



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

PROCUREMENT MEMORANDUM 2021-06

ACTION

MEMORANDUM FOR: Senior Bureau Procurement Officials

FROM: *for:* Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

SUBJECT: Federal Acquisition Regulation Class Deviation: Exceptions to the
Limitations on Subcontracting (LOS) requirements for Small
Business Concerns Under FAR part 19

Background

Federal Acquisition Regulation (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.

The Small Business Administration (SBA) published a final rule in the Federal Register at 84 FR 65647 on November 29, 2019. SBA's rule amended regulations at 13 CFR 125.6 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.

Purpose

This class deviation is issued in accordance with FAR 1.404 and pursuant to Civilian Agency Acquisition Council (CAAC) Letter 2021-02 to apply the exceptions identified above to the LOS requirements for Small Business.

Required Actions

Contracting officers shall insert the deviated FAR clause 52.219-14 provided in Attachment A without change in lieu of the existing FAR clause.

Effective Date

This deviation is effective September 10, 2021, and remains in effect until rescinded or incorporated into the FAR.

Questions

Please direct any questions regarding this Procurement Memorandum to
OAM_Mailbox@doc.gov.

Attachment A – FAR Deviation Text