



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 27, 2023

MEMORANDUM TO: Acquisition Management Division and Buyers in the Regions

FROM: Eleni Jernell *Eleni Jernell* Signed by Jernell, Eleni
Senior Procurement Executive on 09/27/23
Division of Acquisition Management
Office of Administration

SUBJECT: CLASS DEVIATION FROM THE FEDERAL ACQUISITION
REGULATION (FAR) VERIFICATION OF ELIGIBILITY FOR THE
8(a) PROGRAM

PURPOSE: To provide a class deviation from the Federal Acquisition Regulation (FAR) regarding the Small Business Administration's (SBA) 8(a) Program offer and acceptance, specifically deviations to FAR 19.804-3(a)(1) and (a)(2), as shown in the enclosure to this class deviation.

BACKGROUND: This class deviation implements a court injunction issued by the United States District Court for the Eastern District of Tennessee on July 19, 2023, enjoining the use of the rebuttable presumption of social disadvantage in administering SBA's 8(a) Program, and SBA's guidance issued on August 18, 2023, and updated on August 25, 2023. Due to the injunction, SBA must determine the eligibility of certain concerns for the 8(a) Program. Because of the court decision, this class deviation applies in lieu of the existing SBA and NRC Partnership Agreement with respect to the verification of 8(a) Participant eligibility for the purposes of offer and acceptance.

GUIDANCE:

Effective immediately, Contracting Officers (CO) shall use the procedures in this class deviation to verify a concern's eligibility for the 8(a) Program in lieu of using the System for Award Management or presuming acceptance of a requirement by SBA prior to making an award under the 8(a) Program.

Contracting Officers shall not make an award to an 8(a) participant unless:

- a. They receive from SBA an eligibility determination for the 8(a) participant, including an 8(a) partner to a joint venture;
- b. The apparent successful offeror provides a copy of the SBA qualification letter for the 8(a) participant, including an 8(a) partner to a joint venture; or
- c. They document that the 8(a) participant (including an 8(a) partner to a joint venture) appears on the SBA's 8(a) Social Disadvantage Qualification List, which is updated daily and available for government-only review on OMB MAX [here](#).

This restriction applies to the following actions:

- a. Competitive or sole-source 8(a) contract
- b. 8(a) sole-source orders placed against existing or new 8(a) set-aside multiple-award contracts, including Governmentwide acquisition contracts (GWACS) and Federal Supply Schedule (FSS) contracts.
- c. 8(a) orders placed against existing or new non-8(a) set-aside multiple award contracts, including GWACS and FSS contracts.
- d. 8(a) orders under blanket purchase agreements or basic ordering agreements.
- e. Out-of-scope modifications and unpriced options under existing 8(a) contracts.

Except as noted above, existing 8(a) contracts are not impacted by this class deviation, and Contracting Officers may award in-scope modifications and exercise priced options without obtaining SBA acceptance or requiring the contractor to provide a copy of the SBA qualification letter, unless verification of eligibility would otherwise be required (see FAR 19.812(d)). In addition, Contracting Officers may place competitive 8(a) orders against existing 8(a) set-aside multiple-award contracts, GWACS, and FSS contracts without obtaining SBA acceptance or requiring the contractor to provide a copy of the SBA qualification letter.

AUTHORITY: This class deviation is issued under the authority of FAR 1.404 and NRC Acquisition Regulation (NRCAR) 2001.404.

This deviation is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) (see [CAAC Letter No. 2023-04](#)) in accordance with FAR 1.404(a) and NRCAR 2001.404

EFFECTIVE DATE: This deviation is effective as dated and shall remain in effect until it is rescinded.

Enclosure

Class Deviation From The Federal Acquisition Regulation (FAR) Verification of Eligibility For The 8(a) Program DATE September 27, 2023

ADAMS Accession No.: ML23265A005; Memo ML23265A011

OFFICE	ADM/AMD			
NAME	EJernell <i>EJ</i>			
DATE	Sep 27, 2023			

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Enclosure – Deviation to FAR Text

Baseline is accurate through FAC 2023-05, to be effective September 22, 2023. Changes to baseline shown as **[bolded, bracketed additions]** and ~~struck through deletions~~.

FAR text unchanged shown as asterisks.

Part 19 – Small Business Programs

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Subpart 19.8 – Contracting with the Small Business Administration (The 8(a) Program)

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19.804 Evaluation, offering, and acceptance.

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19.804-3 SBA acceptance.

(a) Upon receipt of the contracting office's offering letter, SBA will determine whether to accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the contracting office in writing within 10 working days of receipt of the offer if the contract is likely to exceed the simplified acquisition threshold and within two working days of receipt if the contract is at or below the simplified acquisition threshold. The contracting office may grant an extension of these time periods, if requested by SBA.

(1) For acquisitions exceeding the simplified acquisition threshold, if SBA does not respond to an offering letter within ten working days, the contracting office may seek SBA's acceptance through the Associate Administrator for Business Development. The contracting office **[must receive SBA's decision of acceptance before proceeding with award of an 8(a) contract]** ~~may assume that SBA has accepted the requirement into the 8(a) program if it does not receive a reply from the Associate Administrator for Business Development within five calendar days of receipt of the contracting office's request.~~

(2) For acquisitions not exceeding the simplified acquisition threshold, **[the contracting office must receive SBA's decision of acceptance before proceeding with an award of an 8(a) contract]** ~~when the contracting office makes an offer to the 8(a) program on behalf of a specific 8(a) participant and does not receive a reply to its offering letter within two working days, the contracting office may assume the offer is accepted and proceed with award of an 8(a) contract.~~

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