

PROCUREMENT ADVISORY

ADVISORY No. 114

Federal Acquisition Regulation Class Deviation – Removal of Dollar Limitation for Set-asides under the Women-Owned Small Business Program

1. SUMMARY

This advisory removes the dollar limitation for set-asides under the Women-Owned Small Business (WOSB) Program in the Federal Acquisition Regulation (*FAR*, 48 C.F.R. subpart 19.15) as shown in the *FAR* changes in Attachment 1.

2. BACKGROUND

The deviation implements an interim rule of the Small Business Administration (SBA). Section 1697 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, Public Law 112-239, amended section 8(m) of the Small Business Act, (15 U.S.C. 637(m)) by removing the dollar limitations for set-asides to an economically disadvantaged women-owned small business (EDWOSB) or WOSB eligible under the Small Business Administration's Women-owned Small Business Federal Contract Program. Section 1697 became effective January 2, 2013. SBA issued its interim final rule in the Federal Register on May 07, 2013, at 78 FR 26504, conforming SBA regulations to section 1697, by revising 13 C.F.R. 127.503(a)(2) and 127.503(b)(2).

An interim *FAR* rule will be issued in the next Federal Acquisition Circular, as *FAR* Case 2013-010, amending *FAR* section 19.1505(b) and (c) removing the dollar limitations on the anticipated award price of a contract to an EDWOSB or WOSB concern eligible under the WOSB Program.

3. REFERENCES

- *FAR* section 1.404, *Class Deviations*.
- Civilian Agency Acquisition Council Letter 2013-03, dated May 7, 2013, *Class Deviation from the Federal Acquisition Regulation (FAR) to Remove the Dollar Limitation for Set-asides under the Women-Owned Small Business (WOSB) Program*.
- Small Business Act, Title 15 U.S.C. Section 637(m).
- National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, Public Law 112-239, Section 1697.

3. ACTIONS

Effective immediately, contracting officers may restrict competition under the WOSB Program at any dollar level, provided the other requirements for a set-aside under the WOSB Program are met.

Pending issuance of a FAR rule, contracting officers shall follow the changes to FAR 19.1505(b) and (c) in Attachment 1.

EFFECTIVE DATE: Effective immediately.

EXPIRATION DATE: This deviation shall remain in effect until the necessary changes are incorporated into the FAR or it is otherwise rescinded.

Advisories are posted on the USDA World Wide Web site at the following URL:

<http://www.dm.usda.gov/procurement/policy/advisories.html> . If you have questions or comments regarding this advisory, please contact Donna Calacone by telephone at (202) 205-4036 or email at Donna.Calacone@dm.usda.gov or send an email message to procurement.policy@dm.usda.gov.

SEE ATTACHMENT 1

**Change to FAR 19.505(b) and (c) - Class Deviation May 7, 2013 –
Pursuant to CAAC Letter 2013-003**

Subpart 19.15 – Women-Owned Small Business (WOSB) Program

19.1505 Set-aside procedures.

(a) The contracting officer.

(1) Shall comply with 19.203 before deciding to set aside an acquisition under the WOSB Program.

(2) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program in those NAICS codes in which SBA has determined that WOSB concerns eligible under the WOSB program are underrepresented or substantially underrepresented in Federal procurement, as specified on SBA's Web site at <http://www.sba.gov/WOSB>.

(b) For requirements in NAICS codes designated by SBA as underrepresented, a contracting officer may restrict competition to EDWOSB concerns if the contracting officer has a reasonable expectation based on market research that –

(1) Two or more EDWOSB concerns will submit offers for the contract; **[and]**

~~(2) The anticipated award price of the contract (including options) does not exceed \$6.5 million, in the case of a contract assigned an NAICS code for manufacturing; or \$4 million for all other contracts; and~~

~~(3) Contract award will be made at a fair and reasonable price.~~

(c) A contracting officer may restrict competition to WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), for requirements in NAICS codes designated by SBA as substantially underrepresented if there is a reasonable expectation based on market research that –

(1) Two or more WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), will submit offers; **[and]**

~~(2) The anticipated award price of the contract (including options) will not exceed \$6.5 million, in the case of a contract assigned a NAICS code for manufacturing, or \$4 million for all other contracts; and~~

~~(3) Contract award may be made at a fair and reasonable price.~~