
(AUG 2023) (DEVIATION 2023-O0007)

(a) Awards will only be made to—

(1) Small business concerns that are expressly certified by the Small Business Administration (SBA) for participation in SBA's 8(a) program and which meet the following criteria at the time of submission of offer—

(i) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(ii) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by SBA;

(2) A joint venture, in which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause, that complies with [13 CFR 124.513\(c\)](#); or

(3) A joint venture—

(i) That is comprised of a mentor and an 8(a) protégé with an approved mentor-protégé agreement under the 8(a) program;

(ii) In which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause; and

(iii) That complies with [13 CFR 124.513\(c\)](#).

(b) By submission of its offer, the Offeror represents that it meets the applicable criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation. A contracting officer may consider a

Attachment 1
Class Deviation 2023-O0007
Verification of Eligibility for the 8(a) Program
Changes are indicated by a change bar in the right-hand margin.

joint venture for contract award. SBA does not approve joint ventures for competitive awards, but see [13 CFR 124.501\(g\)](#) for SBA's determination of participant eligibility.

(d) The _____ [*insert name of SBA's contractor*] shall notify the _____ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock.

(End of clause)

Alternate I (MAR 2023). If the competition is to be limited to 8(a) participants within one or more specific SBA regions or districts, add the following paragraph (a)(1)(iii) to paragraph (a) of the clause:

(iii) The offeror's approved business plan is on the file and serviced by _____ [*Contracting Officer completes by inserting the appropriate SBA District and/or Area Office(s) as identified by the SBA*].

**252.219-7010 Notification of Competition Limited to Eligible 8(a) Participants—
Partnership Agreement (DEVIATION 2023-O0007).**

As prescribed in 219.811-3(2), use the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) PARTICIPANTS—
PARTNERSHIP AGREEMENT
(AUG 2023) (DEVIATION 2023-O0007)

(a) Awards will only be made to small business concerns that are expressly certified by the Small Business Administration (SBA) for participation in SBA's 8(a) Program and which meet the following criteria at the time of submission of offer:

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan.

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by SBA.

(3) If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, then the offeror's approved business plan is on the file and serviced by _____. *[Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by SBA.]*

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) Unless SBA has waived the requirements of paragraphs (d)(1)(i) through (iii) and (d)(2) of this clause in accordance with [13 CFR 121.1204](#), a small business concern that provides an end item it did not manufacture, process, or produce, shall—

(i) Provide an end item that a small business has manufactured, processed, or produced in the United States or its outlying areas; for kit assemblers, see paragraph (d)(2) of this clause instead;

(ii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

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(iii) Take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice; for example, providing storage, transportation, or delivery.

(2) When the end item being acquired is a kit of supplies, at least 50 percent of the total cost of the components of the kit shall be manufactured, processed, or produced by small businesses in the United States or its outlying areas.

(3) The requirements of paragraphs (d)(1)(i) through (iii) and (d)(2) of this clause do not apply to construction or service contracts.

(e) The _____ *[insert name of SBA's contractor]* will notify the _____ *[insert name of contracting agency]* Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)