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GCP Feedback Submission FAR Part 19

GovContracPros, LLC ("GCP"), a FAR & SBA regulatory advisory firm servicing dozens of clients in the federal marketplace, wishes to thank the FAR Council for the opportunity to provide feedback on the Federal Acquisition Regulation Overhaul. We are eager to continue supporting federal agencies in the most efficient and cost-effective way possible. Nevertheless, we are concerned about the Model Deviation for FAR Part 19's impact on small businesses.

As the FAR Council is well aware, FAR Part 19 procedures were used by executive agencies to award approximately $95.5 billion in contracts in FY25, $120.3 billion in FY24, $116 billion in FY23, and $102 billion in FY22. Small businesses are frankly the largest driver of growth, innovation, and price competition in the federal marketplace, and therefore, the regulations and procedures which govern award of contracts to these entities merit exceptional care in reforming. For these reasons, we wish to highlight changes contemplated through the Revolutionary FAR Overhaul for Part 19. For convenience we refer herein to the FAR Model Deviation language as "RFO" and section, and we refer to the current FAR, as the "FAR".

First, RFO 19.101(a) provides that the Government's policy is to provide maximum practicable opportunity in its acquisitions for small business and other small business socio-economic categories, including veteran-owned small business ("VOSB"), service-disabled veteran-owned small business ("SDVOSB"), HUBZone small businesses ("HUBZone"), small disadvantaged businesses ("SDB"), and women-owned small businesses ("WOSB"). Likewise, RFO 19.101(b) provides that the SBA certifies these socio-economic categories. However, the RFO language omits 8(a) Program Participants ("8(a)") and economically disadvantaged women-owned small businesses ("EDWOSB") We recommend that the FAR Council revise this language to provide for inclusion of 8(a)s and EDWOSBs.

Second, the RFO language removes FAR 19.201(c) regulations requiring agencies to establish a Small and Disadvantaged Business Utilization Office, and the duties of this office. This requirement still exists in the Small Business Act, and therefore merits inclusion in the RFO language. The RFO removes FAR 10.001(c), which required consultation with SBA Procurement Center Representatives and notice to affected small businesses. We recommend such inclusions.

Third, regarding bundling and consolidation, FAR 19.202-1(e)(2)(v) requires contracting officers to provide a statement why "consolidation or bundling is necessary and justified. The RFO language removes "consolidation". GCP notes that § 15(e)(2)(A) of the Small Business Act states: "Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified." The Small Business Act goes on at §15(l)(2)(D), that Procurement Center Representatives are "authorized to . . . review any bundled or consolidated solicitation or contract in accordance with this Act;". Furthermore, at § 15(p)(4)(A), the Small Business Act requires the SBA to "transmit a report on bundled or consolidated contracts to the Committees on Small Business of the House of Representatives and the Senate."

GCP is concerned that the lack of express language regarding bundling and consolidation, despite statutory language requiring the same, will not only run afoul of the Small Business Act, but also lead to further consolidation of requirements which will prevent for effective competition among small businesses. We recommend reverting to the FAR language, especially that at FAR 19.202-1(e)(2)(v) regarding bundling and consolidation.

Fourth, the RFO removes critical guidance for NAICS selection currently at FAR 19.102. GCP believes that the current reference to the U.S. NAICS Manual is useful for consideration by the current acquisition workforce. We recommend including the current language at FAR 19.102.

Fifth, the RFO eliminates FAR 19.203, which describes the relationship between the small business programs, and in particular, deleted the order of precedence. Recognizing the statutory goaling scheme for small businesses, and for socio-economic categories, GCP recommends inclusion of FAR 19.203 to ensure that contracting officers are aware of these requirements.

Sixth, GCP applauds the FAR Council for its preservation of the "Rule of Two" at RFO 19.104-1. The "Rule of Two" is critical for the inclusion of small businesses in the federal marketplace and the corresponding benefits of efficiency, innovation, and price competition. However, GCP recommends that the FAR Council make clear as the Court of Federal Claims did in *Tolliver*, that the Rule of Two must be applied prior to selection of any contract vehicle, including government-wide acquisition contracts ("GWAC").

Seventh, GCP is concerned by RFO 19.105-1(c) which provides for unequal, or perhaps, unclear qualification requirements for socio-economic set-asides for joint ventures. With significant reductions in staff at the SBA, GCP believes that contracting officers do not have the appropriate guidance or support to make determinations regarding the eligibility of joint ventures for award of contracts, even where the SBA is the arbiter of such a determination. Furthermore, recognizing the significant increase in reliance on joint ventures for award of contracts, such guidance is critical. For instance, RFO 19.105-1(c)(2) regarding HUBZones, provides that for a HUBZone contract, a joint venture is eligible as long as "at least one party to the joint venture is a HUBZone". RFO 19.106-1(c)(2) provides that a joint venture is eligible for award of SDVOB contract as long as the "managing SDVOSB joint venture partner is designated in SAM as an SDVOSB concern certified by SBA". RFO 19.107-1(c) provides that a joint venture is eligible for a WOSB contract as long as a "WOSB participant is certified in SAM".
These standards are uneven and incongruent with current SBA regulations regarding the same. The appropriate and preferred criteria for qualification for a joint venture is that which the FAR Council identified for SDVOSBs at RFO 19.106-1(c)(2). GCP recommends that this language be adopted for each of the socio-economic categories. Finally, we note that the RFO removed language referencing 13 CFR 125.8, which is a critical regulatory safe harbor for small business joint ventures. We recommend inclusion of this language in the RFO.

Eighth, RFO 19.108-7 eliminates FAR 19.805-1 language wholesale that SBA may accept a requirement for a sole source 8(a) award if there is not a reasonable expectation that at least two eligible and responsible 8(a) participants will submit offers at a fair market price, or if the requirement is offered to a Tribe or Alaska Native Corporation ("ANC"). The RFO provides no recognition of the statutory authority for Tribally-owned and ANC-owned 8(a)s, and for the Department of Defense, Native Hawaiian-owned 8(a)s, to receive sole source awards above the competitive threshold, and for the Department of Defense, those awards may be made at amounts up to $100 million with a justification and approval. Section 823 of the National Defense Authorization Act expressly authorizes award of contracts under the SBA's authority, and that those awards include direct award contracts to Alaska Native, Native Hawaiian, and Tribally-owned 8(a) enterprises. GCP recommends that the language of FAR 19.805-1(b) be preserved to respect these statutory authorities.

Ninth, RFO 19.108-7(d) removes crucial procurement efficiencies by requiring competition under GWACs and reverses the current requirement that SBA approve competition below the competitive threshold for 8(a) contracts, to requiring the Associate Administrator of Government Contracting and Business Development to apply only "when not using contracts referred to in paragraph (d)(1)". Put differently, under the forthcoming rules, contracting officers will be required to conduct any 8(a) acquisition below the competitive threshold (anticipated to be $8.5 million for manufacturing NAICS codes and $5.5 million for others) as a competitive 8(a) order using SBA-approved GWACs. Sole source awards will be allowed only if true competition is infeasible (i.e., fewer than two eligible participants or fair market pricing cannot be met).
This represents a notable shift from current FAR policies, which do not mandate GWAC use and prioritize sole source awards below the competitive threshold, signaling a significant reduction in sole source opportunities for 8(a) participants below threshold. Under the revised FAR 19.108-7(b), sole source 8(a) awards to these entities exceeding the competitive thresholds will require the same stringent justifications required for other noncompetitive awards. Such justifications include demonstrating that only one responsible source exists or that unusual and compelling urgency exists. This change will significantly restrict sole source awards at higher contract values for these entities. Again, GCP recommends reversion to the current language at FAR 19.805-1.

Tenth, regarding the crucial limitations on subcontracting, which exist to ensure that socio-economic set aside benefits flow to the intended participants, GCP notes that the RFO language is inconsistent with statute. FAR 19.505 expressly states that the limitations on subcontracting apply to small businesses above the simplified acquisition threshold ("SAT") and that current FAR 19.8 regarding 8(a)s, FAR 19.13 regarding HUBZones, FAR 19.14 regarding SDVOSBs, and FAR 19.15 regarding WOSBs applies these requirements to those socio-economic awards. RFO 19.104-3(c) provides that the limitations on subcontracting applies above the SAT to HUBZones, SDVOSBs, WOSBs, and 8(a) awards, however, the regulation detailing the limitations on subcontracting requirements are only included RFO 19.108-8 regarding 8(a) contracts.
GCP believes that this regulatory scheme could cause unnecessary confusion and therefore should revert to the current language at FAR 19.505 which applies these requirements clearly across socio-economic categories. Furthermore, FAR 19.108-8 is inconsistent with statute because this language provides that an 8(a) must perform contracts with its own employees, rather measuring by dollars. GCP also notes that RFO 19.108-8 completely removes any reference to "similarly situated entities" regarding subcontracting arrangements.
Again, GCP recommends revision of this language to follow statutory requirements. Furthermore, regarding acquisition thresholds, GCP notes that RFO 19.208-2(a)(1) states that SBA may not accept for negotiation a sole-source 8(a) contract that exceeds $25 million unless justification and approval is prepared. GCP believes that this threshold may have been an oversight given the Final Rule, effective 01 October 2025 which adjusted this threshold to $30 million. Lastly regarding thresholds, at RFO 19.208-2(a)(2), the language reads that the SBA is responsible for initiating negotiations with the agency within the time established by the agency. Under current procedures, the SBA authorizes the agency to negotiate directly with the identified 8(a) Participant in its Acceptance Letter.

Eleventh, regarding appeals related to the 8(a) Program, the RFO language provides for procedures at RFO 19.108-9 and RFO 19.208-8. GCP notes that these sections retain authority for SBA to appeal to the Head of Contract Agency ("HCA") the decision to make a particular acquisition available under the 8(a) Program if the SBA and the contracting officer fail to agree. However, these sections delete specific authority to appeal: (i) a contracting officer's decision to reject a specific 8(a) participant for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) program; (ii) the terms and conditions of a proposed 8(a) contract, including the contracting officer's NAICS code designation and estimate of the fair market price; and (iii) a contracting officer's decision that an acquisition previously procured under the 8(a) program is a new requirement not subject to the release requirements. GCP believes that these appeals serve to protect 8(a) participation by dynamic small businesses and must be re-admitted under the RFO.

Twelfth, the longstanding "once 8(a), always 8(a)" protection, which requires SBA approval for exit from the program and preserves incumbency, is anticipated to be eliminated under RFO 19.108-11. Agencies are expected to gain authority to unilaterally transition requirements previously in the 8(a) program to other set-asides like HUBZone, SDVOSB, or WOSB without SBA approval or formal justification. This change will undermine incumbency protections and client relationship continuity for 8(a) firms, making follow-on work less predictable and more vulnerable to re-competition or reassignment. Of course, this change is contrary to SBA's regulations and business development purposes of the program.
More specifically, SBA's regulations at 13 CFR 124.504(d)(1) state: "Where a procurement will contain work currently performed under one or more 8(a) contracts, and the procuring agency determines that the procurement should not be considered a follow-on requirement to the 8(a) contract(s), the procuring agency must coordinate with SBA that it intends to procure such specified work outside the 8(a) BD program through a requirement that it considers to be new." Accordingly, the procuring agency must coordinate with SBA where it seeks to reprocure a follow-on requirement through a pre-existing limited contracting vehicle which is not available to all 8(a) BD Program Participants and the previous/current 8(a) award was not so limited. SBA has noted that this applies even when an agency uses an 8(a) GWAC like STARS 3, where an incumbent may not be on that vehicle and could be adversely affected by not having the opportunity to compete for that follow-on.

Thirteenth, regarding representations, RFO 19.301-2 eliminates the distinction for whether certification of size and status is required on orders issued under multiple award contracts ("MAC") that themselves are set-aside for small or socio-economic categories and those that are not. GCP notes that the size and socio-economic status of any offeror relate back to award of underlying contract in all instances. SBA's regs (and current 19.301-2(a)(2)) provide that size and status relates back to award of underlying MAC where MAC itself was set-aside or where award was a reserve, but where underlying MAC was unrestricted, size and status for an order set-aside for any type of small business is determined as of the date of offer for the order.

Although, RFO 19-303-3 acknowledges that for 8(a) contracts, "offers and acceptances are required for individual orders under multiple-award contracts that have not been set aside for exclusive competition among 8(a) contractors", this language implies that the offeror must be eligible (size and status) for the order. GCP believes that such a change would up-end countless precedents at the SBA's Office of Hearings and Appeals and remove legitimate reliance by small businesses who pursued MACs successfully, but may have exceeded applicable size standards owing to such success. GCP recommends that the FAR Council recognize these precedents and establish clearly that size and status of an offeror is based on their size and status at the time of priced offer for the MAC.

Finally, regarding Certificates of Competency, the RFO removes FAR 19.602-1 language and specifically items that the contracting officer must furnish to the SBA. These procedures also restrict referrals to one referral for any single acquisition, which prevents multiple referrals, i.e. the apparently successful offeror. For purposes of administrative efficiency and clarity, GCP recommends that this language be restored.

Thank you for the opportunity to contribute this feedback to the Revolutionary FAR Overhaul process.

GCP TEAM