

Date: July 12, 2019

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

Subj: Class Deviation from the Federal Acquisition Regulation Regarding Limitations on Subcontracting for Small Business Concerns, CAAC Letter 2019--01 (VIEWS 00232029)

To: Heads of the Contracting Activities

1. Purpose. To issue a class deviation in accordance with Federal Acquisition Regulation (FAR) 1.404 to implement regulatory changes made by the Small Business Administration (SBA) to limitations on subcontracting in its final rule published in the Federal Register at 81 FR 34243 on May 31, 2016, as advised by the Civilian Agency Acquisition Council (CAAC) letter 2019-01 issued April 3, 2019.

2. FAR Section Impacted. This class deviation impacts numerous small business-related clauses in FAR part 52.

3. Effective Date. Immediately.

4. Expiration Date. This deviation expires when incorporated in the FAR or is otherwise superseded.

5. Applicability. This class deviation applies to all Department of Veterans Affairs (VA) contracting activities.

6. Background. SBA, in its final rule published in the Federal Register at 81 FR 34243 on May 31, 2016, 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 or sole source authorities of the Small Business Act.

a. Need for Deviation. FAR case 2016-011, Revision of Limitations on Subcontracting, implementing appropriate regulatory changes made in the SBA final rule, was published as a proposed rule on December 4, 2018 (83 FR 62540). It is moving through the rulemaking process to implement the appropriate changes in the FAR, based on the SBA final rule. Pending publication of a final rule and amendment to the FAR, the CAAC letter 2019-01 provided interim deviated language and consultation for agencies to authorize a class deviation to implement these updates to limitations on subcontracting. This class deviation will permit VA to implement these regulatory changes prior to publication of final revisions issued in a FAR final rule.

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b. New Policy. This class deviation updates the limitations on subcontracting and the nonmanufacturer rule for all small businesses in the clauses relating to set-asides and sole source awards under FAR part 19 for—

- Small business concerns;
- 8(a) Program participants;
- Historically Underutilized Business Zone (HUBZone) small business concerns;
- Service-disabled Veteran-owned small business (SDVOSB) concerns **[Not Applicable to VA]**. See note under b(4) below for VA Acquisition Regulation (VAAR) clauses applicable to SDVOSBs and Veteran-owned small businesses (VOSBs) under the Veterans First Contracting Program (VFCP)];
- Economically disadvantaged women-owned small business (EDWOSB) concerns; and
- Women-owned small business (WOSB) concerns eligible under the WOSB Program.

(1) Small Business Concerns. In solicitations, contracts, and task or delivery orders that are set aside for small business under FAR subpart 19.5, contracting officers shall use the clauses in Attachment 1 as follows:

(a) Use 52.219-6, Notice of Total Small Business Set-Aside (DEVIATION 2019-01), in lieu of FAR 52.219-6. Contracting officers shall use this deviation clause with Alternate I to FAR clause 52.219-6 prescribed at FAR 19.508(c) when the acquisition is for a product in a class for which the SBA has waived the nonmanufacturer rule (see FAR 19.102(f)(4) and (5)). Use this deviation clause with Alternate II to FAR 52.219-6 prescribed at FAR 19.508(c) when including Federal Prison Industries, Inc. (FPI) in the competition in accordance with FAR 19.504.

(b) Use 52.219-7, Notice of Partial Small Business Set-Aside (DEVIATION 2019-01), in lieu of FAR 52.219-7 in set-asides prescribed in paragraph (1) involving partial small business set-asides. This includes part or parts of multiple-award contracts, including those described in FAR 38.101. Contracting officers shall use this deviation clause with Alternate I to FAR clause 52.219-7 prescribed at FAR 19.508(d) when the acquisition is for a product in a class for which the SBA has waived the nonmanufacturer rule (see FAR 19.102(f)(4) and (5)). Use this deviation clause with Alternate II to FAR 52.219-7 prescribed at FAR 19.508(d) when including FPI in the competition in accordance with FAR 19.504.

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(c) Use 52.219-14, Limitations on Subcontracting (DEVIATION 2019-01)¹, in lieu of FAR 52.219-14.

(2) 8(a) Program Participants. In solicitations, contracts, and task or delivery orders for competitive 8(a) procurements and 8(a) sole source awards under FAR part 19, contracting officers shall use the clauses in Attachment 2 as follows:

Use 52.219-14, Limitations on Subcontracting (DEVIATION 2019-01), in lieu of FAR 52.219-14.

(3) 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:

(a) Use 52.219-3 Notice of HUBZone Set-Aside or Sole Source Award (DEVIATION 2019-01), in lieu of FAR 52.219-3. Contracting officers shall not use Alternate I of FAR 52.219-3 as Alternate I conflicts with the attached deviation clause.

(b) Use 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (DEVIATION 2019-01), in lieu of FAR 52.219-4. Contracting officers shall not use Alternate I of FAR 52.219-4 as Alternate I conflicts with the attached deviation clause.

(4) SDVOSB Concerns. Not Applicable to VA. *[NOTE: Contracting officers shall use the VAAR SDVOSB and Veteran-owned small business (VOSB) clauses under the VFCP as prescribed at VAAR subpart 819.70 and as revised and updated in Class Deviation from VA Acquisition Regulation Part 819—Small Business Programs and Part 852—Solicitation and Contract Clauses, to be issued under separate VAAR deviation.]*
Contracting officers are not authorized to use FAR clause 52.219-27 for VA procurements.

(5) 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:

¹ Note this same clause is also used in Attachment 2 for 8(a).

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Use 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (DEVIATION 2019-01), in lieu of FAR 52.219-29.

(6) 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 2019-01), in lieu of FAR 52.219-30.

7. Additional information. Direct questions or concerns regarding this deviation to the Office of Acquisition and Logistics (003A), Procurement Policy and Warrant Management Service (003A2A) via email at va.procurement.policy@va.gov or (202) 632-5288.

/S/

Angela Billups

Attachments

Attachment 1 – Small Business Concerns

Attachment 2 – 8(a) Program Participants

Attachment 3 – HUBZone Small Business Concerns

Attachment 4 – **[Not Applicable to VA]**

Attachment 5 – EDWOSB Concerns

Attachment 6 – WOSB Concerns Eligible under the WOSB Program

Attachment 1

Small Business Concerns

52.219-6 Notice of Total Small Business Set-Aside (DEVIATION 2019-01).

As prescribed in 19.508(c), insert the following clause: **[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 (DEVIATION 2019-01)

(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 or reserved 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.*

~~A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.~~

[(1) For a contract at or below the simplified acquisition threshold, a small business concern may provide the end item of any firm. For a contract exceeding the simplified acquisition threshold and the requirements of paragraphs (d)(1)(i) through (iii) of this clause have not been waived by SBA 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) Paragraph (d)(1) of this clause does not apply to construction or service contracts.]

(End of clause)

* * * * *

52.219-7 Notice of Partial Small Business Set-Aside (DEVIATION 2019-01).

~~As prescribed in 19.508(d), insert the following clause:~~ **[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 (DEVIATION 2019-01)

(a) *Definitions.* "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) *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.
- (2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.
- (3) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s).
- (4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion.
- (5) The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) Agreement.

~~For the set aside portion of the acquisition, a small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.~~

[(1) For a contract at or below the simplified acquisition threshold, a small business concern may provide the end item of any firm. For a contract exceeding the simplified acquisition threshold and the requirements of paragraphs (c)(1)(i) through (iii) of this clause have not been waived by SBA 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) Paragraph (c)(1) of this clause does not apply to construction or service contracts or to the non-set-aside portion of the contract.]

(End of clause)

* * * * *

52.219-14 Limitations on Subcontracting (DEVIATION 2019-01).

~~As prescribed in 19.508(e) or 19.811-3(e), insert the following clause:~~ **[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):]**

LIMITATIONS ON SUBCONTRACTING (DEVIATION 2019-01)

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

[(b) *Definition.* As used in this clause—

“Similarly situated entity” means a first-tier subcontractor, including an independent contractor, that has the same small business program status as that which qualified the prime contractor for the award, and that is considered small for the NAICS code the prime contractor assigned to the subcontract the subcontractor will perform. An example of a similarly situated entity is a first-tier subcontractor that is a HUBZone small business concern for a HUBZone set-aside or sole source award under the HUBZone Program.]

~~(b) [(c)]~~ ***Applicability.* This clause applies only to—**

~~(1) Contracts that have been set aside or reserved 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; and~~

~~(3) Orders set aside for small business or 8(a) participants under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).~~

[(1) Contracts that have been set aside or reserved any of the small business concerns identified in 19.000(a)(3);

(2) Part or parts of a multiple-award contract that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(3) Contracts that have been awarded on a sole-source basis in accordance with subparts 19.8, 19.13, 19.14, and 19.15; and

(4) Orders set aside for any of the small business concerns identified in 19.000(a)(3) under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).]

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

[(e) *Agreement.*] ~~(e)~~ By submission of an offer and execution of a contract, the Offeror/Contractor agrees in performance of the contract in the case of a contract for—

~~(1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.~~

[(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 50 percent subcontract amount that cannot be exceeded;]*

~~(2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.~~

[(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 50 percent subcontract amount that cannot be exceeded;]*

~~(3) *General construction.* The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.~~

[(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 85 percent subcontract amount that cannot be exceeded; or]*

~~(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.~~

[(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 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.]

(End of clause)

Attachment 2

8(a) Program Participants

52.219-14 Limitations on Subcontracting (DEVIATION 2019-01).

~~As prescribed in 19.508(e) or 19.811-3(e), insert the following clause:~~ **[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):]**

LIMITATIONS ON SUBCONTRACTING (DEVIATION 2019-01)

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

[(b) *Definition.* As used in this clause—

“Similarly situated entity” means a first-tier subcontractor, including an independent contractor, that has the same small business program status as that which qualified the prime contractor for the award, and that is considered small for the NAICS code the prime contractor assigned to the subcontract the subcontractor will perform. An example of a similarly situated entity is a first-tier subcontractor that is a HUBZone small business concern for a HUBZone set-aside or sole source award under the HUBZone Program.]

~~(b)~~ **[(c)] *Applicability.* This clause applies only to—**

~~(1) Contracts that have been set aside or reserved 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) Orders set aside for small business or 8(a) participants under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).~~

[(1) Contracts that have been set aside or reserved any of the small business concerns identified in 19.000(a)(3);

(2) Part or parts of a multiple-award contract that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(3) Contracts that have been awarded on a sole-source basis in accordance with subparts 19.8, 19.13, 19.14, and 19.15; and

(4) Orders set aside for any of the small business concerns identified in 19.000(a)(3) under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).]

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

[(e) *Agreement.*] ~~(e)~~ By submission of an offer and execution of a contract, the Offeror/Contractor agrees in performance of the contract in the case of a contract for—

~~(1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.~~

[(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 50 percent subcontract amount that cannot be exceeded;]

~~(2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.~~

[(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 50 percent subcontract amount that cannot be exceeded;]

~~(3) *General construction.* The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.~~

[(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 85 percent subcontract amount that cannot be exceeded; or]

~~[(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.]~~

[(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 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.]

(End of clause)

Attachment 3

HUBZone Small Business Concerns

52.219-3 Notice of HUBZone Set-Aside or Sole Source Award (DEVIATION 2019-01).

~~As prescribed in 19.1309(a), insert the following clause:~~ **[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):]**

NOTICE OF HUBZONE SET-ASIDE OR SOLE SOURCE AWARD (DEVIATION 2019-01)

~~(a) Definitions. See 13 CFR 125.6(e) for definitions of terms used in paragraph (c).~~ **[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 has the same small business program status as that which qualified the prime contractor for the award, and that is considered small for the NAICS code the prime contractor assigned to the subcontract the subcontractor will perform. An example of a similarly situated entity is a first-tier subcontractor that is a HUBZone small business concern for a HUBZone set-aside or sole source award under the HUBZone Program.]

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

- ~~(1) Contracts that have been set aside or reserved for, 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; and~~
- ~~(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).~~

(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.]

~~(d) [(e) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract,~~ **[By submission of an offer and execution of a contract, a HUBZone small business concern agrees that,]** in the case of a contract for—

~~(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;~~

[(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 50 percent subcontract amount that cannot be exceeded;]

~~(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone 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 50 percent subcontract amount that cannot be exceeded;]

~~(3) *General construction.* (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;~~

~~(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's employees and employees of HUBZone small business concern subcontractors; and~~

~~(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or~~

[(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 85 percent subcontract amount that cannot be exceeded; or]

~~(4) Construction by special trade contractors. (i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;~~

~~(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's employees and employees of HUBZone small business concern subcontractors;~~

~~(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.~~

[(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 75 percent subcontract amount that cannot be exceeded.]

~~(e) [(f) **Joint venture.**] A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) [(e)] of this clause will be performed by the aggregate of the HUBZone small business participants.~~

~~(f)(1) When the total value of the contract exceeds \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.~~

~~(2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.~~

~~(3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.~~

[(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) Paragraph (g)(1) of this clause does not apply to construction or service contracts.]

~~(g) [(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)

52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns (DEVIATION 2019-01).

~~As prescribed in 19.1309(b), insert the following clause:~~ **[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 (DEVIATION 2019-01)

(a) *Definitions.* ~~See 13 CFR 125.6(e) for definitions of terms used in paragraph (d).~~ **[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 has the same small business program status as that which qualified the prime contractor for the award, and that is considered small for the NAICS code the prime contractor assigned to the subcontract the subcontractor will perform. An example of a similarly situated entity is a first-tier subcontractor that is a HUBZone small business concern for a HUBZone set-aside or sole source award under the HUBZone Program.]

(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 ~~(d)~~**[(e)]** and ~~(e)~~**[(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.]

~~(d) [(e) Agreement. A HUBZone small business concern agrees that in the performance of the contract, [By submission of an offer and execution of a contract, a HUBZone small business concern agrees that,] in the case of a contract for—~~

~~(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;~~

[(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 50 percent subcontract amount that cannot be exceeded;]

~~(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone 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 50 percent subcontract amount that cannot be exceeded;]

~~(3) General construction. (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;~~

~~(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;~~

~~(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or~~

[(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 85 percent subcontract amount that cannot be exceeded; or]

~~(4) Construction by special trade contractors. (i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;~~

~~(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;~~

~~(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.~~

[(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 75 percent subcontract amount that cannot be exceeded.]

~~(e)[(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 ~~(d)[(e)]~~ of this clause.

~~(f)[(g)](1)~~ ~~When the total value of the contract exceeds , a~~**[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. HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract

~~only end items manufactured or produced by HUBZone small business concern manufacturers.~~

~~(2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.~~

~~(3)~~**(2)** Paragraphs ~~(g)~~**(g)**(1) and ~~(f)~~**(2)** of this section**[clause]** do**[es]** not apply in connection with**[to]** construction or service contracts**[, or when the price evaluation preference is waived by the offeror]**.

~~(g)~~**(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)

Attachment 4
NOT APPLICABLE TO VA
SDVOSB Concerns

52.219-27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (DEVIATION 2019-01). VA contracting officers are required to follow guidance in VAAR subpart 819.70, as modified by class deviations affecting the Veterans First Contracting Program.

Attachment 5
EDWOSB Concerns

52.219-29 Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (DEVIATION 2019-01).

~~As prescribed in 19.1507, insert the following clause:~~ **[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):]**

NOTICE OF SET-ASIDE FOR, OR SOLE SOURCE AWARD TO, ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS CONCERNS (DEVIATION 2019-01)

(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 has the same small business program status as that which qualified the prime contractor for the award, and that is considered small for the NAICS code the prime contractor assigned to the subcontract the subcontractor will perform. An example of a similarly situated entity is a first-tier subcontractor that is a HUBZone small business concern for a HUBZone set-aside or sole source award under the HUBZone Program.]

“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 or reserved 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; and
- (3) Orders set aside for EDWOSB 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 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.]

~~(d)~~ **[(e)]** *Agreement.* **[By submission of an offer and execution of a contract,]** A[a]n EDWOSB concern agrees that in the performance of the contract for—

~~(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;~~

[(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 50 percent subcontract amount that cannot be exceeded;]

~~(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);~~

[(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 50 percent subcontract amount that cannot be exceeded;]

~~(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and~~

[(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 85 percent subcontract amount that cannot be exceeded; or]

~~(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).~~

[(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 75 percent subcontract amount that cannot be exceeded.]

~~(e)~~ **[(f)]** *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)~~ **[(e)]** above; and

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

~~(f)~~ **[(g)]** *Nonmanufacturer.*

~~An EDWOSB concern that is a non-manufacturer, as defined in 13 CFR 121.406(b) or FAR 19.102(f), may submit an offer on an EDWOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.~~

[(1) Unless SBA has waived the requirements of paragraphs (g)(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

(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) Paragraph (g)(1) of this clause does not apply to construction or service contracts.]

(End of clause)

Attachment 6

WOSB Concerns Eligible under the WOSB Program

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 2019-01).

~~As prescribed in 19.1507, insert the following clause:~~ **[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):]**

NOTICE OF SET-ASIDE FOR, OR SOLE SOURCE AWARD TO, WOMEN-OWNED SMALL BUSINESS CONCERNS ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM (DEVIATION 2019-01)

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

“Similarly situated entity” means a first-tier subcontractor, including an independent contractor, that has the same small business program status as that which qualified the prime contractor for the award, and that is considered small for the NAICS code the prime contractor assigned to the subcontract the subcontractor will perform. An example of a similarly situated entity is a first-tier subcontractor that is a HUBZone small business concern for a HUBZone set-aside or sole source award under the HUBZone Program.]

“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 or reserved 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; and
- (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).

(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.]

~~(d)~~ **[(e) *Agreement.* [By submission of an offer and execution of a contract,] A[a] WOSB concern eligible under the WOSB Program agrees that in the performance of the contract for—**

~~(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;~~

[(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 50 percent subcontract amount that cannot be exceeded;]

~~(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);~~

[(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 50 percent subcontract amount that cannot be exceeded;]

~~(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and~~

[(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 85 percent subcontract amount that cannot be exceeded; or]

~~(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including cost of materials).~~

[(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 75 percent subcontract amount that cannot be exceeded.]

~~(e)~~**[(f)]** *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 joint venture must perform the applicable percentage of work required in accordance with paragraph ~~(d)~~**[(e)]** above; and

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

~~(f)~~**[(g)]** *Nonmanufacturer.*

~~A WOSB concern eligible under the WOSB Program that is a non-manufacturer, as defined in 13 CFR 121.406(b) or FAR 19.102(f), may submit an offer on a WOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.~~

[(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 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;

(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) Paragraph (g)(1) of this clause does not apply to construction or service contracts.]

(End of clause)