

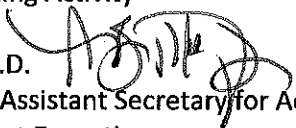


DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

TO: Heads of Contracting Activity

FROM: Angela Billups, Ph.D. 
Associate Deputy Assistant Secretary for Acquisition
Senior Procurement Executive

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) to Remove the Dollar Limitation for Set-asides under the Women-owned Small Business (WOSB) program

Purpose: Approve Class Deviation from FAR to implement the requirements of Section 1697 of the National Defense Authorization Act for Fiscal Year 2013 which amended section 8(m) of the Small Business Act (15 U.S.C. 637(m)) to remove the dollar limitations for set-asides to an economically disadvantaged women-owned small business (EDWOSB) or WOSB eligible under the Small Business Administration's (SBA) Women-owned Small Business Federal Contract Program. Section 1697 of the NDAA was effective January 2, 2013, and the SBA interim final rule addressing those requirements was issued May 7, 2013 at 78 FR 26504.

Guidance: An interim FAR rule (FAR case 2013-010) will be issued in the next Federal Acquisition Circular that will amend FAR 19.1505(b) and (c) to remove the dollar limitations on the anticipated award price of a contract to an EDWOSG or WOSB concern eligible under the WOSB Program. This change will allow contracting officers to restrict competition under the WOSB Program at any dollar level, provided the other requirements for a set-aside under the WOSB Program are met. Pending issuance of the interim FAR rule, this class deviation authorizes set-asides in accordance with the change to FAR 19.1505(b) and (c) (see attached draft FAR text showing changes).

Effective Date: Immediately. This deviation is approved for immediate use and shall remain in effect until the FAR is updated.

CAAC Consultation: The Civilian Agency Acquisition Letter 2013-03 is also attached documenting the results of consultation required by FAR 1.404 for class deviations.

If you have any questions regarding this class deviation please contact Cheryl Howe, at 202-690-5552 or cheryl.howe@hhs.gov.

Attachments

cc: FAR Secretariat



CIVILIAN AGENCY ACQUISITION LETTER 2013-03

May 7, 2013

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM:


LAURA AULETTA
CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT:

Class Deviation from the Federal Acquisition Regulation (FAR)
to Remove the Dollar Limitation for Set-asides under the Women-
owned Small Business (WOSB) Program

Section 1697 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, Public Law 112-239, amended section 8(m) of the Small Business Act, (15 U.S.C. 637(m)) by removing the dollar limitations for set-asides to an economically disadvantaged women-owned small business (EDWOSB) or WOSB eligible under the Small Business Administration's (SBA) Women-owned Small Business Federal Contract Program. Section 1697 became effective January 2, 2013. SBA issued its interim final rule on May 07, 2013, at 78 FR 26504, conforming SBA regulations to section 1697, by revising 13 C.F.R. 127.503(a)(2) and 127.503(b)(2).

An interim FAR rule will be issued in the next Federal Acquisition Circular, as FAR Case 2013-010, amending FAR 19.1505(b) and (c) to remove the dollar limitations on the anticipated award price of a contract to an EDWOSB or WOSB concern eligible under the WOSB Program. As a result, contracting officers may restrict competition under the WOSB Program at any dollar level, provided the other requirements for a set-aside under the WOSB Program are met. Pending issuance of the interim FAR rule, agencies may authorize a class deviation in accordance with FAR 1.404 to authorize set-asides in accordance with the change to FAR 19.1505(b) and (c) (See Attachment 1).

This CAAC memorandum constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1). Agencies are reminded that FAR 1.404 requires agencies to furnish a copy of each approved class deviation to the FAR Secretariat, General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE, 7th Floor, ATTN: Hada Flowers, Washington, DC, 20417. Agencies may also email the deviation to Ms. Flowers at hada.flowers@gsa.gov or send by fax to 202-501-4067.

If you have questions or require additional information regarding this memorandum, please contact Karlos Morgan at (202) 501-2364, or by email at karlos.morgan@gsa.gov.

**Change to FAR 19.505(b) and (c) - Class Deviation
May 7, 2013 - Pursuant to CAAC Letter 2013-003**

Subpart 19.15-Women-Owned Small Business (WOSB) Program

19.1505 Set-aside procedures.

(a) The contracting officer-

(1) Shall comply with 19.203 before deciding to set aside an acquisition under the WOSB Program.

(2) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program in those NAICS codes in which SBA has determined that WOSB concerns eligible under the WOSB program are underrepresented or substantially underrepresented in Federal procurement, as specified on SBA's Web site at <http://www.sba.gov/WOSB>.

(b) For requirements in NAICS codes designated by SBA as underrepresented, a contracting officer may restrict competition to EDWOSB concerns if the contracting officer has a reasonable expectation based on market research that-

(1) Two or more EDWOSB concerns will submit offers for the contract; **[and]**

~~(2) The anticipated award price of the contract (including options) does not exceed \$6.5 million, in the case of a contract assigned an NAICS code for manufacturing; or \$4 million, for all other contracts; and~~

~~(3)~~ Contract award will be made at a fair and reasonable price.

(c) A contracting officer may restrict competition to WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), for requirements in NAICS codes designated by SBA as substantially underrepresented if there is a reasonable expectation based on market research that-

(1) Two or more WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), will submit offers; **[and]**

~~(2) The anticipated award price of the contract (including options) will not exceed \$6.5 million, in the case of a contract assigned an NAICS code for manufacturing, or \$4 million for all other contracts; and~~

~~(3)~~ Contract award may be made at a fair and reasonable price.