



**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**The U.S. Small Business Administration**  
**And**  
**The National Institutes of Health**

**I. PURPOSE**

The purpose of this Memorandum of Understanding (MOU) between the U.S. Small Business Administration (SBA) and the National Institutes of Health (NIH) is to establish procedures for permitting the award of sole source contracts and purchase orders under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) (the Act) for Biodefense related requirements above the competitive threshold amounts established by the Act where NIH demonstrates that circumstances exist which would warrant the use of other than full and open competition.

**II. BACKGROUND**

President Bush has made the defense of the Nation against bioterrorism a national priority. A cornerstone in this strategy to defend the United States homeland is the rapid expansion and development of a national research and development program aimed at rapidly developing vaccines, therapeutic drugs, and diagnostic tools to combat and detect bioterrorism agents.

Part of the President's plan to defend against future bioterrorism is reflected in the FY 2003 budget that proposes to double the appropriation for one of the NIH institutes, the National Institute for Allergy and Infectious Diseases (NIAID), from \$2 billion per year in September 2001 to \$4 billion per year on October 1, 2002. The Biodefense Program within NIAID has become a focal point at NIH counter-bioterrorism research. NIH anticipates that other institutes will have similar biodefense related requirements.

Section 8(a)(1)(D) of the Small Business Act, 15 U.S.C. 637(a)(1)(D), requires contract opportunities offered to the 8(a) program to be awarded on the basis of competition restricted to eligible Program Participants if the anticipated award price of the contract will exceed \$5 million for acquisitions assigned manufacturing NAICS codes and \$3 million for all other acquisitions.

The Federal Acquisition Regulation (FAR) authorizes sole source contracts in a number of circumstances, including where a procuring activity can demonstrate unusual and compelling urgency (48 C.F.R. § 6.302-2) and when disclosure of the agency's needs would compromise the national security (48 C.F.R. § 6.302-6). SBA recognizes that NIH may use one of these exceptions to full and open competition in order to procure needed counter-bioterrorism research or to fulfill other biodefense related requirements on a sole

source basis. SBA believes that these exceptions may be applied equally to the competition requirements of the 8(a) program.

This MOU provides the procedures for NIH to offer and SBA to accept sole source 8(a) requirements above the applicable competitive threshold amounts where NIH has made a determination of unusual and compelling urgency, a national security sole source justification, or another appropriate sole source justification under the FAR.

### **III. SCOPE**

This MOU provides for the award of both contracts and purchase orders that exceed the applicable competitive threshold amounts where NIH demonstrates that circumstances exist which would warrant the use of other than full and open competition.

This MOU applies to all SBA offices and all NIH offices deemed appropriate by the Deputy Assistant Secretary of the U. S. Department of Health & Human Services (HHS), Office of Grants and Acquisitions.

### **IV. RESPONSIBILITIES**

#### **a. The NIH:**

1. must have internal procedures in place to ensure that only funds earmarked for biodefense related activities are used for the procurement of products and services under this MOU;
2. must make a determination under the FAR that the use of a sole source award is appropriate, and include that determination in its offering letter to SBA;
3. must submit the offering letter for a sole source requirement to the SBA's district office responsible for servicing the selected 8(a) Participant, when an 8(a) firm has been identified, and to Martin Gold, Deputy Associate Administrator for Business Development;
4. must submit an open offering letter for a sole source requirement to the SBA district office that services the geographical area where the NIH contracting activity is located, when the NIH has not identified a specific 8(a) Participant for a requirement, and to Martin Gold, Deputy Associate Administrator for Business Development;
5. shall retain the option to use competitive 8(a) procedures, where the head of the contracting activity deems appropriate; in such case, NIH will use normal 8(a) competitive procedures, including the procedures set forth in the Partnership Agreement between SBA and HHS regarding the delegation of 8(a) contract execution functions;

6. shall cite the 8(a) program, along with the specific CICA exception authority (e.g., national security), to ensure proper reporting in the FPDS as an 8(a) award;

7. shall forward a copy of the executed contractual action to the SBA district office servicing the 8(a) awardee; and

8. shall submit a quarterly report to SBA's Associate Administrator for 8(a) Business Development (AA/8(a) BD) detailing the statistical information concerning awards made under this MOU, including NIH's assigned contract number, execution date and dollar amount.

**b. The SBA:**

1. will implement its responsibilities under this MOU through uniform procedures for use by all SBA offices;

2. will issue an acceptance letter or notification of rejection within 3 working days of receipt of an offering letter. Acceptance shall include a size verification and determinations with respect to all elements of eligibility (e.g., determinations of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility);

3. will notify NIH within 3 working days of receipt of an offering letter if it does not agree that the circumstances warrant a sole source award in excess of the applicable competitive threshold amount, and may request NIH to offer the requirement as a competitive 8(a) procurement; and

4. will select an appropriate 8(a) Participant when the NIH submits an open offering letter.

**V. TERM**

This MOU will take effect as soon as both the SBA Associate Deputy Administrator for Government Contracting and Business Development and the HHS Deputy Assistant Secretary for the Office of Grants and Acquisitions have signed it. It will remain in effect for a period of three years from such date.

**VI. AMENDMENT**

This MOU may be amended, in writing, at any time by mutual agreement of the SBA's AA/8(a) BD and the NIH's senior procurement executive.

**VII. TERMINATION**

This MOU may be terminated by either SBA or the NIH upon 30 days advance, written notice to the other party.

## **VIII. ADMINISTRATION**

### **For the NIH:**

Head of the Contracting Activity.

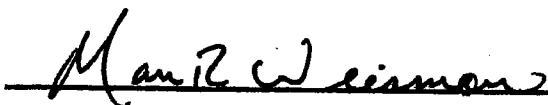
### **For the SBA:**

Associate Administrator for  
8(a) Business Development  
409 3<sup>rd</sup> Street, SW  
Washington, DC 20416  
(202) 205-7340

Deputy Associate Administrator for  
8(a) Business Development  
409 3<sup>rd</sup> Street, SW  
Washington, DC 20416  
(202) 205-6471

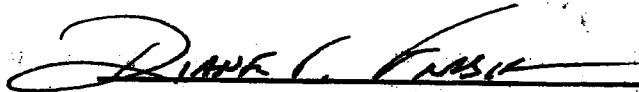
**XI. ACCEPTANCE**

As provided under the authority of the Memorandum of Understanding, the undersigned parties hereby accept the terms and conditions of this amendment.

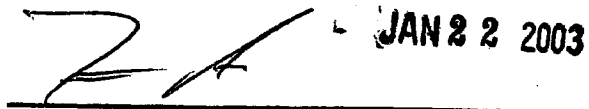


Marc Weisman  
Acting Deputy Assistant Secretary for  
Grants and Acquisitions  
U.S. Department of Health & Human  
Services

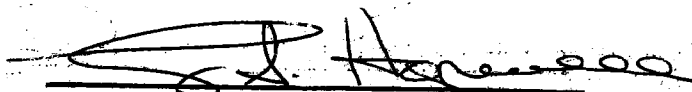
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Diane Frasier  
Head of Contracting Activity  
National Institutes of Health

 JAN 22 2003

Fred C. Armendariz  
Associate Deputy Administrator for  
Government Contracting & Business  
Development  
U.S. Small Business Administration



Luz A. Hopewell  
Associate Administrator for Business  
Development  
U.S. Small Business Administration