



**FEB 12 1999**

**TO:** Acquisition Management Committee (AMC)

**FROM:** Chief, NIH Small Business Office (SBO)

**SUBJECT:** Delegated 8(a) Contracting Authority

The attached memorandum regarding the Department of Health and Human Services (DHHS) Memorandum of Understanding (MOU) for delegated 8(a) contracting authority with the U.S. Small Business Administration (SBA) is being forwarded for dissemination to acquisition staff.

With regard to this new procedure for 8(a) contracting, copies of offering letters, acceptance letters, and purchase orders should be sent to the NIH SBO supporting your institute.



Diana Mukitarian

Attachment

cc:  
Joseph Bowe, NCI Small Business Program Manager  
Don Gula, NIEHS Small Business Program Manager



RECEIVED

Washington, D.C. 20201

FEB 11 7 55 AM '99

February 5, 1999

SMALL BUSINESS OFFICE

MEMORANDUM

**TO:** Executive Committee for Acquisition

**SUBJECT:** Delegated 8(a) Contracting Authority

**FROM:** Deputy Assistant Secretary for Grants  
and Acquisitions Management

The Department of Health and Human Services (HHS) is pleased to be one of the 25 Federal agencies that has established a *MEMORANDUM OF UNDERSTANDING* (MOU) with the U.S. Small Business Administration (SBA), which will provide HHS with a "delegation of authority" for direct awarding of 8(a) contracts. This process will substantially streamline the 8(a) Program's contracting process, and ultimately make the 8(a) business development program stronger. I have attached the implementing instructions and guidance on how to handle requirements and contracts that are issued under the authority of this MOU. The effective date for this new initiative will be **February 8, 1999**.

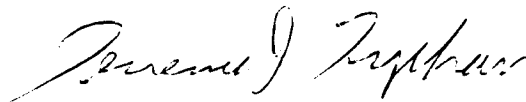
Simply stated, under the approved MOU, SBA's involvement will be limited to certifying eligibility under the 8(a) program, and accepting agency requirements on behalf of 8(a) contractors. The remainder of the acquisition-related activity, including SBA signature authority, will pass to HHS, with no need to consult the SBA for further approvals. The existing 8(a) process was overburdened with duplicate contracting offices, (SBA and HHS Operating Divisions), contract documents (prime and sub-contracts), and processes (legal reviews, contract office reviews, and cost evaluations), which added little or no value. The new streamlined process will eliminate the use of tripartite agreements and serve to delegate signatory authority to our contracting officers. This change will effectively cut a significant amount of time off the present 8(a) contract award process by not requiring the SBA to remain in the acquisition process.

A secondary attribute of the MOU is to make *simplified acquisition threshold* (SAT) procedures available for award under the 8(a) program. SAT have traditionally not been available to 8(a) firms because the 8(a) process was too cumbersome, which defeated the advantage of SAT. Under the MOU, SAT 8(a) awards are now not only possible, but will be accomplished in a very simplified manner.

I have approved a class deviation to FAR Subpart 19.8 which requires a third party signature from the SBA. This deviation will allow HHS to execute its Memorandum of Understanding (MOU) with the SBA to make direct awards to contractors under the 8(a) Program. GSA has provided model language and clauses, contained the Civilian Agency Acquisition Council (CAAC) Letter 98-3, dated May 1, 1998 to replace what is currently in the FAR to award contracts awarded pursuant to Section 8(a) of the Small Business Act directly to 8(a) concerns.

Please direct all questions or comments to Verl Zanders, Director, Office of Small and Disadvantaged Business Utilization (OSDBU), 202-690-7235. OSDBU will be the departmental program manager for this initiative.

Thanking you in advance for your cooperation and participation.



Terrence J. Tychan

Attachments:

- Attachment A - 8(a) Implementation Procedures
- Attachment B - MOU
- Attachment C - Class Deviation
- Attachment D - Sample Solicitation Cover Page
- Attachment E - Sample SBA Offering Letter
- Attachment F - Sample Cover Page for SAT

# IMPLEMENTATION PROCEDURES

for

## STREAMLINING THE 8(a) CONTRACTING PROCESS

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### I. APPLICABILITY

These procedures implement and supplement the Memorandum of Understanding (MOU) (Attachment A) between the Department of Health and Human Services (HHS) and the Small Business Administration (SBA). The MOU is applicable to the SBA and all of the Operating Divisions within HHS. These guidelines implement the intent of the MOU and apply to all new requirements under the 8(a) program effective February 1, 1998 through the term of the MOU.

### II. WARRANTS

Under the terms of the MOU, the Small Business Administration has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act, to the Senior Procurement Executive for the Department of Health and Human Services. Warranted HHS contracting officers are authorized concurrent SBA authority to enter into direct 8(a) contracts.

### III. COVER PAGE

All solicitations for requirements offered to the 8(a) Program under this MOU shall contain a cover sheet (Attachment B) providing information to potential offerors.

### IV. GUIDELINES

The Office of Small and Disadvantaged Business Utilization will serve as Program Manager for the streamlined 8(a) award program.

OSDBU shall:

- a. Serve as liaison with Operating Divisions (OPDIVs) and the Small Business Administration (SBA) through the provisions of the referenced MOU; and,

- b. Monitor, evaluate, and report on OPDIVs performance under the MOU.
- c. Receive copies all contractual actions (i.e., offering letters, basic awards and all modifications) executed in accordance with the provisions of this MOU.

## V. PROCESSING REQUIREMENTS

### A. COMPETITIVE - OTHER THAN CONSTRUCTION

- 3. *The contracting officer for the Department of Health and Human Services shall:*

- (a.) Offer the requirement directly to the SBA district office having jurisdiction over the geographical area in which the buying activity (OPDIV) is located. An example of the format for the "offering letter" is contained in Attch. "D".

- (b.) Submit a copy of the offering letter to the Office of Small and Disadvantaged Business Utilization (OSDBU), DHHS.

- (c.) If the contracting officer has not received an acceptance or rejection of the offering from SBA within **5 working days** of SBA's receipt of the offering letter, the contracting officer may assume that the requirement has been accepted and proceed with the acquisition.

- (d.) Synopsise the procurement in the Commerce Business Daily.

- (e.) Upon completion of its evaluation, submit a request for determination of eligibility for the apparent successful offerors (in negotiated acquisitions) or the low offerors (in sealed bid requirements) to the SBA servicing district office. Notification must include the firm's name, the date of proposal, the Standard Industrial Classification (SIC) code of the procurement, and the size standard of the SIC code. Note that a concern's size is determined as of the date of its self-certification as a small business that is part of its initial priced offer to the procuring agency (OPDIV). SEE 19.805-2

- (f.) Refer the 8(a) concern to the SBA for a possible Certificate of Competency in accordance

with 13 CFR 125.5, if the contracting officer (OPDIV) believes that the apparent successful offerors is not responsible to perform the contract. Please see authority for this action at 13 CFR 124.507(b)(5), published June 30, 1998, (63 FR 35726).

2. *The cognizant SBA district office shall:*

(a.) Notify the procuring agency by issuing an acceptance letter within **5 working days** of receipt of the requirement, if a determination is made to accept the requirement. Notification of acceptance shall be by facsimile machine or other electronic medium.

(b.) Notify the procuring agency in writing within **5 working days** of receipt of the requirement if a determination is made to turn the requirement back. Notification of turn-back shall be by facsimile machine or other electronic medium, and shall include an explanation for the turn-back.

(c.) After notification by the procuring agency of their intent to award to a specific firm, confirm eligibility of the apparent successful offerors to receive the contract award and notify the procuring agency in writing within **2 working days** after receipt of request. Notification shall be by facsimile machine or other electronic medium.

**B. COMPETITIVE - CONSTRUCTION**

1. *The contracting officer for the Department of Health and Human Services shall:*

(a.) Offer the requirement directly to the SBA district office having jurisdiction over the geographic area in which the construction is to be performed. If the construction is to be performed at more than one site, the contracting officer shall offer the requirement directly to the SBA district office having jurisdiction over the area in which the greatest portion of construction is to be performed.

(b.) Submit a copy of the offering letter to the Office of Small and Disadvantaged Business Utilization (OSDBU), DHHS.

(c.) After acceptance by the SBA district office, the contracting officer will synopsize the procurement in the Commerce Business Daily. Such synopsis shall include the geographical area of competition as determined by the cognizant SBA district office (i.e., the SBA district office having jurisdiction over the geographical area in which all or the greatest portion of the construction is to be performed). Only offers from firms located within the geographical area of competition shall be evaluated.

(d.) Upon completion of its evaluation, submit a request for determination of eligibility for the apparent successful offerors to the servicing SBA district office. Notification of the successful offerors must include the firm's name, the date of the firm's proposal, the SIC code of the procurement, and the size standard for the SIC code. Please note that a concern's size is determined as of the date of its self-certification as a small business that is part of its initial priced offer to the procuring agency.

2. *The cognizant SBA district office shall:*

(a.) Notify the procuring agency by issuance of an acceptance letter within **5 working days** of receipt of the requirement if a determination is made to accept the requirement. Notification of acceptance shall be by facsimile machine or other electronic medium.

(b.) Notify the procuring agency in writing within **5 working days** of receipt of the requirement if a determination is made to turn the requirement back. Notification of turn-back shall be by facsimile machine or other electronic medium, and shall include an explanation for the turn-back.

C. OPEN SOLE SOURCE

1. *The contracting officer for the Department of Health and Human Services shall:*

(a.) Offer the requirement directly to the SBA district office serving the geographical area in which the procuring activity is located.

(b.) Submit a copy of the offering letter to the

Office of Small and Disadvantaged Business Utilization (OSDBU), DHHS.

(c.) Upon notification of acceptance of the requirement in behalf of a matched program participant, enter into negotiation with the identified firm.

2. *The servicing SBA district office shall:*

(a.) Notify the procuring agency by issuance of an acceptance letter within **5 working** days of receipt of the requirement. If the SBA finds that the nominated firm is not program eligible to receive the requirement, the business opportunity specialist (BOS) will notify the procuring agency within **5 working days** of receipt of the requirement and propose a substitute. Notification of acceptance shall be by facsimile machine or other electronic medium. **Please note: This will be the only time the program participant's eligibility will be verified.**

D. SIMPLIFIED ACQUISITION THRESHOLD (SAT) PURCHASES

1. *The contracting officer for the Department of Health and Human Services shall:*

(a.) Utilize unilateral purchase orders to be issued under the authority of the referenced MOU using simplified acquisition threshold (SAT) procedures.

(b.) Identify 8(a) participants from the SBA's PRO-Net Internet database.

(c.) Negotiate the terms and conditions of the SAT.

(d.) Concurrently issue a copy of the purchase order to the 8(a) firm, the servicing SBA district office, and the OSDBU-DHHS. The purchase order, itself, constitutes the offer by the procuring agency to the contractor to perform. The purchase order also constitutes the offer by the procuring agency of the requirement to the SBA for the 8(a) program. Neither separate offering letters, nor acceptance letters, will be used. The purchase order document, itself, will serve the function of



"offer" to the program.

2. *The servicing SBA district office shall:*

(a.) Notify the procuring agency within **2 working days** of receipt of the purchase order as to the eligibility of the 8(a) contractor. Absent a negative eligibility determination from the SBA to the agency contracting officer, the contractor may begin performance on the *third day* after receipt of the purchase order.

**VI. CONTRACT EXECUTION AND ADMINISTRATION**

1. *The contracting officer for the Department of Health and Human Services shall:*

(a.) Execute and distribute to the *Office of Small and Disadvantaged Business Utilization (OSDBU), DHHS* one copy of contract award document.

Contracts issued under the referenced MOU will be issued bilaterally, and purchase orders issued under simplified acquisition procedures under the MOU will be issued unilaterally. *The SBA will not be a signatory on contracts or purchase orders issued under the MOU.*

(b.) Execute and distribute one copy of each modification document, if any, to the *Office of Small and Disadvantaged Business Utilization (OSDBU), DHHS*. The SBA will not be a signatory on modifications issued under the MOU.

(c.) May request in writing that existing requirements accepted before the effective date of the referenced MOU, but not yet awarded, be converted to the procedures and provisions of the MOU. The district office may accept or reject such requests. If the request is accepted by the cognizant SBA district office, the requirement will be processed under the authority of the MOU.

2. *The Office of Small and Disadvantaged Business Utilization (OSDBU) shall:*

(a.) Serve as the departmental repository for the receipt of all copies of 8(a) offering letters, award documents and subsequent modifications. Upon

letters, award documents and subsequent modifications. Upon request, provide assistance to program participants in contract administration.

(b.) Perform on-site contract surveillance reviews of OPDIV procuring offices, as necessary, to ensure compliance, identify problems, and recommend corrective action.

(c.) On a monthly basis, OSDBU will review all outstanding acceptance letters and determine whether additional follow-up is necessary with the procuring agency. OSDBU will be responsible for forwarding required documentation to the cognizant SBA district office.

## **VII. RESOLUTION OF CONTRACT DISPUTES**

1. The procuring agency shall resolve appeals, protests, and disputes pursuant to provisions of FAR.
2. The SBA reserves its full appeal authority authorized by FAR 19.810. The SBA may appeal decisions not to make a particular procurement available for award under the 8(a) program. The SBA may appeal decisions to withdraw a requirement from the 8(a) program after offer and acceptance. The SBA may appeal the terms and conditions of a particular contract, including fair market price.

## **VIII. CONTRACT CLAUSES**

The Civilian Agency Acquisition Council (CAAC) has provided model Federal Acquisition Regulation (FAR) language (letter dated May 1, 1998) to be implemented by an amendment to the FAR after promulgation of an SBA final rule. This language is the basis for an approved class deviation to FAR Subpart 19.8. (Copy included) The deviation allows for 8(a) awards under \$100,000 to be made using the simplified acquisition procedures of FAR Part 13; it does not allow for simplified acquisition procedures to be used for commercial item acquisitions exceeding \$100,000 and \$5 million. For acquisitions under \$100,000, offering letters to and acceptance letters from the SBA are not required. The referenced CAAC Letter serves as evidence of consultation with the Chairman of the CAAC, as required by FAR 1.404(a)(1). This consultation will apply only to deviations for 8(a) contracts that are executed under a MOU that is consistent with the attached model coverage. SEE ATTACHMENT C

**MEMORANDUM OF UNDERSTANDING**  
*Between The*  
**U.S. SMALL BUSINESS ADMINISTRATION**  
*And The*  
**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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**I. PURPOSE**

The purpose of this Memorandum of Understanding (MOU) between the U.S. Small Business Administration (SBA) and the U.S. Department of Health and Human Services (HHS) is to establish streamlining procedures for expediting the award of requirements pursuant to Section 8(a) of the Small Business Act (15 U.S.C. 637(a), as amended) (hereinafter the "Act"). This MOU is established in conjunction with ongoing initiatives under the Continuous Improvement Program for HHS authorized under the National Performance Review program. An objective of the Continuous Improvement Program is to promote procurement process efficiencies through pilot testing of innovative ideas.

**II. OBJECTIVES**

- a. To reduce the interval between the time HHS sends an offering letter to SBA and SBA acceptance of the offering to a maximum of 5 workdays.
- b. To eliminate SBA approval of contracts executed under the authority of this MOU.
- c. To establish a uniform policy and procedure regarding application of Simplified Acquisition Procedures (SAP) to the 8(a) contracting process, where applicable.

**III. SCOPE**

This MOU provides for the award of both contracts and awards under the simplified acquisition procedures under the provisions of Section 8(a) of the Small Business Act as implemented by the Federal Acquisition Regulation (49 C.F.R.) (FAR) and SBA's Minority Enterprise Development Program regulations (13 C.F.R. 124).

This MOU encompasses all competitive and non-competitive acquisitions of requirements offered by the HHS and accepted by the SBA into the 8(a) program, including but not limited to: Acquisition of Commercial Items (FAR Part 12), awards under the Simplified Acquisition Procedures (FAR Part 13), awards resulting from Sealed Bids (FAR Part 14), Contracting by Negotiation (FAR Part 15), and Construction and Architect and Engineering Services, (FAR Part 36).

This MOU shall apply to all SBA field offices throughout the United States, and for the HHS, the following identified acquisition offices:

- Administration for Children and Families
- Agency for Health Care Policy Research
- Centers for Disease Control and Prevention
- Food and Drug Administration
- Health Care Finance Administration
- Health Resources Services Administration
- Indian Health Services
- National Institutes of Health
- Program Support Center
- Substance Abuse and Mental Health Services Administration

#### **IV. RESPONSIBILITIES**

a. The SBA shall:

Delegate to the Department of Health and Human Services, specific authority to re-delegate to warranted contracting officers, as appropriate, its authority under Section 8(a)(1)(A) of the Act to enter into 8(a) prime contracts, and its authority under Section 8(a)(1)(B) of the Act to subcontract the performance of that contract to an eligible 8(a) Program Participant (participant);

1. Establish and implement uniform procedures for use by all SBA field offices in conjunction with this pilot test. As a minimum, these procedures shall inform the field offices of this pilot test and establish a procedure for communicating the offer/acceptance of 8(a) requirements within 5 working days between the time the SBA receives an offer letter from one of the designated HHS procurement offices until an SBA acceptance letter is issued;
2. Review the HHS offer letter and issue an acceptance letter, where appropriate, within 5 working days of receipt. Acceptance goes to all elements of eligibility (e.g., determinations of adverse impact, Standard Industrial Classification (SIC) code appropriateness and program eligibility). SBA will make a final determination of size eligibility for the procurement as of the date of the concern's initial offer that includes price;
3. Provide 8(a) participants with assistance on proposal development and/or contract negotiations when requested;

4. Retain the right to appeal contract disagreements to the Secretary of the HHS on behalf of the 8(a) participant pursuant to 13 C.F.R. 124.505 and 15 U.S.C.637(a)(i)(A);
5. Reserve the right to perform on-site contract surveillance reviews at the HHS to ensure compliance with this MOU and applicable regulations, identify problems, and recommend corrective action;
6. Reserve the right to withdraw any delegation issued as a result of this MOU; and
7. Select an appropriate 8(a) participant when the HHS submits an "open" offer letter for a sole source requirement.

b. The Department of Health and Human Services (HHS) shall:

1. Determine which requirements are suitable to be offered to the 8(a) program in accordance with FAR Subpart 19.8, and where appropriate, identify, in conjunction with the appropriate SBA servicing offices, 8(a) participants capable of performing these requirements;
2. Submit the offer letter for new sole source requirements to the SBA's servicing District Office having cognizance of the selected 8(a) participant;
3. Where an 8(a) participant has not been selected for a requirement, submit the "open" offer letter for sole source requirements to the SBA District Office that services the geographical area where the HHS buying activity is located;
4. Submit the offer letter for competitive 8(a) procurements to the SBA District Office that services the geographical area where the HHS buying activity is located, except that offer letters for construction will be submitted to the SBA field office located in the geographical area where the work will be performed.
5. Advertise all 8(a) competitive procurements in the Commerce Business Daily in accordance with FAR Part 19.805. Provide a copy of the Commerce Business Daily announcement to the appropriate SBA field office.
6. Ensure that all applicable requirements of 13 C.F.R. 124 are followed.

7. Submit requirements for review by agency legal counsel, if needed, for determination of legal sufficiency, in accordance with HHS Operating Division procedures.
8. Include the SBA servicing district office on contract distribution lists, and annotate the SBA requirement number on the initial award document.
9. Report to the SBA's Assistant Administrator for Business Development, Office of Minority Business Enterprise, on a quarterly basis, a summary of all 8(a) contracting activities. The report will be provided in electronic format and shall include the contractor's name, address, and SBA case number; requirement number; contract number, award amount, and the contract type and term; and, as appropriate, modification number, type, date, modification amount; and
10. Ensure that all contracts awarded pursuant to this MOU contain special provisions required to coordinate contract termination and novation proceedings related to contracts executed pursuant to this MOU and with the SBA prior to initiating action.

## **V. EXECUTION**

Following SBA acceptance of a HHS requirement, and subsequent solicitation, the cognizant Contracting Officer shall execute a prime contract between the HHS, and the 8(a) participant. Contract execution shall be on (Standard Forms) SF26 (award of supplies/services), SF347 (simplified acquisitions), SF1442 (award of construction), or SF1449 (award of commercial items), as appropriate. A single copy of the appropriate form shall be used. The "Issued by" block shall identify the awarding HHS office. The cognizant SBA District office for the participant shall be identified in the award document. The participant name and address shall be listed as the contractor.

Each participating HHS Operating Division shall issue procurement instrument numbers. (An SBA subcontract number will not be issued.)

A single HHS Contracting Officer's signature may be used in executing the contract or purchase order (A SBA Contracting Officer signature will not be required). The Contracting Officer title shall include the appropriate HHS operating division and the SBA, as illustrated below:

*Contracting Officer for the  
(HHS Operating Division)*

## **VI. TERM**

This MOU will take effect on the date of acceptance and will remain in effect for 1 year, at which time, it may be renewed by mutual agreement of the SBA and the HHS.

## **VII. AMENDMENT**

This MOU may be amended at any time by mutual agreement of the SBA's AA/8(a) BD and the HHS Senior Procurement Executive. Any amendments must be in writing.

## **VIII. TERMINATION**

This MOU may be terminated by either SBA's AA/8(a) BD and the HHS Senior Procurement Executive upon thirty (30) days advance, written notice.

## **IX. ADMINISTRATION**

The following persons are points of contact for administrative matters pertaining to this MOU:

### **HHS**

Mr. Terrence J. Tychan  
Deputy Assistant Secretary for  
Grants and Acquisition Management  
Senior Procurement Executive, HHS  
202-690-6901

Mr. Marc Weisman  
Director  
Office of Acquisition Policy, HHS  
202-401-6103

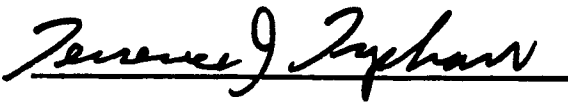
Mr. Verl Zanders  
Director, OSDDBU, HHS  
202-690-7300

### **SBA**

Mr. Jose Gutierrez  
Associate Administrator  
Minority Enterprise Development  
U.S. Small Business Administration  
202-205-6412

**X. ACCEPTANCE**

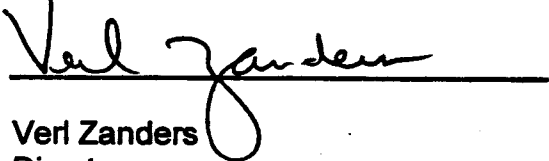
The undersigned parties hereby accept the terms of this MOU:



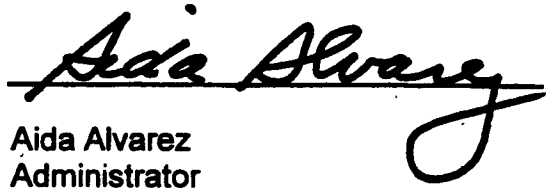
Terrence J. Tychan  
Deputy Assistant Secretary for  
Grants and Acquisition Management,  
and Senior Procurement Executive  
U.S. Department of Health and  
Human Services



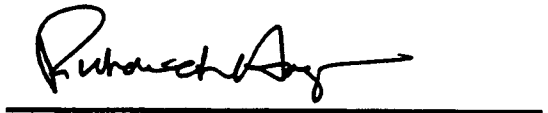
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Director  
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U.S. Department of Health and  
Human Services



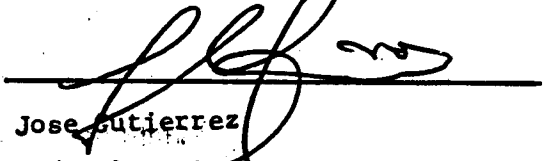
Verl Zanders  
Director,  
Office of Small and Disadvantaged  
Business Utilization  
U.S. Department of Health and  
Human Services



Aida Alvarez  
Administrator  
U.S. Small Business Administration



Richard L. Hayes  
Associate Deputy Administrator for  
Government Contracting and  
Minority Enterprise Development  
U.S. Small Business Administration



Jose Gutierrez  
Associate  
Administrator for Minority Enterprise  
Development  
U.S. Small Business Administration





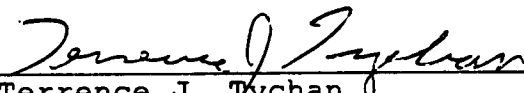
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## MEMORANDUM FOR THE RECORD

**SUBJECT:** Class Deviation to FAR 19.8 - Section 8(a) Awards

In accordance with the provisions of FAR 1.404, I hereby authorize a class deviation of FAR Subpart 19.8 which requires the Small Business Administration (SBA) to be a third party signatory for 8(a) awards. This class deviation will allow the Department of Health and Human Services (HHS) to implement its Memorandum of Understanding (MOU) with the SBA, under which the SBA has delegated to HHS, authority to enter into 8(a) contracts directly with eligible 8(a) firms. The MOU implements an innovative and effective methodology designed to streamline the acquisition process for awards under the 8(a) program. HHS and its Operating Divisions (OPDIVs) are designated components under the MOU. Any solicitation and subsequent awards processed under the referenced MOU, HHS and its OPDIVs will make the award directly to the 8(a) firm. SBA will not be a signatory to the award resulting from this solicitation. SBA will, however, retain responsibility for 8(a) certification, administer other eligibility related issues under the 8(a) program, and be available to 8(a) firms for counseling and assistance.

The General Services Administration has provided model language and clauses, contained in the Civilian Agency Acquisition Council (CAAC) Letter 98-3, dated May 1, 1989 (attached), to supplement the referenced MOU with appropriate FAR provisions. The CAAC Letter serves as evidence of consultation with the Chairman of the CAAC, as required by FAR 1.404(a)(1).

  
\_\_\_\_\_  
Terrence J. Tychan  
Deputy Assistant Secretary for  
Grants and Acquisition Management

2-4-99  
(DATE)



U.S. GENERAL SERVICES ADMINISTRATION  
Office of Governmentwide Policy

MAY 1 - 1998

CIVILIAN AGENCY ACQUISITION COUNCIL LETTER 98-3

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM:

*Edward C. Loeb*  
EDWARD C. LOEB  
CHAIRMAN  
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Direct 8(a) Contracting

After discussions with the Small Business Administration, I am issuing this CAAC Letter to provide model coverage for civilian agencies that are entering into Memoranda of Understanding (MOUs) with the SBA to award contracts awarded pursuant to Section 8(a) of the Small Business Act directly to 8(a) concerns. Currently, the FAR requires procuring activities to issue a prime contract with the SBA, which in turn subcontracts performance of the contract to the 8(a) firm.

The Civilian Agency Acquisition Council (CAAC) has reviewed the attached model coverage. Pending a change to the FAR, civilian agencies may use this language as the basis for their class deviations. The FAR will be amended following promulgation of an SBA final rule. This CAAC Letter serves as evidence of consultation with the Chairman of the CAAC, as required by FAR 1.404(a)(1). This consultation will apply only to deviations for 8(a) contracts that are executed under a MOU that is consistent with the attached model coverage.

Enclosure

1800 F Street, NW, Washington, DC 20405-0002

**DIRECT 8(A) CONTRACTING  
MODEL COVERAGE**

**SMALL BUSINESS PROGRAMS (FAR PART 19)**

**SUBPART 19.800 GENERAL**

*Add subparagraph (d):*

(d) Utilizing Memoranda of Understanding (MOUs), the SBA has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act to the Senior Procurement Executives of various Federal procuring activities. If an agency is covered by an MOU, a contract may be awarded directly to an 8(a) firm on either a sole source or competitive basis. The SBA reserves the right to withdraw any delegation issued as a result of an MOU; however, any such withdrawal shall have no effect on contracts currently awarded under the MOU.

**19.803 SELECTING ACQUISITIONS FOR THE 8(A) PROGRAM.**

*Add 19.803-70 to read:*

**19.803-70 SIMPLIFIED PROCEDURES FOR 8(A) ACQUISITIONS UNDER MOUS.**

Procuring activities may use the simplified acquisition procedures of Part 13 to issue purchase orders or contracts, not exceeding \$100,000, to 8(a) Participants. The following applies to such acquisitions:

(a) Neither offering letters to, nor acceptance letters from the SBA are required.

(b) The procuring activity will use the SBA's PRO-Net database on the Internet (<http://www.sba.gov>) to establish that the selected 8(a) firm is a current program participant.

(c) The contracting officer will issue the purchase order directly to the 8(a) firm.

(d) Once an 8(a) contractor has been identified, the agency contracting officer will establish the price with the selected 8(a) contractor and prepare and issue a purchase order or contract in accordance with the provisions of Part 13. The applicable clauses prescribed in 19.811-3 shall be included in the award document.

(e) The Contracting Officer will forward to the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within five days after the order is issued.

**19.804-2 AGENCY OFFERING.**

(a) When applicable, this notification must identify that the offering is in accordance with the MOU identified in 19.800.

**19.804-3 SBA ACCEPTANCE.**

Add new 19.804-70 which will read:

**19.804-70 SBA ACCEPTANCE UNDER MOUS FOR ACQUISITIONS EXCEEDING \$100,000.**

(a) Acceptance of requirements covered by MOU's on acquisitions that exceed \$100,000.

(1) The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 5 working days of receipt of the offer.

(2) The SBA may request, and the contracting agency may grant, an extension beyond the five-day limit.

(3) SBA's acceptance letters should be faxed or e-mailed to the offering contracting agency.

(4) If the procuring activity has not received an acceptance or rejection of the offering from SBA within 5 days of SBA's receipt of the offering letter, the procuring activity may assume that the requirement has been accepted and proceed with the acquisition.

(b) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

**19.805 COMPETITIVE 8(A).**

**19.805-2 PROCEDURES.**

Add to 19.805-2 new paragraphs (a) and (c)(3) to read as follows:

(a) 8(a) acquisitions may also be conducted using simplified acquisition procedures (see Part 13). The award process is significantly streamlined where an MOU is in place.

(c)(3) For requirements exceeding \$100,000 processed under the MOU cited in 19.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid requirements) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA will determine the eligibility of the firm(s) and advise the contracting officer within 2 working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer will submit information on the next low offeror or next apparent successful offeror (as applicable) to the cognizant SBA field office.

**19.806 PRICING THE 8(A) CONTRACT.**

Add paragraph (a) to read:

(a) When required by Subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor if they are awarding the contract under the MOU cited in 19.800.

**19.808-1 SOLE SOURCE.**

Add new paragraphs 19.808-1 (a) and (b) to read:

(a) If the acquisition is conducted under an MOU cited in 19.800, the 8(a) contractor is responsible for negotiating with the agency within the time established by the agency. If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the agency may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under an MOU cited in 19.800, the agency is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in negotiations.

**19.811-1 SOLE SOURCE.**

19.811-1. Add new paragraph (d) to read as follows:

(d) If the award is to be made under an MOU cited in 19.800, the contract to be awarded by the procuring activity to the 8(a) firm shall be prepared in accordance with the procuring activity's normal procedures, given contract type and dollar amount, that the procuring activity would use for a similar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 253 (c) (5) or 10 U.S.C. 2304 (c) (5) (as appropriate) and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) Appropriate contract clauses shall be included, as necessary, to reflect that the acquisition is an 8(a) contract made under the authority of an MOU cited in 19.800.

(3) The procuring activity shall include SBA's requirement number on the contract unless the acquisition does not exceed \$100,000.

(4) A single award document shall be used between the agency and the 8(a) contractor. As such, a single signature by the agency's contracting officer who is identified as having concurrent authority under an MOU cited in 19.800 to enter into 8(a) contracts will suffice (i.e., an SBA signature will not be required). The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "awarded to" or "contractor name" block on the appropriate forms.

**19.811-2 COMPETITIVE.**

Add paragraphs (a) and (b) to read as follows:

(a) If the award is to be made under delegation of 8(a) contracting authority, competitive contracts for 8(a) firms will be prepared in accordance with the same standards as 8(a) sole source contracts. See 19.811-1.

(b) If the acquisition is conducted under an MOU cited in 19.800, the process for obtaining signatures shall be as specified in 19.811-1(d).

**19.811-3 CONTRACT CLAUSES.**

*Add paragraphs 19.811-3 (d) (3) and (f) to read:*

(d) (3) The clause at 52.219-18 will be used with the Alternate (Deviation) at 52.219-18, when the acquisition is processed under the MOU cited in 19.800.

(f) The contracting officer shall insert the clause at 52.219-70XX, Section 8(a) Direct Award, in direct award contracts and purchase orders processed under the MOU cited at 19.800; the clauses at 52.219-11, Special 8(a) Contract Conditions, 52.219-12, Special 8(a) Subcontract conditions, and 52.219-17, Section 8(a) award, shall not be used.

**19.812 CONTRACT ADMINISTRATION.**

*Add 19.812 (d) to read:*

(d) Awards under the MOU cited in 19.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause entitled, Section 8(a) Direct Award, that requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 52  
SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**52.219-18 ALTERNATE FOR ACQUISITIONS UNDER 19.800**

**(Deviation) (date )**

When the acquisition is processed under the MOU cited in 19.800, substitute the following for the paragraph in 52.219-18:

(c) Any award resulting from this solicitation will be made directly by the contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

**52.219-70XX SECTION 8(A) DIRECT AWARDS.**

As prescribed in 19.811-3(f), insert the following clause:

**SECTION 8(A) DIRECT AWARD ( DATE )**

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the [Insert Agency Name]. SBA does retain responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

*[To be completed by Contracting Officer at time of award]*

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any novation agreement. The contracting activity may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) to notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or controls shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(2) it will adhere to the requirements of 52.219-14, Limitations on Subcontracting. **(END OF CLAUSE)**

(Solicitation Cover Page for Contracts)

**NOTICE TO OFFERORS**

This solicitation is being processed under a Memorandum of Understanding (MOU) between the Department of Health and Human Services (HHS) and the Small Business Administration (SBA), under which the SBA has delegated to HHS, authority to enter into 8(a) contracts directly with eligible 8(a) firms. The MOU implements innovative and effective methodology designed to streamline the acquisition process for awards under the 8(a) program. The [name of Operating Division] is a designated pilot agency under the MOU.

Any solicitation and subsequent awards processed under the referenced MOU, [name of Operating Division] will make the award directly to the 8(a) firm. SBA will not be a signatory to the award resulting from this solicitation. SBA will, however, retain responsibility for 8(a) certification, administer other eligibility related issues under the 8(a) program, and be available to 8(a) firms for counseling and assistance.

If you have any questions pertaining to this MOU, please contact [insert name, mailing address and telephone number of the Operating Division contact person].

**HHS/SBA MOU (FEB 8, 1999)**

**Servicing Small Business Administration Field Office**

To facilitate communications, it is requested that the 8(a) participant submitting this offer/bid provide the following information regarding the firm's cognizant servicing Small Business Administration (SBA) office.

Servicing SBA Office

\_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Cognizant SBA Business Opportunity Specialist's Name

\_\_\_\_\_

Phone \_\_\_\_\_



Sample offering letter to SBA for an 8(a) contract award

Business Opportunity Specialist  
(NAME OF BOS)  
U.S. Small Business Administration  
(ADDRESS)  
(CITY AND STATE)

The attached requirement is being processed under a Memorandum of Understanding (MOU) between the Department of Health and Human Services (HHS) and the Small Business Administration (SBA). The following information is provided pursuant to Federal Acquisition Regulation 19.804-2 for this acquisition:

1. The Statement of Work is provided as an enclosure.
2. The period of performance is a base period commencing from (Period of Performance), with an option period consisting of \_\_\_\_\_.
3. The applicable SIC code is \_\_\_\_\_, with size standard \_\_\_\_\_.
4. The total estimated amount for this requirement is \$\_\_\_\_\_ outlined as follows:  

Base Period:	\$ _____	Year 1:	\$ _____
Year 2:	\$ _____	Year 3:	\$ _____
5. The selected firm is deemed to be capable of providing the services described in the enclosed Statement of Work.
6. A time and materials contract is anticipated.
7. No solicitation for this specific acquisition has been issued indicating this requirement as a small business set-aside nor has the requirement been publicly announced.
8. The recommended 8(a) program participant is \_\_\_\_\_.
9. No other 8(a) company has marketed this effort.
10. No No SBA district or regional offices have asked for this acquisition under the 8(a) program.

11. This is a new requirement, and no public announcement has been made. We do not believe an eligible 8(a) concern could reasonably be expected to obtain this award under normal competitive conditions.
12. It is recommended that this acquisition be pursued on a sole source basis with the subcontractor nominated herein.

It is understood that if an acceptance or rejection of the offering from SBA is not received within 5 days of SBA's receipt of the offering letter, we, the procuring activity, may assume that the requirement has been accepted and proceed with the acquisition.

Should additional information be required, please contact the undersigned at (Phone Number). The fax number for this office is (Fax Number).

Sincerely,

---

Contracting Officer  
Small Business Specialist

Enclosure

SAMPLE COVER PAGE FOR USE ON PURCHASE ORDERS AWARDED UNDER THE MOU

**NOTICE**

The attached Purchase Order is being processed under a Memorandum of Understanding (MOU) between the Department of Health and Human Services (HHS) and the Small Business Administration (SBA), under which the SBA has delegated to the HHS authority to make 8(a) awards directly to eligible 8(a) firms. The MOU implements a HHS acquisition initiative designed to streamline the acquisition process for awards under the 8(a) program. The [insert name of Operating Division] is a designated agency under this MOU.

Under the terms of the MOU, SBA will not be a signatory to this award. SBA will, however retain responsibility for 8(a) certification, administer other eligibility related issues under the 8(a) program, and be available to 8(a) firms for counseling and assistance

In keeping with the MOU, you are not to begin performance under the attached Purchase Order until 7 working days after the issue date to permit time for the SBA to verify your eligibility as a participant in the 8(a) program. You may begin performance on the 8th work day following the award date, unless you receive notification from the [Operating Division] contracting officer who signed the purchase order not to begin performance. If you have any questions concerning this procedure, please contact the designated contracting officer. Any questions pertaining to your participation in the 8(a) program should continue to be directed to your servicing SBA Business Opportunity Specialist.

**NOTE:** This requirement is being processed under a Memorandum of Understanding (MOU) between the SBA and HHS, under which procedural changes to the customary 8(a) process have been made. Upon SBA acceptance of this offer, the [ (Operating Division) ] contracting officer will solicit a proposal, hold discussions, and make the contract award directly to the 8(a) firm, pursuant to the procedures developed under the MOU.