

## **CLASS DEVIATION FROM THE FEDERAL ACQUISITION REGULATION**

### **Determination and Findings**

In accordance with Civilian Agency Acquisition Council (CAAC) Letter 2021-02, "Class Deviation From the Federal Acquisition Regulation Regarding Exceptions to the Limitations on Subcontracting (LOS) requirements for Small Business Concerns Under FAR part 19", the Department of Commerce is authorizing a class deviation that implements revisions made by the Small Business Administration (SBA) to its regulation at Code of Federal Regulations part 125.6 of title 13, revising the LOS for service contracts at FAR clause 52.219-14.

### **Findings**

- FAR Case 2016-011, Revision of Limitations on Subcontracting, was published as a final rule at 86 FR 44233, effective 30 days after publication. This rule revised the LOS requirements for service contracts at FAR clause 52.219-14; under revised paragraph (e)(1), contractors cannot pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. At this time for service contracts, there are no exceptions provided in the FAR clause.
- SBA's rule amended regulations to include exclusions to the 50 percent limitation on subcontracting for service contracts. The following exclusions may apply:
  - Other direct costs, to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service. Examples include airline travel, work performed by transportation or disposal entity under a contract assigned the environmental remediation NAICS code (562910), cloud computing services, or mass media purchases.
  - Work performed outside the United States on awards made pursuant to the Foreign Assistance Act of 1961, or work performed outside the United States required to be performed by a local contractor.
- The CAAC Letter 2021-02 allows agencies to authorize a class deviation to implement the exceptions to the Limitations on Subcontracting Requirements for Small Business Concerns under FAR Part 19.
- Contracting officers are provided deviated language for FAR clause 52.219-14 to implement the Small Business Administrations (SBA) final rule published in the Federal Register at 84 FR 65647 on November 29, 2019.

### **Determination**

In accordance with FAR 1.404, I hereby authorize this class deviation. The areas of the FAR that are affected by this class deviation are 52.219-14.

This class deviation will remain in effect until rescinded or incorporated into the FAR.

for: \_\_\_\_\_  
Approved:  
Barry E. Berkowitz  
Senior Procurement Executive and  
Director for Acquisition Management

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Date: