

Department of the Interior Acquisition, Arts, and Asset Policy (DOI-AAAP)

Title	Class Deviation - Limitations on Subcontracting
Reference Number	0177
Version Number	2
Function(s)	Acquisition, Small Business
Point of Contact	Bell, Christopher N, Giammo, Antonia S
Source of this Requirement	Civilian Agency Acquisition Council (CAAC) Letter 2021-02, Class Deviation from the Federal Acquisition Regulation (FAR) Regarding Exceptions to the Limitations on Subcontracting (LOS) Requirements for Small Business Concerns under FAR Part 19
Regulatory Reference	FAR 1.404, DIAR 1401.404, FAR Part 19, FAR 52.219-14, 13 CFR 125.6

Version Detail

The table below describes the version history of this policy.

Version Number	Date	Author	Description of update
01	12/22/2021	Antonia Giammo	Implements the CAAC deviation for the Department of the Interior to allow for deviated language for FAR clause 52.219-14, which includes the Small Business Administration's amended rules.
02	Date of Signature	Antonia Giammo	Amends attachment 2, Limitations on Subcontracting Deviated Clause, to incorporate changes to the underlying FAR.

Purpose:

Issues a Federal Acquisition Regulation (FAR) Class Deviation on the Limitations on Subcontracting

Scope:

This policy applies to DOI FAR based contracts, including multiple-award contracts, if any portion of the requirement is to be set aside for small business and the contract amount is expected to exceed the simplified acquisition threshold.

Effective date:

This policy is effective upon signature and will remain in effect until the FAR is amended or the deviation is otherwise rescinded.

Background:

FAR Case 2016-011, Revision of Limitations on Subcontracting, was published as a final rule at 86 FR 44233. This rule revises 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's (SBA) rule amended regulations at 13 CFR 125.6 to include exclusions to the 50 percent limitation on subcontracting for service contracts. The attached [deviated clause 52.219-14](#) incorporates the exceptions established by SBA's amended regulations.

Action:

Contracting officers shall use [deviated clause 52.219-14 \(Attachment 2\)](#) instead of the current FAR clause equivalent.

Attachments:

[Attachment 1 - Civilian Agency Acquisition Council \(CAAC\) Letter 2021-02, Class Deviation from the Federal Acquisition Regulation \(FAR\) Regarding Exceptions to the Limitations on Subcontracting \(LOS\) Requirements for Small Business Concerns under FAR Part 19](#)
[Attachment 2 – Limitations on Subcontracting Deviated Clause \(Oct 2022\)](#)

Approval Signature:

X

Megan Olsen
Director, Office of Acquisition and Property ...

Limitations on Subcontracting Deviation Clause

Use deviated clause 52.219-14 instead of the current FAR clause equivalent.

Baseline is FAC 2022-08, effective October 28, 2022.

52.219-14 Limitations on Subcontracting.

As prescribed in 19.507(e), insert the following clause:

LIMITATIONS ON SUBCONTRACTING (OCT 2022)

(DEVIATION OCT 2022)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) *Definition. Similarly situated entity*, as used in this clause, means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

(c) *Applicability*. This clause applies only to—

(1) Contracts that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(2) Part or parts of a multiple-award contract that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(3) Contracts that have been awarded on a sole-source basis in accordance with subparts 19.8, 19.13, 19.14, and 19.15;

(4) Orders expected to exceed the simplified acquisition threshold and that are—

(i) Set aside for small business concerns under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or

(ii) Issued directly to small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii);

(5) Orders, regardless of dollar value, that are—

(i) Set aside in accordance with subparts 19.8, 19.13, 19.14, or 19.15 under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or

(ii) Issued directly to concerns that qualify for the programs described in subparts 19.8, 19.13, 19.14, or 19.15 under multiple-award contracts, as described in 19.504(c)(1)(ii); and

(6) Contracts using the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference.

(d) *Independent contractors.* An independent contractor shall be considered a subcontractor.

(e) *Limitations on subcontracting.* By submission of an offer and execution of a contract, the Contractor agrees to the following requirements in the performance of a contract assigned a North American Industry Classification System (NAICS) code applicable to this contract:

(1) *Services (except construction).* It will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding certain other direct costs and certain work performed outside the United States (see paragraph (e)(1)(i)), to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract.

(i) The following services may be excluded from the 50 percent limitation:

(A) 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 a transportation or disposal entity

under a contract assigned the environmental remediation NAICS code (562910), cloud computing services, or mass media purchases.

(B) 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.

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. It will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract.

(3) *General construction*. It will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 85 percent subcontract amount that cannot be exceeded.

(4) *Construction by special trade contractors.* It will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) The Contractor shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (c) (1), (2), (3) and (6) of this clause -

[Contracting Officer check as appropriate.]

___ By the end of the base term of the contract and then by the end of each subsequent option period; or

___ By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (c) (4) and (5) of this clause, by the end of the performance period for the order.

(g) A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.

(1) In a joint venture comprised of a small business protégé and its mentor approved by the Small Business Administration, the small business protégé shall perform at least 40 percent of the work performed by the joint venture. Work performed by the small business protégé in the joint venture must be more than administrative functions.

(2) In an 8(a) joint venture, the 8(a) participant(s) shall perform at least 40 percent of the work performed by the joint venture. Work performed by the 8(a) participants in the joint venture must be more than administrative functions.

(End of clause)