OFFICE OF THE UNDER SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MAR 12 2010

In reply refer to
DARS Tracking Number: 2010-O0006

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT), DASA(P)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION & LOGISTICS MANAGEMENT), DASN(A&LM)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Class Deviation to the Federal Acquisition Regulation – Immediate Cessation of the Use of Price Evaluation Adjustment for Small Disadvantaged Businesses

Effective immediately, Department of Defense (DoD) contracting officers shall not use FAR 19.11, Price Evaluation Adjustment For Small Disadvantaged Business Concerns, and DFARS 219.11. Contracting officers shall modify existing solicitations in accordance with FAR 1.108(d). This class deviation remains in effect until incorporated in the FAR and DFARS or otherwise rescinded.

Section 2323 of Title 10, United States Code, permitted the DoD to select bids of small disadvantaged businesses by using the price evaluation adjustment method. In *Rothe vs Department of Defense, 606 F. Supp. 2d 648 and 545 F. 3d 1023 (Fed. Cir. 2008),* the Court held that 10 U.S.C. 2323 is unconstitutional. By memorandum dated March 10, 2009, USD (AT&L) notified the Department that all activity that relies exclusively on the use of 10 U.S.C. section 2323 should cease.

An interim FAR and an interim DFARS rule will be published. We will consider comments received within two weeks after the date of this deviation in the formulation of the interim rules. Comments received after that period of time will be considered in the formulation of the final rules. My point of contact for this matter is Ms. Cassandra R. Freeman, 703-602-8383 or cassandra.freeman@osd.mil.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

cc:
Director, Small Business Programs