

November 9, 2022

FAR Class Deviation to Provide Time for the System Implementation of FAC 2022-08

Purpose: This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) to utilize the new policies set forth in FAC 2022-08 with an effective date of October 28, 2022.

Authority: This class deviation is issued under the authority of FAR 1.404 and through consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) via the [CAAC Letter 2023-01](#).

Background: Effective October 28, 2022, the FAR cases FAC 2022-08 makes regulatory changes to entity representations in System for Award Management (SAM) on the following FAR provisions:

- 1) 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services, at paragraph (c); and
- 2) 52.219-1, Small Business Program Representations, at paragraph (c).

This class deviation allows the Department to use the new policies while the Integrated Award Environment (IAE) is working to implement the new policies in the Federal e-business systems (SAM).

Action: Contracting Officers must follow the procedures outlined in the following attachment.

Effective Date: This deviation is effective immediately and remains in effect until the FAR changes in FAC 2022-08 are implemented in SAM.gov.

Point of Contact: Questions regarding this deviation may be directed to Procurement.Policy@usda.gov

Attachment

Attachment

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 Woman Owned Small Business (WOSB) or Economically Disadvantaged Woman Owned Small Business (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.