

August 26, 2004

AGAR ADVISORY

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

Suspension of Authority to Use Very Small Business Set-Asides and Certain Price Evaluation Adjustments

INTRODUCTION: This Agriculture Acquisition Regulation (AGAR) Advisory has been prepared to immediately broadcast three class deviations to the Federal Acquisition Regulation (FAR). The deviations suspend the use of FAR subparts 19.9 and 19.11, FAR Subsection 19.1307(d), and related clauses in FAR Part 52 for contracts awarded after June 5, 2004, until further notice.

SUMMARY: The statutory authorities enabling FAR Subparts 19.9 and 19.11 expired June 5, 2004. As a result, the FAR subparts enabling Contracting Officers to use very small businesses set-asides and to apply a price evaluation adjustment for eligible offers from small disadvantaged businesses are unsupported by statute and are not to be used, effective immediately.

SPECIFIC ISSUES:

- Refer to the attached USDA FAR deviation for further information. Be advised that this authority may be reauthorized at some future point. If that occurs, this office will issue additional guidance as appropriate.
- The Small Business Administration memorandum advising USDA of the expiration of this authority, dated July 30, 2004, is also attached.
- If an issue arises on a contract awarded subject to a price evaluation preference or adjustment after June 5, 2004 but before action could be taken under these deviations, 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.

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

EXPIRATION DATE: Upon issuance of revised FAR coverage.

[END]



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Agriculture

Office of the
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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.

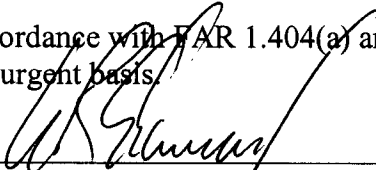
These deviations will suspend use of FAR Subparts 19.9, 19.11, and 19.1307(d) and the accompanying clauses in FAR Part 52, effective immediately and until further notice.

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.