

Date: March 22, 2018

From: Acting Deputy Senior Procurement Executive

Subj: Class Deviation from Federal Acquisition Regulation 19.502-2, Total small business set-asides (VAIQ 7867323)

To: VA Heads of Contracting Activities (HCA)

- 1. Purpose:** To issue a Class Deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, Class Deviations, and Department of Veterans Affairs Acquisition Regulation (VAAR) 801.404, Class Deviations, to deviate from FAR 19.502-2, Total small business set-asides.
- 2. FAR Sections Impacted:** This deviation impacts FAR 19.502-2.
- 3. Effective Date:** Immediately.
- 4. Expiration Date:** This class deviation will remain in effect until rescinded.
- 5. Applicability:** This deviation applies to all VA contracting activities.
- 6. Background:** The Procurement Policy Memorandum (PPM) 2018-04 "Guidance and Procedures regarding use of Tiered Evaluations (Cascading) for use in solicitations set-aside in accordance with the VA Rule of Two" was developed to provide guidance and standardized procedures for the use of tiered evaluations (also called cascading) in solicitations for single or multiple award requirements by providing clear procedures and required solicitation provisions. The goal of the PPM is to minimize delays in the re-solicitation process that are incurred subsequent to application of the VA Rule of Two at either the Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB) priority tiers within a single synopsis solicitation. It will also streamline the process of satisfying VA's obligation under 38 U.S.C. § 8127 when viable offers are not received at the Service-Disabled Veteran-Owned Small Businesses (SDVOSB) or Veteran-Owned Small Businesses (VOSB) priority tiers within a single synopsis procurement. The current language in the FAR limits the effectiveness of the PPM by requiring the contracting officer to withdraw the set-aside and resolicit the requirement if no acceptable offers are received from responsible small business concerns. Deviation from the current language will give the contracting officer the option to follow the tiered evaluations procedures and proceed to the next eligible tier in the evaluation process, if permitted in the solicitation.

a. Current FAR 19.502-2(a) Policy:

FAR 19.502-2(a) "Before setting aside an acquisition under this paragraph, refer to 19.203(b). Each acquisition of supplies or services that has an anticipated dollar value exceeding \$3,500 (\$20,000 for acquisitions as described in 13.201(g)(1)), but not over \$150,000, (\$750,000 for acquisitions described in paragraph (1)(i) of the Simplified Acquisition Threshold definition at 2.101), is automatically reserved exclusively for small

business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business reservation does not preclude the award of a contract as described in 19.203.”

b. Need for Deviation: The deviation is needed to allow the contracting officer to follow tiered evaluation procedures, if permitted in the solicitation, and not require the solicitation to be cancelled and resolicited.

c. New FAR subpart 19.502-2—Total small business set-asides.

FAR 19.502-2(a) Before setting aside an acquisition under this paragraph, refer to 19.203(b). Each acquisition of supplies or services that has an anticipated dollar value exceeding \$10,000 (\$20,000 for acquisitions as described in 13.201(g)(1)), but not over \$250,000, (\$750,000 for acquisitions described in paragraph (1)(i) of the Simplified Acquisition Threshold definition at 2.101), is automatically reserved for small business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. A set-aside may utilize tiered evaluation procedures if allowed by the solicitation. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, or, when utilizing tiered evaluation procedures, proceeds to evaluate a lower priority tier, the contracting officer shall document the rationale for this decision in the contract file. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis or, if permitted in the solicitation, follow the tiered evaluations procedures and proceed to the next eligible tier in the evaluation process. The small business reservation does not preclude the award of a contract as described in 19.203.

7. Direct questions regarding this class deviation to the Procurement Policy and Warrant Management Service via email at vacovaproc@va.gov or (202) 632-5288.

/s/

Thomas Burgess

Attachment: Class Deviation from FAR 19.502-2

**Class Deviation from Federal Acquisition Regulation (FAR)
19.502-2, Total Small Business Set-Asides**

19.502-2 Total small business set-asides.

(a)***If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis or, if permitted in the solicitation, follow the tiered evaluations procedures and proceed to the next eligible tier in the evaluation process.***