

**CLASS DEVIATION
FINDINGS AND DETERMINATION
USE OF CLAUSES TO IMPLEMENT REGULATORY CHANGES TO
LIMITATIONS ON SUBCONTRACTING AND NONMANUFACTURER RULE
(SUPPLEMENT 1)**

Findings


1. The Small Business Administration (SBA), in its final rule published in the Federal Register at 81 FR 34243 on May 31, 2016 and made effective June 30, 2016, implemented the statutory requirements of section 1651 of the National Defense Authorization Act (NDAA) for fiscal year 2013 (15 U.S.C. 657s). The final rule 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, sole source, or HUBZone price evaluation preference authorities of the Small Business Act.
2. The Civilian Agency Acquisition Council (CAAC) issued CAAC letter 2019-01 on April 3, 2019 providing agencies a model class deviation to implement regulatory changes made by SBA to limitations on subcontracting in its final rule, pending publication of the formal amendment to the FAR via FAR case 2016-011. The class deviation updated 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: (1) Small business concerns; (2) 8(a) Program participants; (3) Historically Underutilized Business Zone (HUBZone) small business concerns; (4) Service-disabled veteran-owned small business (SDVOSB) concerns; (5) Economically disadvantaged women-owned small business (EDWOSB) concerns; and (6) Women-owned small business (WOSB) concerns eligible under the WOSB Program. The Department of Energy issued its resulting class deviation on July 25, 2019.
3. CAAC letter 2019-01 supplement 1 was issued on July 2, 2020 to provide agencies a supplement to the model class deviation discussed in item 2 above. The supplement revises and supersedes CAAC letter 2019-01, and was issued after FAR case 2014-002, Set-Asides under Multiple Award Contracts, was released as a final rule effective March 30, 2020. FAR case 2014-002 substantially changed FAR part 19 and the clauses related to FAR part 19 awards. The supplement updates the limitations on subcontracting and the nonmanufacturer rule for all small businesses in the clauses relating to awards under FAR part 19. Rulemaking to formally incorporate these changes is in progress. Pending publication of the amendment to the FAR via FAR case 2016-011, Revision of Limitations on Subcontracting, the Department of Energy may authorize a class deviation to implement these updates:
 - a. All awards under FAR part 19 will use: (1) 52.219-14, Limitations on Subcontracting (DEVIATION JUN 2020) in lieu of either the current FAR clause or the deviation clause from the original CAAC letter, and (2) 52.219-33, Nonmanufacturer Rule (DEVIATION JUN 2020) in lieu of the current FAR clause. These are shown in new attachment 7 to CAAC letter 2019-01 supplement 1.

- b. Small business set-asides will use the current FAR clauses 52.219-6 or 52.219-7 in lieu of the deviation clauses from attachment 1 of the original CAAC letter 2019-01.
 - c. Clauses for HUBZones (52.219-3 and 52.219-4), for SDVOSBs (52.219-27), for EDWOSBs (52.219-29) and for WOSBs (52.219-30), have been updated with new deviated language, in attachments 3 through 6 to CAAC letter 2019-01 supplement 1.
4. CAAC letter 2019-01 supplement 1 constitutes required consultation in accordance with FAR 1.404 with the Chair of the CAAC.

Determination

It is hereby determined that a class deviation (using the FAR deviation clauses and instructions included in CAAC letter 2019-01 supplement 1, attachments 1-7) is appropriate to implement changes due to the issuance of FAR case 2014-002 as a final rule. Once processed, the Department of Energy will share the deviation widely among its workforces to ensure full awareness of and compliance with revisions to the limitations on subcontracting and the nonmanufacturer rule. This class deviation is effective upon the date of signature and will remain effective until cancelled or until the FAR is amended by FAR case 2016-011.

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S. Keith Hamilton, P.E.,
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Effective Date: _____

Attachment: CAAC Letter 2019-01 Supplement 1 with FAR Deviation Clauses and Instructions (Attachments 1-7)