OFFICE OF THE UNDER SECRETARY OF DEFENSE
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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

NOV 19 2009

In reply refer to DARS Tracking Number: 2009-O0009

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION & LOGISTICS MANAGEMENT), ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQ
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Class Deviation to the Federal Acquisition Regulation – Small Disadvantaged Business Certification for Subcontractors

Effective immediately, contracting officers are authorized to use the attached deviations from the Federal Acquisition Regulation (FAR)—

- 19.703, "Eligibility requirements for participating in the program" (Attachment 1);
- Paragraph (c) of FAR clause 52.219-8, "Utilization of Small Business Concerns" (Attachment 2); and
- Paragraph (a) of FAR 52.219-25, "Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting" (Attachment 3).

A class deviation is necessary to implement changes to the requirement for Small Disadvantaged Business (SDB) certifications. On October 3, 2008, the Small Business Administration (SBA) published an Interim Final Rule in the Federal Register (73 FR 57490), which eliminates the requirement for SBA SDB certification for subcontractors. Prime contractors may now rely on the written representation of subcontractors regarding SDB status.

To be consistent with the SBA's current regulation and to alleviate any adverse impact to the SDB subcontracting goal for DoD prime contractors, contracting officers will deviate from the FAR by following the revised guidance and substituting the attached clauses. Contracting officers may modify existing solicitations and contracts in accordance with FAR 1.108(d).

This deviation remains in effect until incorporated in the FAR or otherwise rescinded. My staff point of contact for this matter is Ms. Cassandra R. Freeman, 703-602-8383 or cassandra.freeman@osd.mil.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachment(s):
As Stated

cc:
DoD Small Business Programs Director

52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.

As prescribed in 19.1204(b), insert the following clause:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (APR 2008) (DEVIATION)

(a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor ~~shall obtain~~ may accept self-representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors ~~through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern is a small disadvantaged business concern certified by the Small Business Administration by using the Central Contractor Registration database or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility~~.

(b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, in the Contractor's own format providing the same information, or accomplished through using the Electronic Subcontracting Reporting System's Small Disadvantaged Business Participation Report. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report at the completion of the contract.

(End of clause)