



DPAP POLICY UPDATE

DATE

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SPEAKER

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BACKGROUND

The Department of Defense (DoD) Office of Small Business Programs (OSBP) in partnership with the Small Business Administration sponsored Small Business Training Week (SBTW17) at the Sheraton Atlanta in Atlanta, Georgia. Answers to questions submitted through the OSBP SBTW mobile app are included below.

QUESTIONS AND ANSWERS

As Small Business Professionals in DoD, do we follow SBA rules or wait for DoD guidance in the DFARS?

I can't speak to the rules that Small Business Professionals follow, but contracting officers must follow the FAR and DFARS. When SBA changes their regulations, contracting officers cannot implement those changes on their own; they must wait for the FAR and/or DFARS to be updated. This approach ensures consistency in the application of new rules throughout DoD, which is important for contractors, particularly small businesses.

DFARS 201.404 identifies DPAP as the deviation authority for deviations that diminish any preference given small business concerns by the FAR or DFARS or extend to requirements imposed by statute or by regulations of other agencies. Please address this process.

The process for class deviations that require approval by the Director, DPAP, is described at DFARS 201.402, paragraph (2). Submit the request through your military department/defense agency channels and through the Director of the DAR Council to the Director, DPAP.

TWEETS

Check out videos from #SBTW17 at <http://tiny.cc/knyory>.

Check out the presentations from #SBTW17 at <https://go.usa.gov/x5GJG>.

Can you address the conflicts and differing interpretations with respect to case 2016-002, Applicability of Small Business Regulations Outside the United States?

The basic regulatory conflict is that SBA's regulations state that they "apply to all types of Federal Government contracts... regardless of the place of performance" (13 CFR 125.2(a)), while FAR 19.000(b) states that part 19, Small Business Programs, "applies only in the United States or its outlying areas" (except subpart 19.6, which applies worldwide). SBA revised its regulations in 2013 to add the phrase "regardless of the place of performance." (See the Federal Register at 78 FR 61114, October 2, 2013, www.federalregister.gov.) The FAR language has been part of procurement regulations – e.g., Armed Services Procurement Regulation, or ASPR – since at least 1959. (See the Federal Register at 24 FR 3584, May 5, 1959.) For a thorough discussion of the different interpretations regarding the applicability of small business regulations outside the United States, see the article in "Air Force Law Review" titled, "Only in America! (And Its Outlying Areas)" (73 A.F. L. Rev. 151). The article is available online at <http://www.afjag.af.mil/Portals/77/documents/AFD-150827-031.pdf>.

Where can I find the rationale behind a final rule implemented into the FAR or DFARS? Can I find it at DPAP site?

The rationale for any FAR or DFARS rule should be explained in the notice that appears in the Federal Register. You can find these notices at www.federalregister.gov. It helps to have the case number, but you can also search for key words and agencies. If you search by agency, FAR changes will be listed under three separate agencies – GSA, NASA, and DoD / Defense Acquisition Regulations System. DFARS changes will be listed under DoD / Defense Acquisition Regulations System. I recommend reviewing the proposed or interim rule as well as the final rule. The proposed or interim rule sometimes provides a more detailed explanation of the purpose and basis of the rule because that is the first time the public sees it. The final rule tends to focus on the differences between the proposed or interim rule and the final rule.

Is the Class Deviation for FAR Clause 52.219-19 going to be updated to be consistent with the most recent final subcontracting revisions to the FAR? Will the existing deviation to 52.219-9 be amended to include the additional assurances that are required for subcontracting plans?

An updated class deviation has been drafted. However, since deviations are alternative regulations, the higher level review that currently applies to our FAR and DFARS rules also applies to deviations. Therefore, it is taking longer than usual to process deviations so I can't predict when the revised deviation might be signed. In the meantime, it's important to note that the substantive changes made to FAR 52.219-9 in Class Deviation 2016-00009 have been incorporated into the FAR. Therefore, contracting officers should use the updated version of 52.219-9 (JAN 2017) that is in the FAR instead of the version in the class deviation. The rest of Class Deviation 2016-00009 remains in effect. (Note that the class deviation states it is in effect until incorporated into the FAR or DFARS.)

LEARN MORE

We are the Department of Defense (DoD) Office of Small Business Programs (OSBP). We maximize opportunities for small businesses to contribute to national security by providing combat power for our troops and economic power for our nation.

The nonmanufacturer rule change is not tricky. When will the FAR be updated to match SBA \$150k limitation?

Regardless of how difficult or easy a rule is, it still has to go through the rulemaking process. The nonmanufacturer rule will be updated in the FAR as part of FAR case 2016-011, Revision of Limitations on Subcontracting. At this time, I can't predict when it will be published or when it will take effect.