

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) REGARDING CERTIFICATION OF
SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS**

Findings

1. The objective of this class deviation is to implement the Small Business Administration (SBA) final rules published November 29, 2022, and July 3, 2023. The SBA rules established 13 CFR 128 regarding status as a Service-Disabled Veteran-Owned Small Business (SDVOSB) concern to be eligible for an award under the Service-Disabled Veteran-Owned Small Business Program (SDVOSB Program). Beginning January 1, 2024, to be eligible for an SDVOSB set-aside or sole-source award, a concern must either be certified by SBA as an SDVOSB concern or have both represented that it is an SDVOSB concern in and have submitted a complete application for SDVOSB certification to SBA on or before December 31, 2023. SDVOSBs that are not certified by SBA, and do not have a pending application for certification with SBA on or before December 31, 2023, will not be eligible to receive set-aside or sole-source awards under the SDVOSB Program. SDVOSB concerns may continue to self-represent their status for awards outside of the SDVOSB Program (e.g., a small business set-aside or unrestricted procurement).
2. The FAR currently requires contracting officers to use the System for Award Management (SAM) to determine if SDVOSB concerns are eligible for SDVOSB set-aside or sole-source awards. SAM.gov however, will not be updated on January 1, 2024, to reflect the SBA certifications or pending applications. Therefore, beginning January 1, 2024, contracting officers must deviate from the FAR to verify that an offeror is eligible for consideration for a set-aside or sole-source award under the SDVOSB Program by confirming that the concern is either designated as a certified SDVOSB concern by SBA in SBA's Veteran Small Business Certification (VetCert) system at <https://veterans.certify.sba.gov/> or in SBA's Dynamic Small Business System (DSBS) at https://dsbs.sba.gov/search/dsp_dsbs.cfm, or has both represented its status as an SDVOSB concern in SAM.gov and submitted a complete application for certification on or before December 31, 2023 to SBA.
3. The Civilian Agency Acquisition Council (CAAC) Letter 2024-02, issued by the CAAC on December 13, 2023, serves as consultation, pursuant to FAR 1.404, authorizing agencies to issue a class deviation to implement the SBA final rule as described above. Effective January 1, 2024, contracting officers shall use the procedures in this CAAC Letter 2024-02 in lieu of the procedures at FAR 19.1403(a) through (c), 19.1405(b), and 19.1406 to verify an offeror's eligibility for a set-aside or sole-source award under the SDVOSB Program.

Determination

It is hereby determined that a class deviation (using the procedures included in CAAC Letter 2024-02) is appropriate to implement the SBA final rules at 13 CFR 128 published on November 29, 2022, and July 3, 2023, regarding status as a SDVOSB concern to be eligible for an award under the SDVOSB Program. Once approved, the Department will share the deviation widely among its workforce to ensure full awareness of and compliance with the revisions to affected regulations. This class deviation is effective upon January 1, 2024, and will remain effective until cancelled or incorporated into the FAR.

Berta Schreiber,
Acting Director, Office of Acquisition Management,
Department of Energy

William J. Quigley,
Senior Procurement Executive
National Nuclear Security Administration

Effective Date: January 1, 2024

Attachments:

CAAC Consultation to Issue a Class Deviation From the Federal Acquisition Regulation (FAR)
Regarding Certification of Service-Disabled Veteran-Owned Small Business Concerns
SDVOSB Certification Requirement