



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

September 27, 2023

MEMORANDUM TO: Acquisition Management Division and Buyers in the Regions

FROM: Eleni Jernell *Eleni Jernell* Signed by Jernell, Eleni  
Senior Procurement Executive on 09/27/23  
Division of Acquisition Management  
Office of Administration

SUBJECT: CLASS DEVIATION FROM THE FEDERAL ACQUISITION  
REGULATION (FAR) VERIFICATION OF ELIGIBILITY FOR THE  
8(a) PROGRAM

**PURPOSE:** To provide a class deviation from the Federal Acquisition Regulation (FAR) regarding the Small Business Administration's (SBA) 8(a) Program offer and acceptance, specifically deviations to FAR 19.804-3(a)(1) and (a)(2), as shown in the enclosure to this class deviation.

**BACKGROUND:** This class deviation implements a court injunction issued by the United States District Court for the Eastern District of Tennessee on July 19, 2023, enjoining the use of the rebuttable presumption of social disadvantage in administering SBA's 8(a) Program, and SBA's guidance issued on August 18, 2023, and updated on August 25, 2023. Due to the injunction, SBA must determine the eligibility of certain concerns for the 8(a) Program. Because of the court decision, this class deviation applies in lieu of the existing SBA and NRC Partnership Agreement with respect to the verification of 8(a) Participant eligibility for the purposes of offer and acceptance.

**GUIDANCE:**

Effective immediately, Contracting Officers (CO) shall use the procedures in this class deviation to verify a concern's eligibility for the 8(a) Program in lieu of using the System for Award Management or presuming acceptance of a requirement by SBA prior to making an award under the 8(a) Program.

Contracting Officers shall not make an award to an 8(a) participant unless:

- a. They receive from SBA an eligibility determination for the 8(a) participant, including an 8(a) partner to a joint venture;
- b. The apparent successful offeror provides a copy of the SBA qualification letter for the 8(a) participant, including an 8(a) partner to a joint venture; or
- c. They document that the 8(a) participant (including an 8(a) partner to a joint venture) appears on the SBA's 8(a) Social Disadvantage Qualification List, which is updated daily and available for government-only review on OMB MAX [here](#).

This restriction applies to the following actions:

- a. Competitive or sole-source 8(a) contract
- b. 8(a) sole-source orders placed against existing or new 8(a) set-aside multiple-award contracts, including Governmentwide acquisition contracts (GWACS) and Federal Supply Schedule (FSS) contracts.
- c. 8(a) orders placed against existing or new non-8(a) set-aside multiple award contracts, including GWACS and FSS contracts.
- d. 8(a) orders under blanket purchase agreements or basic ordering agreements.
- e. Out-of-scope modifications and unpriced options under existing 8(a) contracts.

Except as noted above, existing 8(a) contracts are not impacted by this class deviation, and Contracting Officers may award in-scope modifications and exercise priced options without obtaining SBA acceptance or requiring the contractor to provide a copy of the SBA qualification letter, unless verification of eligibility would otherwise be required (see FAR 19.812(d)). In addition, Contracting Officers may place competitive 8(a) orders against existing 8(a) set-aside multiple-award contracts, GWACS, and FSS contracts without obtaining SBA acceptance or requiring the contractor to provide a copy of the SBA qualification letter.

**AUTHORITY:** This class deviation is issued under the authority of FAR 1.404 and NRC Acquisition Regulation (NRCAR) 2001.404.

This deviation is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) (see [CAAC Letter No. 2023-04](#)) in accordance with FAR 1.404(a) and NRCAR 2001.404

**EFFECTIVE DATE:** This deviation is effective as dated and shall remain in effect until it is rescinded.

Enclosure:  
Deviation to FAR Text

SUBJECT: CLASS DEVIATION FROM THE FEDERAL ACQUISITION REGULATION (FAR)  
VERIFICATION OF ELIGIBILITY FOR THE 8(a) PROGRAM  
DATED: SEPTEMBER 27, 2023

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**\*eConcurrence**

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