

January 3, 2005

# AGAR ADVISORY

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT  
AGAR ADVISORY NO. 66C

## **Final Suspension of Authority to Use the Very Small Business Set-Asides and the Small Disadvantaged Business Price Evaluation Adjustments**

**INTRODUCTION:** This Agriculture Acquisition Regulation (AGAR) Advisory has been prepared to advise Contracting Officers that the authorities for the very small business (VSB) set-asides and the small disadvantaged business concern price evaluation adjustment (SDB PEA) have expired.

**SUMMARY:** The statutory authorities enabling FAR Subparts 19.9 and 19.11 expired June 5, 2004; were extended and again expired on December 8, 2004. As a result, the FAR subparts enabling Contracting Officers to use VSB set-asides and to apply a SDB PEA are unsupported by statute. Pursuant to Civilian Agency Acquisition Council Letter 2004-04 and to USDA's Federal Acquisition Regulation class deviation, dated August 26, 2004, neither the VSB set-asides nor the SDB PEA process are to be used in USDA acquisitions.

### **SPECIFIC ISSUES:**

- AGAR Advisories numbered 66, 66A, and 66B, all addressing the original suspension and extensions of the authority, are cancelled by this advisory;
- USDA's class deviation to specific portions of the FAR, dated August 26, 2004, is attached;
- The Small Business Administration memorandum, dated July 30, 2004, regarding the VSB set-asides is attached;
- The Small Business Administration memorandum, dated December 22, 2004, regarding the SDB PEA is attached; and
- The Civilian Agency Acquisition Council Letter 2004-04, dated December 27, 2004, is attached.

If an issue arises on a contract awarded subject to a price evaluation preference or adjustment after June 5, 2004, Heads of the Contracting Activities should consult with the Office of Procurement and Property Management.

**QUESTIONS:**

If you have questions about this advisory, please contact J. R. Holcombe Jr. by telephone at (202) 720-8484, by fax at (202) 720-8972, or by e-mail to [Richard.Holcombe@USDA.gov](mailto:Richard.Holcombe@USDA.gov).

This advisory is available at <http://www.usda.gov/procurement/policy/advisories.html>.

**EXPIRATION DATE:** Upon issuance of revised FAR coverage.

**[END]**



United States  
Department of  
Agriculture

Office of the  
Assistant Secretary  
for Administration

Office of  
Procurement  
and Property  
Management

300 7<sup>th</sup> Street  
Southwest  
Room 302  
Reporters Building

Washington, DC  
20024-9300

AUG 26 2004

TO: W. R. Ashworth  
Senior Procurement Executive

FROM: David J. Shea  
Chief  
Procurement Policy Division

SUBJECT: Urgent Class Deviations Suspending Use of Federal Acquisition  
Regulation Subparts 19.9, 19.11, 19.13, and Related Part 52 Clauses

In accordance with Federal Acquisition Regulation (FAR) 1.404(a) and Agriculture Acquisition Regulation (AGAR) 401.404, your approval is requested to deviate from FAR Subparts 19.9, 19.11, 19.13, and the associated clauses in Part 52 on a class basis.

Effective June 5, 2004 the statutory authority enabling these two FAR subparts expired. These authorities were found in Section 304 of the Small Business Reauthorization And Amendments Act of 1994 (Public Law 103-403) and in 15 U.S. C. 644 (Public Law 103-355, Section 7102). Regulatory coverage is not included in the codified regulations of the Small Business Administration. As a result, the FAR coverage exists without statutory authority and can no longer be used.

FAR Subpart 19.9 codified a mandatory set-aside process for "very small businesses." Without the statutory authority to continue the process, this exception to the requirements of the Competition in Contracting Act expired.

FAR Subpart 19.11 codified a price evaluation adjustment for small disadvantaged business concerns. Without the statutory authority to apply the price evaluation adjustment, Contracting Officers are without the statutory authority to base awards on the adjustment or to pay the price differential for contracts already awarded with an adjustment after June 5, 2004.

FAR Subsection 19.1307(d) provides small disadvantaged businesses that are also certified as a HUBZone firm the benefit of both the HUBZone price evaluation preference and the price evaluation adjustment for small disadvantaged business concerns. With the expiration of the statutory authority for a price evaluation adjustment for small disadvantaged business concerns, use of this in conjunction with the HUBZone preference is no longer appropriate.

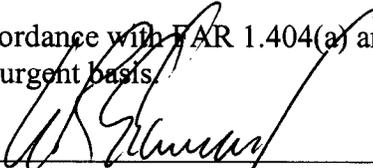
These deviations will suspend use of FAR Subparts 19.9, 19.11, and 19.1307(d) and the accompanying clauses in FAR Part 52, effective immediately and until further notice.

Given the need for certain USDA contracting activities issue solicitations for critical commodities using short response and delivery times, we propose that the deviations are so urgent so as to preclude the need to initiate consultation with and await a response from the Civilian Agency Acquisition Council (CAAC). This immediate action is authorized under FAR 1.404(a)(2).

We will provide a copy of these class deviations to the CAAC upon your approval.

APPROVAL:

In accordance with FAR 1.404(a) and AGAR 401.404, I authorize these class deviations on an urgent basis.

  
\_\_\_\_\_  
W. R. Ashworth, Senior Procurement Executive

8.26.04  
\_\_\_\_\_  
Date

cc: James House, Office of Small and Disadvantaged business Utilization  
Laura Smith-Auletta, CAAC Chair, GSA



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

JUL 30 2004

OFFICE OF THE ADMINISTRATOR

**MEMORANDUM FOR AGENCY SENIOR PROCUREMENT EXECUTIVES**

From: Melanie Sabelhaus *MS*  
Deputy Administrator  
U.S. Small Business Administration

Subject: Small Business Administration (SBA), Expiring Program Authority

The purpose of this Memorandum is to advise you of the expiration of the statutory authority for the Small Disadvantaged Business (SDB) prime contracting mechanisms for civilian agencies and the Very Small Business (VSB) Program.

Specifically, the SDB price evaluation adjustment, originally authorized under Public Law 103-355, Section 7102, (15 U.S.C. § 644 note), expired starting on June 5, 2004. That statutory provision, as implemented in the Federal Acquisition Regulation Subpart 19.11, authorized civilian agencies to apply the price evaluation adjustment to benefit certified SDBs at the prime contracting level. Until Congress reauthorizes this provision, it remains in effect only for the Department of Defense (DoD), National Aeronautics and Space Administration (NASA), and the Coast Guard, since their SDB procurement preference authority is not covered under this expired statutory provision. (Please note: The 5% governmentwide procurement contract goal established under Public Law 95-507 (15 U.S.C. §644(g)), for small business concerns owned and controlled by socially and economically disadvantaged individuals remains in effect for both defense and civilian agencies.)

In addition, the VSB Program, originally authorized under Section 304 of SBA's Reauthorization and Amendments Act of 1994, Public Law 103-403, expired beginning on June 5, 2004, for all Federal agencies. The VSB Program was created as a governmentwide pilot program to increase contracting opportunities for VSB concerns.

SBA is actively engaged in promoting Small Business and continues its efforts to encourage Congress to reauthorize the Program.



**U.S. SMALL BUSINESS ADMINISTRATION**  
WASHINGTON, D.C. 20416

**DATE:** December 22, 2004  
**TO:** Chief Acquisition Officers and Senior Procurement Executives  
**FROM:** Emily Murphy  
**SUBJECT:** Suspension of the Price Evaluation Adjustment for Small Disadvantaged  
Businesses at Civilian Agencies  
**CC:** OSDBU Directors

The purpose of this memorandum is to advise you that the statutory authority for the Small Disadvantaged Business (SDB) price evaluation adjustment for civilian agencies has lapsed.

The SDB price evaluation adjustment for civilian agencies, originally authorized under the Federal Acquisition Streamlining Act of 1994 (Pub.L. 103-355, Sec. 7102), expired starting on December 9, 2004. This provision, as implemented in Federal Acquisition Regulation Subpart 19.11, authorized civilian agencies to apply the price evaluation adjustment to benefit certain certified SDBs in competitive acquisitions. Although the program was continued under the Small Business Administration's (SBA) temporary authorizations, the authority for the SDB price evaluation adjustment was omitted from the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (Pub.L. 108-447, Division K). As a result, civilian agencies have no statutory authority to apply the SDB price evaluation adjustment.

Please note that the SDB price evaluation adjustment for the Department of Defense, National Aeronautics and Space Administration, and the U.S. Coast Guard is governed by a separate statutory authority and is not affected by the recent lapse in authority for the civilian agencies. The statutory, government-wide goal for contracting with SDBs at not less than 5 percent remains in effect for both defense and civilian agencies.

If you have any questions or concerns regarding these programs, please contact Denise Benjamin at the SBA at 202-619-1799.



DEC 27 2004

GSA Office of the Chief Acquisition Officer

Civilian Agency Acquisition Council Letter 2004-04

MEMORANDUM FOR CIVILIAN AGENCIES

FROM: LAURA AULETTA *Laura Auletta*  
CHAIR  
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Expired Program Authority for the Price Evaluation Adjustment  
for Small Disadvantaged Business Program

The purpose of this CAAC Letter is to inform you that the authority for the Price Evaluation Adjustment for Small Disadvantaged Business Concerns is no longer in effect for civilian agencies. It remains in effect for Department of Defense, National Aeronautics and Space Administration, and the Coast Guard.

Public Law 103-355, Section 7102, (15 U.S.C. §644 note) authorized the small disadvantaged business (SDB) price evaluation adjustment. Federal Acquisition Regulation Subpart 19.11 authorized civilian agencies to apply the price evaluation adjustment in competitive acquisitions in the authorized NAICS Industry Subsector to benefit certain certified SDBs at the prime contracting level. The Small Business Administration (SBA) notified civilian agencies that this program lapsed effective December 9, 2004. FAR Subpart 19.11 is no longer in effect (see attached SBA memorandum).

The SDB price evaluation adjustment for Department of Defense, National Aeronautics and Space Administration, and the Coast Guard is governed by a separate statutory authority and is not affected by the recent lapse in authority for civilian agencies.

The statutory government-wide goal for contracting with SDBs at not less than 5 percent remains in effect for both defense and civilian agencies.

Attachment