



Date: October 19, 2022

MEMORANDUM FOR TREASURY ACQUISITION PERSONNEL

FROM: NICOLE EVANS *Nicole Evans*
SENIOR PROCUREMENT EXECUTIVE

SUBJECT: **Class Deviation No. 2023-00001 from the Federal Acquisition Regulation (FAR) to provide time for the system implementation of Federal Acquisition Circular (FAC) 2022-08**

1. **PURPOSE:** To provide a class deviation to implement the new policies in FAC 2022-08 (87 FR 58218) published on September 23, 2022. This deviation allows Treasury bureaus to use the new policies while the General Services Administration (GSA) is working to integrate the new policies in the federal e-business systems (i.e., the System for Award Management (SAM)).
2. **EFFECTIVE DATE:** October 28, 2022
3. **EXPIRATION DATE:** Until superseded, incorporated into the FAR, or otherwise rescinded.
4. **GUIDANCE:** The FAR cases in FAC 2022-08 make changes to entity representations in SAM (i.e., FAR provisions 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services, at paragraph (c), and 52.219-1, Small Business Program Representations, also at paragraph (c)). Starting October 28, 2022, the new version of these two provisions will be shown on the Electronic Code of Federal Regulations (eCFR) and acquisition.gov, but will not appear on SAM. Until the SAM system is updated, Contracting Officers cannot rely on certain representations in SAM. Therefore, beginning October 28, 2022, the procedures below will apply.
5. **DEVIATION:** See attached procedures.
6. **ADDITIONAL INFORMATION:** The point of contact for this acquisition bulletin is Mr. Steven Kvalevog who can be reached at Steven.Kvalevog@treasury.gov.

Contracting Officer Procedures

Offer-by-Offer Representations for Small Business Joint Ventures and Service-Disabled Veteran-Owned Small Business (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 SDVOSB 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, COs should:

- 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 an 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).

Where to check status as a Women-Owned Small Business (WOSB) or Economically Disadvantaged Women-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 Historically Underutilized Business Zone (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.