

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 19 - SMALL BUSINESS
(formerly SMALL BUSINESS PROGRAMS)**

Findings

1. The objective of this class deviation is to implement the Federal Acquisition Regulatory Council’s model deviation text to the Federal Acquisition Regulation (FAR) Part 19 - *Small Business* (formerly *Small Business Programs*), and applicable sections of FAR Part 52 - *Solicitation Provisions and Contract Clauses*.
2. On April 15, 2025, President Donald J. Trump issued Executive Order (E.O.) 14275, *Restoring Common Sense to Federal Procurement*. Section 2 of the E.O. established the policy that the FAR “should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.”
3. On May 2, 2025, the Office of Management and Budget (OMB) issued memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*, initiating a major overhaul of the FAR (Revolutionary FAR Overhaul, or “RFO”). The memorandum tasked the Office of Federal Procurement Policy (OFPP) with leading the RFO, in coordination with the other members of the Federal Acquisition Regulatory Council – i.e., the General Services Administration (GSA), the Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA) and federal buying agencies. The goal is refocusing the FAR on its statutory roots. To that end, the FAR is being updated to:
 - Remove language that is not required by statute
 - Remove duplicative or outdated language
 - Clarify or provide more plain language
 - Revise language for the new FAR framework
 - Retain language necessary for governmentwide acquisition standards

The OMB memorandum M-25-26 established a two phased approach to implementing enterprise deregulation as follows: Phase one, FAR Council deviation guidance, and phase two, formal rulemaking. Phase one involves the FAR Council issuing guidance on a rolling basis with clear, plain language model deviation text organized by FAR part. The goal is streamlining the regulation by aligning it more closely to its statutory base. According to the memorandum, agencies should adopt this model deviation text within 30 days by issuing either individual or class deviations.

4. On May 2, 2025, the FAR Council issued further implementing guidance in a memorandum titled *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*. Pursuant to the FAR Council’s memorandum, “agencies that adopt the Council’s RFO class deviation text without change, or require different text

only to address statutory direction unique to the agency, do not need to coordinate with the Council.”

5. On September 26, 2025, the FAR Council issued model deviation text for FAR Part 19 and corresponding provisions and clauses at FAR Part 52. FAR Part 19 is streamlined and emphasizes the importance of small businesses in Federal procurement by making the regulations clearer, more intuitive, and easier for the acquisition workforce to implement. The deviated text preserves the most substantive requirements while reorganizing them to align with the acquisition lifecycle.

The Part reinforces that it is the Government’s policy to provide maximum practicable opportunities in its acquisitions to small business, 8(a) participants, and other small business socioeconomic categories (i.e., veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), HUBZone small business, small disadvantaged business, and women-owned small business concerns (WOSB)).

For contracts, it keeps the rule of two (meaning contracting officers must set aside requirements when there are two or more small businesses identified who can provide the supplies or service) above the micro-purchase threshold. The rule of two is required by statute between the micro-purchase threshold and the simplified acquisition threshold. The FAR Council retained the rule of two above the simplified acquisition threshold as essential to sound procurement.

Other revisions include:

- Discretion for Contracting Officers. The deviated text clarifies that a contracting officer’s decision to set aside or not set aside an order placed under a multiple-award contract is an exercise of discretion and not a basis for a protest.
- Removing rerepresentation requirements when ordering off an existing contract. Agency small business credit is driven by the size determination made by the contracting officer at the contract level, and updated when certain contract level events take place (e.g., option exercise, novation).
- Competing 8(a) orders. Where an acquisition is below the competitive threshold (see 19.108-7(a)(2)), contracting officers must first try conducting the acquisition as a competitive 8(a) order using Small Business Administration (SBA)-approved government-wide contracts before proceeding with a sole source 8(a) award.
- Automatic 8(a) release. A requirement is automatically released from the 8(a) program if the follow-on will be set aside under the HUBzone, SDVOSB, or WOSB programs.

Statutory requirements retained in the RFO FAR Part 19 model deviation include, but are not limited to, the following:

- 10 U.S.C. § 3203 and 41 U.S.C. § 3303, *Exclusion of Particular Source or Restriction of Solicitation to Small Business Concerns*
- 15 U.S.C. §§ 631-657u, *Small Business Act*

- 41 U.S.C. § 3104, *Small Business Concerns*

In addition, the following table provides a non-exhaustive list of non-statutory requirements that have been revised and retained, or removed from Part 19:

Change	Description
Retained	<ul style="list-style-type: none"> • The following provision and clauses are retained (or remain reserved) with no changes: <ul style="list-style-type: none"> ○ 52.219-5, Reserved ○ 52.219-7 (Clause), <i>Notice of Partial Small Business Set-Aside</i> ○ 52.219-11 (Clause), <i>Special 8(a) Contract Conditions</i> ○ 52.219-12 (Clause), <i>Special 8(a) Subcontract Conditions</i> ○ 52.219-13 (Clause), <i>Notice of Set-Aside of Orders</i> ○ 52.219-15, Reserved ○ 52.219-17 (Clause), <i>Section 8(a) Award</i> ○ 52.219-18 (Clause), <i>Notification of Competition Limited to Eligible 8(a) Participants</i> ○ 52.219-19 through 52.219-26, Reserved ○ 52.219-31 (Provision) <i>Notice of Small Business Reserve</i>
Moved / Updated	<ul style="list-style-type: none"> • FAR Part 19 was retitled from <i>Small Business Programs</i> to <i>Small Business</i>. • Throughout the Part, references to the Dynamic Small Business Search (DSBS) site were updated to the Small Business Search (SBS) website at https://search.certifications.sba.gov/. • 19.000, <i>Scope of part</i>, is updated to remove unnecessary citations and content. • 19.001, <i>Definitions</i>, is retained and has been updated to include numerous definitions that were previously spread throughout the part. Most of the definitions have been retained with no, or only minor edits. The only exception is the definition of “Similarly situated entity” which has been removed from this section and is retained only within clause 52.219-14, <i>Limitations on Subcontracting</i>. • The revised Part structure now reflects the acquisition lifecycle: <ul style="list-style-type: none"> ○ Subpart 19.1 - <i>Presolicitation</i> ○ Subpart 19.2 - <i>Evaluation and Award</i> ○ Subpart 19.3 - <i>Postaward</i> • Subpart 19.1, <i>Presolicitation</i>, consolidates all policies and procedures applicable before issuance of a solicitation, creating a single point of reference for acquisition planning and market research. <ul style="list-style-type: none"> ○ 19.101, <i>Small business goals</i>, is new and serves as an introduction to the Government’s small business policy and the tools available to achieve agency small business goals.

	<ul style="list-style-type: none"> ▪ Within 19.101(a): <ul style="list-style-type: none"> • The general policy statement on providing maximum practicable opportunities is relocated from 19.201(a). • The requirement to measure and report small business participation is relocated from 19.202-5(b). ▪ 19.101(b) is a new addition that functions as a “roadmap” for contracting officers, listing the various acquisition strategies available and providing direct cross-references to the corresponding sections within the new part 19. ○ 19.102, <i>Coordination</i>, consolidates all requirements for coordinating with the SBA and the agency’s Office of Small and Disadvantaged Business Utilization (OSDBU). <ul style="list-style-type: none"> ▪ General principles of cooperation with the SBA are relocated from 19.401. ▪ Rules regarding SBA Procurement Center Representatives (PCRs) are relocated from 19.402. ▪ The mandatory 30-day notification to the SBA PCR for certain acquisitions is relocated from 19.202-1(e). ▪ The procedures for a contracting officer to reject an SBA recommendation and the subsequent SBA appeal process are relocated from 19.502-8. ○ 19.103, <i>Small business size standards</i>, consolidates content from the former subpart 19.1, specifically former sections 19.102 and 19.103. The content concerning NAICS codes, size standards, and the appeal process for NAICS code designations remains substantively the same but is now logically situated within the presolicitation subpart. ○ 19.104, <i>Small business set-asides</i>, consolidates the rules for total and partial small business set-asides, the nonmanufacturer rule, and related clause prescriptions. <ul style="list-style-type: none"> ▪ Relocated from former 19.502-2, this section retains that for contracts above the micro-purchase threshold, the contracting officer must set the contract aside for small business if there is a reasonable expectation of obtaining competitive offers from two or more responsible small business concerns (the rule of two). ▪ An important change – by changing the word “acquisition” to “contract” at 19.104-1(a), set-aside requirements (the rule of two) are clarified. Set-aside at the master contract level is mandatory, set-
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	<p>aside is encouraged but discretionary at the order level (see 19.111).</p> <ul style="list-style-type: none"> ▪ The procedures for partial set-asides are consolidated from former 19.502-3 (for contracts other than multiple-award) and former 19.502-4 (for multiple-award contracts) into a single, unified subsection at 19.104-2. The new subsection does not distinguish between multiple-award or other-than-multiple-award contracts, as the underlying principles are identical. ▪ The nonmanufacturer rule is relocated from former 19.505(c). ▪ Clause prescriptions are relocated from former 19.507. <ul style="list-style-type: none"> ○ Socioeconomic Programs at sections 19.105 (HUBZone), 19.106 (SDVOSB), 19.107 (WOSB), and 19.108 (8(a)). These sections represent a major structural overhaul. Previously, each socioeconomic program was addressed in its own subpart containing rules for all acquisition phases. In the deviated text, the presolicitation aspects of each program are relocated to subpart 19.1. ○ 19.108-7, <i>Competitive 8(a) and sole source 8(a) policy</i>, is updated: <ul style="list-style-type: none"> ▪ In paragraph (b) to state that SBA may accept sole-source awards above the competitive threshold (see 19.108-7(a)(2)) if the contracting officer complies with the requirement for other than full and open competition in accordance with FAR 6.103. ▪ An important change in paragraph (d) – where an acquisition is below the competitive threshold, contracting officers must first try conducting the acquisition as a competitive 8(a) order using SBA-approved government-wide contracts that permit it before proceeding with a sole source 8(a). ○ 19.108-11, <i>Release requirements for non-8(a) procurement</i>, is revised to state that a requirement is automatically released from the 8(a) program if the follow-on will be set aside under the HUBzone, SDVOSB, or WOSB programs. Release does not have to be formally requested from the SBA in this situation. ○ 19.109, <i>Small business subcontracting plans</i>, centralizes all presolicitation requirements related to subcontracting plans, which were previously located throughout subpart 19.7. ○ 19.110, <i>Price evaluation preference for HUBZone small business concerns</i>, relocates the rules for applying the
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	<p>HUBZone price evaluation preference from former 19.1307(a) and the associated clause prescription from former 19.1309(b).</p> <ul style="list-style-type: none"> ○ 19.111, <i>Orders under multiple-award contracts</i>, consolidates rules for orders under multiple-award contracts that were previously in different locations throughout the part. It combines guidance on assigning NAICS codes to orders (from former 19.102(b)(3)) with the rules for setting aside orders (from former 19.504). The section retains that set-asides for orders are discretionary. ○ 19.112, <i>Reserves</i>, relocates the content governing the use of reserves on multiple-award contracts from former 19.503 and the associated prescription from former 19.507(g). ● Subpart 19.2, <i>Evaluation and Award</i>, centralizes all policies and procedures applicable after offers are received but before a contract is awarded. <ul style="list-style-type: none"> ○ 19.201, <i>Small business size and socioeconomic status determination</i>, consolidates protest and representation procedures into a single location. This change simplifies the process for contracting officers, who previously had to consult separate sections for each type of protest. The following sections are consolidated here: <ul style="list-style-type: none"> ▪ Representation by the offeror at initial award (from former 19.301-1) ▪ Protesting a small business representation (from former 19.302) ▪ Small disadvantaged business status and reviews (from former 19.304 and 19.305) ▪ Protesting HUBZone status (from former 19.306) ▪ Protesting SDVOSB status (from former 19.307) ▪ Protesting WOSB/economically disadvantaged women-owned small business (EDWOSB) status (from former 19.308) ▪ Protesting 8(a) eligibility and requesting size determinations (from former 19.813 and 19.814) ○ 19.202, <i>Encouraging small business responses</i>, relocates the content from former 19.202-4(c) which requires contracting officers to provide copies of solicitations and other information to small businesses upon request. ○ 19.203, <i>Equal low bids</i>, relocates the content on handling equal low bids from former 19.202-3 and the related clause prescription from former 19.309(b). ○ 19.204, <i>Certificate of competency</i>, relocates and consolidates the entirety of former Subpart 19.6,
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Certificates of Competency and Determinations of Responsibility. Placing this topic in the *Evaluation and Award* subpart aligns it with the point in the acquisition process where a responsibility determination is made.

- 19.205, *Evaluating and awarding set-asides*, consolidates various award-related provisions for set-asides, including:
 - The determination of fair market price (from former 19.202-6)
 - Procedures for when only one offer is received (from former 19.502-2(a) and 19.1305(c))
 - Rules for withdrawing a set-aside prior to award (from former 19.502-9)
- 19.206, *Evaluating small business subcontracting plans*, consolidates all procedures related to the review, negotiation, and acceptance of subcontracting plans prior to award. It incorporates content from former sections 19.704 (*Subcontracting plan requirements*), 19.705-4 (*Reviewing the subcontracting plan*), and 19.705-5 (*Awards involving subcontracting plans*).
- 19.207, *Evaluating offers using the HUBZone price evaluation preference*, relocates the specific methodology for applying the 10 percent price evaluation preference for HUBZone small business concerns, previously located in 19.1307(b), (c), and (d).
- 19.208, *Evaluating and awarding under the 8(a) Program*, consolidates all evaluation and award procedures for the 8(a) program from former subpart 19.8, *Contracting with the Small Business Administration (The 8(a) Program)* including competitive procedures (former 19.805-2), contract negotiation (former 19.808), pricing (former 19.806), fair market price estimation (former 19.807), preaward survey (former 19.809-1), effect of exiting the 8(a) program on eligibility for award (formerly 19.816), contract preparation (former 19.811), and SBA appeals (former 19.810).
- Subpart 19.3, *Postaward*, consolidates all policies and procedures applicable after a contract has been awarded.
 - 19.301, *Small business size rerepresentations*, relocates the requirements for a contractor to rerepresent its size status after award. It combines the content from former 19.301-2 and 19.301-3 into a single, logically placed post-award section. The content is further updated:
 - For IDIQ contracts, removes rerepresentation at the order level.
 - Clarifies that agency small business credit is driven by status at the master contract level which is

	<p>updated when certain contract level events take place (e.g., option exercise, novation).</p> <ul style="list-style-type: none"> ○ 19.302, <i>Small business subcontracting plans</i>, consolidates all post-award responsibilities related to subcontracting plans. It incorporates procedures for requiring a plan after award due to a modification (from former 19.705-2(e)), monitoring compliance with the plan (from former 19.705-7), and other postaward responsibilities of the contracting officer (from former 19.705-6). ○ 19.303, <i>8(a) Program contracts</i>, consolidates all post-award aspects of the 8(a) program. It includes guidance on contract administration (from former 19.812), contractual obligations for contractors exiting the program (from former 19.816(a)), and post-award rules for indefinite-delivery contracts (from former 19.804-6). <ul style="list-style-type: none"> ● The following provisions and clauses are updated to reflect plain language or content moved from Part 19 into the applicable clause or provision to avoid unnecessary duplication. <ul style="list-style-type: none"> ○ 52.219-1 (Provision) <i>Small Business Program Representations</i> ○ 52.219-2 (Provision), <i>Equal Low Bids</i> ○ 52.219-3 (Clause), <i>Notice of HUBZone Set-Aside or Sole-Source Award</i> ○ 52.219-4 (Provision), <i>Notice of Price Evaluation Preference for HUBZone Small Business Concerns</i> ○ 52.219-6 (Clause), <i>Notice of Total Small Business Set-Aside</i> ○ 52.219-8 (Clause), <i>Utilization of Small Business Concerns</i> ○ 52.219-9 (Clause), <i>Small Business Subcontracting Plan</i> ○ 52.219-10 (Clause), <i>Incentive Subcontracting Program</i> ○ 52.219-14 (Clause), <i>Limitations on Subcontracting</i> ○ 52.219-16 (Clause), <i>Liquidated Damages-Subcontracting Plan</i> ○ 52.219-27 (Clause), <i>Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program</i> ○ 52.219-28 (Clause), <i>Postaward Small Business Program Rerepresentation</i> ○ 52.219-29 (Clause), <i>Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns</i> ○ 52.219-30 (Clause), <i>Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program</i>
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	<ul style="list-style-type: none"> ○ 52.219-33 (Clause), <i>Nonmanufacturer Rule</i>
Removed	<ul style="list-style-type: none"> ● 19.203, <i>Relationship among small business programs</i>, is removed because it is not statutorily required or essential for sound procurement. ● 19.502-5, <i>Insufficient reasons for not setting aside an acquisition</i>, has been deleted. The principles it contained are implicit within the mandatory nature of the set-aside requirements (new section 19.104). ● 19.602-3, <i>Resolving differences between the agency and the SBA</i>, is removed because it is not statutorily required or essential to sound procurement, and it has potential to cause confusion. ● 19.706, <i>Responsibilities of the cognizant administrative contracting officer</i>, is removed because it is not statutorily required or essential to sound procurement. ● 19.707, <i>The Small Business Administration's role in carrying out the program</i>, is removed because it is not statutorily required or essential to sound procurement. ● Separate sections on “General”, “Applicability” and “Exclusions” are removed from the HUBZone, SDVOSB, and WOSB subparts as they are unnecessary and duplicative of content elsewhere in the part. ● The following provisions and clauses are removed as they not required by statute or essential to sound procurement: <ul style="list-style-type: none"> ○ 52.219-1 (Provision) <i>Small Business Program Representations, Alternate I</i> ○ 52.219-32 (Clause), <i>Orders Issued Directly Under Small Business Reserves</i>

Determination

In accordance with FAR 1.304 *Class deviations* (as implemented by DOE/NNSA class deviation) and Department of Energy Acquisition Regulation (DEAR) 901.404 *Class deviations*, to fully comply with the requirement of E.O. 14275 and the revised FAR Parts 19 and 52, it is hereby determined that a class deviation is appropriate pursuant to OMB memorandum M-25-26 (Attachment 1) and the FAR Council memorandum (Attachment 2) issued on May 2, 2025, using the RFO model deviation text for Part 19 and applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will use the RFO model deviation text for Part 19 in lieu of 48 Code of Federal Regulations (CFR) Part 19, and the RFO model deviation text for the applicable sections of Part 52 in lieu of the corresponding applicable sections at 48 CFR 52.219-1 through 52.219-33. Once approved, the Department will share the deviation widely among its workforce to ensure full awareness of and compliance with the revisions to the affected regulations. This class deviation is effective upon issuance, and will remain effective until cancelled or incorporated into the FAR.

Janella Davis,
Acting Director
Office of Acquisition Management
Senior Procurement Executive
Department of Energy

William J. Quigley,
Deputy Associate Administrator
Office of Partnership and Acquisition
Services
Senior Procurement Executive
National Nuclear Security Administration

Attachments:

OMB Memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*
FAR Council Memorandum, *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*
RFO Parts 19 and 52 Model Deviation Text