



ACQUISITION  
AND SUSTAINMENT

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

In reply refer to  
DARS Tracking Number: 2020-O0008, Revision 2

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)  
DIRECTORS, DEFENSE AGENCIES  
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Class Deviation—Limitations on Subcontracting for Small Business

Effective immediately, this class deviation revises and supersedes the revision to the class deviation issued on April 3, 2020. The revision is necessary to correct errors in Attachments 1 and 3 to the class deviation. Specifically, in Attachment 1, language has been added to paragraph (d)(1) of 52.219-6, Notice of Total Small Business Set-Aside (DEVIATION 2020-O0008), and paragraph (f)(1) of 52.219-7, Notice of Partial Small Business Set-Aside (DEVIATION 2020-O0008), to specify that certain requirements apply unless the Small Business Administration has waived those requirements in accordance with 13 CFR 121.1204. In Attachment 3, a paragraph reference has been corrected in paragraph (h)(1) of 52.219-3, Notice of HUBZone Set-Aside or Sole Source Award (DEVIATION 2020-O0008).

Therefore, effective March 30, 2020, contracting officers shall follow the procedures provided in this class deviation when issuing solicitations and awarding contracts or task or delivery orders under FAR part 19 to—

- (A) Small business concerns;
- (B) 8(a) program participants;
- (C) Historically Underutilized Business Zone (HUBZone) small business concerns;
- (D) Service-disabled veteran-owned small business (SDVOSB) concerns;
- (E) Economically disadvantaged women-owned small business (EDWOSB) concerns; and
- (F) Women-owned small business (WOSB) concerns eligible under the WOSB Program.

The following procedures and the attached deviation clauses implement revisions made by the Small Business Administration to its regulation. These revisions changed and standardized the limitations on subcontracting and the nonmanufacturer rule with which small businesses must comply under Government contracts awarded pursuant to the set-aside, sole-source, or HUBZone price evaluation preference authorities of the Small Business Act. This class deviation updates the limitations on subcontracting and the nonmanufacturer rule for all small businesses in the clauses relating to awards under FAR part 19.

**(A) Small Business Concerns**

In solicitations, contracts, and task or delivery orders that are set aside for small business under FAR part 19, contracting officers shall use the clauses in Attachment 1 as follows:

- Use 52.219-6, Notice of Total Small Business Set-Aside (DEVIATION 2020-O0008), in lieu of FAR 52.219-6 and 52.219-33, Nonmanufacturer Rule.
- Use 52.219-7, Notice of Partial Small Business Set-Aside (DEVIATION 2020-O0008), in lieu of FAR 52.219-7 and 52.219-33.
- Use 52.219-14, Limitations on Subcontracting (DEVIATION 2020-O0008), in lieu of FAR 52.219-14.

Contracting officers shall use the alternates to FAR clauses 52.219-6 and 52.219-7 prescribed at FAR 19.507 with the deviation clauses provided in the attachment. The limitations on subcontracting and nonmanufacturer rule apply to small business set-asides for contracts that exceed the simplified acquisition threshold. The limitations on subcontracting and nonmanufacturer rule do not apply to small business set-asides for contracts at or below the simplified acquisition threshold.

**(B) 8(a) Program Participants**

In solicitations, contracts, and task or delivery orders under the 8(a) program (FAR subpart 19.8), contracting officers shall use the clauses in Attachment 2 as follows:

- Use 52.219-14, Limitations on Subcontracting (DEVIATION 2020-O0008), in lieu of FAR 52.219-14 for competitive 8(a) procurements and 8(a) sole-source awards.
- Use 52.219-33, Nonmanufacturer Rule (DEVIATION 2020-O0008), in lieu of FAR 52.219-33 for 8(a) sole-source awards only.

The limitations on subcontracting apply to contracts and task or delivery orders awarded pursuant to competitive 8(a) procurements and 8(a) sole-source awards under FAR part 19 regardless of the dollar value of the award.

**(C) HUBZone Small Business Concerns**

In solicitations, contracts, and task or delivery orders that are set aside for, or awarded on a sole-source basis to, HUBZone small business concerns under FAR part 19, as well as

procurements using the HUBZone price evaluation preference, contracting officers shall use the clauses in Attachment 3 as follows:

- Use 52.219-3, Notice of HUBZone Set-Aside or Sole Source Award (DEVIATION 2020-O0008), in lieu of FAR 52.219-3 and 52.219-33.
- Use 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (DEVIATION 2020-O0008), in lieu of FAR 52.219-4 and 52.219-33.

Contracting officers shall not use Alternate I of FAR 52.219-3 or Alternate I of FAR 52.219-4. These alternates conflict with the attached deviation clauses.

The limitations on subcontracting and the nonmanufacturer rule apply to contracts and task or delivery orders that are set aside for, or awarded on a sole-source basis to, HUBZone small business concerns under FAR part 19, or awarded using the HUBZone price evaluation preference, regardless of the dollar value of the award.

#### **(D) SDVOSB Concerns**

In solicitations, contracts, and task or delivery orders that are set aside for, or awarded on a sole-source basis to, SDVOSB concerns under FAR part 19, contracting officers shall use the clause in Attachment 4 as follows:

- Use 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (DEVIATION 2020-O0008), in lieu of FAR 52.219-27 and 52.219-33.

The limitations on subcontracting and the nonmanufacturer rule apply to contracts and task or delivery orders that are set aside for, or awarded on a sole-source basis to, SDVOSB concerns under FAR part 19 regardless of the dollar value of the award.

#### **(E) EDWOSB Concerns**

In solicitations, contracts, and task or delivery orders that are set aside for, or awarded on a sole-source basis to, EDWOSB concerns under FAR part 19, contracting officers shall use the clause in Attachment 5 as follows:

- Use 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (DEVIATION 2020-O0008), in lieu of FAR 52.219-29 and 52.219-33.

The limitations on subcontracting and the nonmanufacturer rule apply to contracts and task or delivery orders that are set aside for, or awarded on a sole-source basis to, EDWOSB concerns under FAR part 19 regardless of the dollar value of the award.

**(F) WOSB Concerns Eligible under the WOSB Program**

In solicitations, contracts, and task or delivery orders that are set aside for, or awarded on a sole-source basis to, WOSB concerns eligible under the WOSB Program under FAR part 19, contracting officers shall use the clause in Attachment 6 as follows:

- Use 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (DEVIATION 2020-O0008), in lieu of FAR 52.219-30 and 52.219-33.

The limitations on subcontracting and the nonmanufacturer rule apply to contracts and task or delivery orders that are set aside for, or awarded on a sole-source basis to, WOSB concerns eligible under the WOSB Program under FAR part 19 regardless of the dollar value of the award.

This class deviation remains in effect until it is incorporated in the FAR or otherwise rescinded. My point of contact is Mr. Mike Pelkey, who may be reached at 703-614-1253 or [michael.f.pelkey.civ@mail.mil](mailto:michael.f.pelkey.civ@mail.mil).

Kim Herrington  
Acting Principal Director,  
Defense Pricing and Contracting

Attachments:  
As stated

**52.219-6 Notice of Total Small Business Set-Aside (DEVIATION 2020-O0008).**

Insert the following clause in solicitations and contracts involving total small business set-asides. This includes multiple-award contracts when orders may be set aside for any of the small business concerns identified in 19.000(a)(3), as described in 8.405-5 and 16.505(b)(2)(i)(F):

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (OCT 2020) (DEVIATION 2020-O0008)

(a) *Definition.* “Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been totally set aside for small business concerns; and
- (2) Orders set aside for small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).

(c) *General.*

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(d) *Agreement.*

(1) For a contract or an order at or below the simplified acquisition threshold, a small business concern may provide the end item of any firm. For a contract or an order exceeding the simplified acquisition threshold, unless the Small Business Administration has waived the requirements of paragraphs (d)(1)(i) through (iii) 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;

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

(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) For contracts or orders for multiple end items, at least 50 percent of the total value of the contract or order shall be manufactured, processed, or produced in the United States or its outlying areas by small business concerns.

(3) Paragraphs (d)(1) through (2) of this clause do not apply to construction or service contracts.

(End of clause)

**52.219-7 Notice of Partial Small Business Set-Aside (DEVIATION 2020-O0008).**

Insert the following clause in solicitations and contracts involving partial small business set-asides. This includes part or parts of multiple-award contracts, including those described in 38.101:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (OCT 2020) (DEVIATION 2020-O0008)

(a) *Definition.* “Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *Applicability.* This clause applies only to contracts that have been partially set aside for small business concerns.

(c) *General.*

(1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns identified in 19.000(a)(3). Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected on the set-aside portion of the requirement.

(2) Small business concerns may submit offers and compete for the non-set-aside portion and the set-aside portion.

(d) The Offeror shall—

[*Contracting Officer check as appropriate.*]

\_\_\_ Submit a separate offer for each portion of the solicitation for which it wants to compete (i.e., set-aside portion, non-set-aside portion, or both); or

\_\_\_ Submit one offer to include all portions for which it wants to compete.

(e) *Partial set-asides of multiple-award contracts.*

(1) Small business concerns will not compete against other than small business concerns for any order issued under the part or parts of the multiple-award contract that are set aside.

(2) Small business concerns may compete for orders issued under the part or parts of the multiple-award contract that are not set aside, if the small business concern received a contract award for the non-set-aside portion.

(f) *Agreement.*

(1) For a contract or an order at or below the simplified acquisition threshold, a small business concern may provide the end item of any firm. For a contract or an order exceeding the simplified acquisition threshold, unless the Small Business Administration has waived the requirements of paragraphs (f)(1)(i) through (iii) 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;

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

(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) For contracts or orders for multiple end items, at least 50 percent of the total value of the contract or order shall be manufactured, processed, or produced in the United States or its outlying areas by small business concerns.

(3) Paragraphs (f)(1) through (2) of this clause do not apply to construction or service contracts.

(End of clause)

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**52.219-14 Limitations on Subcontracting (DEVIATION 2020-O0008).**

Insert the following clause in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business and the contract amount is expected to exceed the simplified acquisition threshold. This includes multiple-award contracts when orders may be set aside for small business concerns, as described in 8.405-5 and 16.505(b)(2)(i)(F), and when orders may be issued directly to a small business concern as described in 19.504(c)(1)(ii). For contracts that are set aside, the contracting officer shall indicate in paragraph (g) of the clause whether compliance with the limitations on subcontracting is required at the contract or order level:

LIMITATIONS ON SUBCONTRACTING (MAR 2020) (DEVIATION 2020-O0008)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) *Definition.* “Similarly situated entity,” as used in this clause, means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

(c) *Applicability.* This clause applies only to—

(1) Contracts that have been set aside for small business concerns or 8(a) participants;

(2) Part or parts of a multiple-award contract that have been set aside for small business concerns or 8(a) participants;

(3) Contracts that have been awarded on a sole-source basis in accordance with subpart 19.8;

(4) Orders set aside for small business concerns under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F), if the order amount is expected to exceed the simplified acquisition threshold;

(5) Orders competed among 8(a) participants in accordance with subpart 19.8 under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F), regardless of dollar value;

(6) Contracts using the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference; and

(7) Orders issued directly to small business concerns or 8(a) participants under multiple-award contracts as described in 19.504(c)(1)(ii).

(d) *Independent contractors.* An independent contractor shall be considered a subcontractor.

(e) *Limitations on subcontracting.* By submission of an offer and execution of a contract, the Contractor agrees that in performance of a contract assigned a NAICS code for—

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor’s 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract. Other direct costs are excluded to the extent they are not the principal purpose of the contract and cannot be obtained from small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor’s



50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.

(g) The Contractor shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (c)(1) and (2) of this clause—

*[Contracting Officer check as appropriate.]*

— By the end of the base term of the contract and then by the end of each subsequent option period; or

— By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (c)(3) and (4) of this clause, by the end of the performance period for the order.

(End of clause)

**52.219-14 Limitations on Subcontracting (DEVIATION 2020-O0008).**

Insert the following clause in any solicitation and contract resulting from the procedures in subpart 19.8. This includes multiple-award contracts when orders may be set aside for 8(a) participants as described in 8.405-5 and 16.505(b)(2)(i)(F), and when orders may be issued directly to an 8(a) participant as described in 19.504(c)(1)(ii). For contracts that are set aside, the contracting officer shall indicate in paragraph (g) of the clause whether compliance with the limitations on subcontracting is required at the contract or order level:

LIMITATIONS ON SUBCONTRACTING (MAR 2020) (DEVIATION 2020-O0008)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) *Definition.* “Similarly situated entity,” as used in this clause, means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

(c) *Applicability.* This clause applies only to—

(1) Contracts that have been set aside for small business concerns or 8(a) participants;

(2) Part or parts of a multiple-award contract that have been set aside for small business concerns or 8(a) participants;

(3) Contracts that have been awarded on a sole-source basis in accordance with subpart 19.8;

(4) Orders set aside for small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F), if the order amount is expected to exceed the simplified acquisition threshold;

(5) Orders competed among 8(a) participants in accordance with subpart 19.8 under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F), regardless of dollar value;

(6) Contracts using the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference; and

(7) Orders issued directly to small business concerns or 8(a) participants under multiple-award contracts as described in 19.504(c)(1)(ii).

(d) *Independent contractors.* An independent contractor shall be considered a subcontractor.

(e) *Limitations on subcontracting.* By submission of an offer and execution of a contract, the Contractor agrees that in performance of a contract assigned a NAICS code for—

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract. Other direct costs are excluded to the extent they are not the principal purpose of the contract and cannot be obtained from small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.

(g) The Contractor shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (c)(1) and (2) of this clause—

*[Contracting Officer check as appropriate.]*

\_\_\_ By the end of the base term of the contract and then by the end of each subsequent option period; or

\_\_\_ By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (c)(3) and (4) of this clause, by the end of the performance period for the order.

(End of clause)

\* \* \* \* \*

**52.219-33 Nonmanufacturer Rule (DEVIATION 2020-O0008).**

Insert the following clause in solicitations and contracts when the item being acquired has been assigned a manufacturing or supply North American Industry Classification System (NAICS) code, and the requirement is awarded on a sole-source basis in accordance with subpart 19.8. Do not insert the clause when the Small Business Administration has determined that there are no small business manufacturers of the product or items and has waived the nonmanufacturer rule:

NONMANUFACTURER RULE (MAR 2020) (DEVIATION 2020-O0008)

(a) *Definitions.* As used in this clause—

“Manufacturer” means the concern that transforms raw materials, miscellaneous parts, or components into the end item. Concerns that only minimally alter the item being procured do not qualify as manufacturers of the end item. Concerns that add substances, parts, or components to an existing end item to modify its performance will not be considered the end item manufacturer, where those identical modifications can be performed by and are available from the manufacturer of the existing end item.

“Nonmanufacturer” means a concern, including a supplier, that provides an end item it did not manufacture, process, or produce.

(b) *Applicability.*

(1) This clause does not apply to contracts awarded pursuant to the unrestricted portion of a partial set-aside or to a contractor that is the manufacturer of the product or end item.

(2) This clause applies to—

(i) Contracts that have been awarded pursuant to a competitive 8(a) procurement;

(ii) Contracts that have been awarded on a sole-source basis in accordance with subpart 19.8; and

(iii) Orders competed among 8(a) participants under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F); and

(iv) Orders issued directly to an 8(a) participant under multiple-award contracts as described in 19.504(c)(1)(ii).

(c) *Requirements.*

(1) The Contractor shall—

(i) Provide an end item that a small business has manufactured, processed, or produced in the United States or its outlying areas;

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

Attachment 2  
Class Deviation 2020-O0008, Revision 2  
Limitations on Subcontracting for Small Business  
*Changes are indicated by a change bar in the right-hand margin.*

(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) For contracts or orders for multiple end items, at least 50 percent of the total value of the contract or order shall be manufactured, processed, or produced in the United States or its outlying areas by small business concerns.

(End of clause)

**52.219-3 Notice of HUBZone Set-Aside or Sole Source Award (DEVIATION 2020-O0008).**

Insert the following clause in solicitations and contracts for acquisitions that are set aside for, or awarded on a sole source basis to, HUBZone small business concerns under 19.1305 or 19.1306. This includes multiple-award contracts when orders may be set aside for HUBZone small business concerns as described in 8.405-5 and 16.505(b)(2)(i)(F) or when orders may be issued directly to one HUBZone small business concern in accordance with 19.504(c)(1)(ii):

NOTICE OF HUBZONE SET-ASIDE OR SOLE SOURCE AWARD (OCT 2020)  
(DEVIATION 2020-O0008)

(a) *Definitions.* As used in this clause—

“HUBZone small business concern” means a small business concern, certified by the Small Business Administration (SBA), that appears on the List of Qualified HUBZone Small Business Concerns maintained by the SBA (13 CFR 126.103).

“Similarly situated entity” means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

(b) *Applicability.* This clause applies only to—

(1) Contracts that have been set aside or awarded on a sole source basis to HUBZone small business concerns;

(2) Part or parts of a multiple-award contract that have been set aside for HUBZone small business concerns;

(3) Orders set aside for HUBZone small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F); and

(4) Orders issued directly to HUBZone small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii).

(c) *General.*

(1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns will not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(d) *Independent contractors.* An independent contractor shall be considered a subcontractor.

(e) *Limitations on subcontracting.* By submission of an offer and execution of a contract, a HUBZone small business concern agrees that, in the case of a contract assigned a NAICS code for—

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract. Other direct costs are excluded to the extent they are not the principal purpose of the contract and cannot be obtained from small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) A HUBZone small business contractor shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (b)(1) or (2) of this clause—

*[Contracting Officer check as appropriate.]*

\_\_\_ By the end of the base term of the contract and then by the end of each subsequent option period; or

\_\_\_ By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraph (b)(3) or (4) of this clause, by the end of the performance period for the order.

(g) *Joint venture.* A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause shall be performed by the aggregate of the HUBZone small business participants.

(h) *Nonmanufacturer.*

(1) Unless SBA has waived the requirements of paragraphs (h)(1)(i) through (iii) of this clause in accordance with 13 CFR 121.1204, a HUBZone 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;

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

(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) For contracts or orders for multiple end items, at least 50 percent of the total value of the contract or order shall be manufactured, processed, or produced in the United States or its outlying areas by small business concerns.

(3) Paragraphs (h)(1) through (2) of this clause do not apply to construction or service contracts.

(i) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

**52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns (DEVIATION 2020-O0008).**

Insert the following clause in solicitations and contracts for acquisitions conducted using full and open competition:

NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS  
(MAR 2020) (DEVIATION 2020-O0008)

(a) *Definitions.* As used in this clause—



“HUBZone small business concern” means a small business concern, certified by the Small Business Administration (SBA), that appears on the List of Qualified HUBZone Small Business Concerns maintained by the SBA (13 CFR 126.103).

“Similarly situated entity” means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

(b) *Evaluation preference.*

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

(ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraphs (e) and (f) of this clause do not apply if the Offeror has waived the evaluation preference.

\_\_\_ Offeror elects to waive the evaluation preference.

(d) *Independent contractors.* An independent contractor shall be considered a subcontractor.

(e) *Limitations on subcontracting.* By submission of an offer and execution of a contract, a HUBZone small business concern agrees that, in the case of a contract assigned a NAICS code for—

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor’s 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service

portion of the contract. Other direct costs are excluded to the extent they are not the principal purpose of the contract and cannot be obtained from small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable requirements specified in paragraph (e) of this clause.

(g) *Nonmanufacturer.*

(1) Unless SBA has waived the requirements of paragraphs (g)(1)(i) through (iii) of this clause in accordance with 13 CFR 121.1204, a HUBZone 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;

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

(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) For contracts or orders for multiple end items, at least 50 percent of the total value of the contract or order shall be manufactured, processed, or produced in the United States or its outlying areas by small business concerns.

(3) Paragraphs (g)(1) through (2) of this clause do not apply—

(i) To construction or service contracts; or

(ii) When the Offeror waives the evaluation preference.

Attachment 3  
Class Deviation 2020-O0008, Revision 2  
Limitations on Subcontracting for Small Business  
*Changes are indicated by a change bar in the right-hand margin.*

(h) *Notice.* The HUBZone small business Offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone Offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

**52.219-27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside  
(DEVIATION 2020-O0008).**

Insert the following clause in solicitations and contracts for acquisitions that are set aside for, or awarded on a sole source basis to, service-disabled veteran-owned small business concerns under 19.1405 and 19.1406. This includes multiple-award contracts when orders may be set aside for service-disabled veteran-owned small business concerns as described in 8.405-5 and 16.505(b)(2)(i)(F) or when orders may be issued directly to one service-disabled veteran-owned small business contractor in accordance with 19.504(c)(1)(ii):

NOTICE OF SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (MAR 2020)  
(DEVIATION 2020-O0008)

(a) *Definitions.* As used in this clause—

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) “Service-disabled veteran” means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Similarly situated entity” means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

(b) *Applicability.* This clause applies only to—

(1) Contracts that have been set aside for service-disabled veteran-owned small business concerns;

(2) Part or parts of a multiple-award contract that have been set aside for service-disabled veteran-owned small business concerns;

(3) Orders set aside for service-disabled veteran-owned small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F); and

(4) Orders issued directly to service-disabled veteran-owned small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii).

(c) *General.*

(1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a service-disabled veteran-owned small business concern.

(d) *Independent contractors.* An independent contractor shall be considered a subcontractor.

(e) *Limitations on subcontracting.* By submission of an offer and execution of a contract, a service-disabled veteran-owned small business concern agrees that in the performance of a contract assigned a NAICS code for—

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract. Other direct costs are excluded to the extent they are not the principal purpose of the contract and cannot be obtained from small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) A service-disabled veteran-owned small business concern shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (b)(1) and (2) of this clause—

[Contracting Officer check as appropriate.]

\_\_\_ By the end of the base term of the contract and then by the end of each subsequent option period; or

\_\_\_ By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (b)(3) and (4) of this clause, by the end of the performance period for the order.

(g) *Joint venture.* A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification Systems (NAICS) code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement; and

(3) The joint venture meets the requirements of 13 CFR 121.103(h).

(4) The joint venture meets the requirements of 13 CFR 125.15(b).

(h) *Nonmanufacturer.*

(1) Unless SBA has waived the requirements of paragraphs (h)(1)(i) through (iii) of this clause in accordance with 13 CFR 121.1204, a service-disabled veteran-owned 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;

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

(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) For contracts or orders for multiple end items, at least 50 percent of the total value of the contract or order shall be manufactured, processed, or produced in the United States or its outlying areas by small business concerns.

(3) Paragraphs (h)(1) through (2) of this clause do not apply to construction or service contracts.

(End of clause)

**52.219-29 Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (DEVIATION 2020-O0008).**

Insert the following clause in solicitations and contracts for acquisitions that are set aside for, or awarded on a sole source basis to, economically disadvantaged women-owned small business (EDWOSB) concerns under 19.1505(b) or 19.1506(a). This includes multiple-award contracts when orders may be set aside for EDWOSB concerns as described in 8.405-5 and 16.505(b)(2)(i)(F) or when orders may be issued directly to one EDWOSB contractor in accordance with 19.504(c)(1)(ii):

NOTICE OF SET-ASIDE FOR, OR SOLE SOURCE AWARD TO, ECONOMICALLY DISADVANTAGED  
WOMEN-OWNED SMALL BUSINESS CONCERNS (MAR 2020) (DEVIATION 2020-O0008)

(a) *Definitions.* As used in this clause—

“Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business (WOSB) concern eligible under the WOSB Program.

“Similarly situated entity” means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

“WOSB Program Repository” means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *Applicability.* This clause applies only to—

(1) Contracts that have been set aside for, or awarded on a sole source basis to, EDWOSB concerns;

(2) Part or parts of a multiple-award contract that have been set aside for EDWOSB concerns;

(3) Orders set aside for EDWOSB concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F); and

(4) Orders issued directly to EDWOSB concerns under multiple-award contracts as described in 19.504(c)(1)(ii).

(c) *General.*

(1) Offers are solicited only from EDWOSB concerns. Offers received from concerns that are not EDWOSB concerns will not be considered.

(2) Any award resulting from this solicitation will be made to an EDWOSB concern.

(3) The Contracting Officer will ensure that the apparent successful offeror has provided all required documents to the WOSB Program Repository. The contract will not be awarded until all required documents are received.

(d) *Independent contractors.* An independent contractor shall be considered a subcontractor.

(e) *Limitations on subcontracting.* By submission of an offer and execution of a contract, an EDWOSB concern agrees that in the performance of a contract assigned a NAICS code for—

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract. Other direct costs are excluded to the extent they are not the principal purpose of the contract and cannot be obtained from small business concerns;

(2) Supplies or products (other than procurement from a nonmanufacturer in such supplies or products), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) An EDWOSB concern shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (b)(1) and (2) of this clause—



[Contracting Officer check as appropriate.]

\_\_\_ By the end of the base term of the contract and then by the end of each subsequent option period; or

\_\_\_ By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (b)(3) and (4) of this clause, by the end of the performance period for the order.

(g) *Joint Venture.* A joint venture may be considered an EDWOSB concern if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The EDWOSB participant of the joint venture is designated in the System for Award Management as an EDWOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating an EDWOSB concern as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the EDWOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the EDWOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the EDWOSB contract performed by the joint venture.

(4) The joint venture performs the applicable percentage of work required in accordance with paragraph (d) above; and

(5) The procuring activity executes the contract in the name of the EDWOSB or joint venture.

(h) *Nonmanufacturer.*

(1) Unless SBA has waived the requirements of paragraphs (h)(1)(i) through (iii) of this clause in accordance with 13 CFR 121.1204, an EDWOSB 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;

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

Attachment 5  
Class Deviation 2020-O0008, Revision 2  
Limitations on Subcontracting for Small Business  
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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) For contracts or orders for multiple end items, at least 50 percent of the total value of the contract or order shall be manufactured, processed, or produced in the United States or its outlying areas by small business concerns.

(3) Paragraphs (h)(1) through (2) of this clause do not apply to construction or service contracts.

(End of clause)

**52.219-30 Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (DEVIATION 2020-O0008).**

Insert the following clause in solicitations and contracts for acquisitions that are set aside for, or awarded on a sole source basis to, women-owned small business (WOSB) concerns under 19.1505(c) or 19.1506(b). This includes multiple-award contracts when orders may be set aside for WOSB concerns eligible under the WOSB Program as described in 8.405-5 and 16.505(b)(2)(i)(F) or when orders may be issued directly to one WOSB contractor in accordance with 19.504(c)(1)(ii):

NOTICE OF SET-ASIDE FOR, OR SOLE SOURCE AWARD TO, WOMEN-OWNED SMALL BUSINESS CONCERNS ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM (MAR 2020)  
(DEVIATION 2020-O0008)

(a) *Definitions.* As used in this clause—

“Similarly situated entity” means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

“Women-owned small business (WOSB) concern eligible under the WOSB Program” (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

“WOSB Program Repository” means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *Applicability.* This clause applies only to—

(1) Contracts that have been set aside for, or awarded on a sole source basis to, WOSB concerns eligible under the WOSB Program;

(2) Part or parts of a multiple-award contract that have been set aside for WOSB concerns eligible under the WOSB Program;

(3) Orders set aside for WOSB concerns eligible under the WOSB Program, under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F); and

(4) Orders issued directly to WOSB concerns eligible under the WOSB Program under multiple-award contracts as described in 19.504(c)(1)(ii).

(c) *General.*

(1) Offers are solicited only from WOSB concerns eligible under the WOSB Program. Offers received from concerns that are not WOSB concerns eligible under the WOSB Program shall not be considered.

(2) Any award resulting from this solicitation will be made to a WOSB concern eligible under the WOSB Program.

(3) The Contracting Officer will ensure that the apparent successful offeror has provided the required documents to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(d) *Independent contractors.* An independent contractor shall be considered a subcontractor.

(e) *Limitations on subcontracting.* By submission of an offer and execution of a contract, a WOSB concern eligible under the WOSB Program agrees that in the performance of a contract assigned a NAICS code for—

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract. Other direct costs are excluded to the extent they are not the principal purpose of the contract and cannot be obtained from small business concerns;

(2) Supplies or products (other than procurement from a nonmanufacturer in such supplies or products), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count toward the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity

further subcontracts will count toward the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) A WOSB concern eligible under the WOSB Program shall comply with the limitations on subcontracting as follows:

- (1) For contracts, in accordance with paragraphs (b)(1) and (2) of this clause—  
[Contracting Officer check as appropriate.]

\_\_\_ By the end of the base term of the contract and then by the end of each subsequent option period; or

\_\_\_ By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (b)(3) and (4) of this clause, by the end of the performance period for the order.

(g) *Joint Venture.* A joint venture may be considered a WOSB concern eligible under the WOSB Program if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The WOSB participant of the joint venture is designated in the System for Award Management as a WOSB concern eligible under the WOSB Program;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating a WOSB concern eligible under the WOSB Program as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the WOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the WOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the WOSB contract performed by the joint venture.

(4) The procuring activity executes the contract in the name of the WOSB concern eligible under the WOSB Program or joint venture.

(h) *Nonmanufacturer.*

(1) Unless SBA has waived the requirements of paragraphs (h)(1)(i) through (iii) of this clause in accordance with 13 CFR 121.1204, a WOSB concern eligible under the WOSB Program 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;

Attachment 6  
Class Deviation 2020-O0008, Revision 2  
Limitations on Subcontracting for Small Business  
*Changes are indicated by a change bar in the right-hand margin.*

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

(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) For contracts or orders for multiple end items, at least 50 percent of the total value of the contract or order shall be manufactured, processed, or produced in the United States or its outlying areas by small business concerns.

(3) Paragraphs (h)(1) through (2) of this clause do not apply to construction or service contracts.

(End of clause)