

IMPLEMENTATION PROCEDURES

for

STREAMLINING THE 8(a) CONTRACTING PROCESS

I. APPLICABILITY

These procedures implement and supplement the Partnership Agreement (PA) (Attachment A) between the Department of Health and Human Services (HHS) and the Small Business Administration (SBA). They supersede the February 5, 1999 instructions provided to the HHS Acquisition Community under the Memorandum of Understanding (MOU). The PA is presently applicable to the SBA and HHS and all of the Operating Divisions (OPDIVs) within HHS. These guidelines implement the intent of the PA and apply to all new requirements under the 8 (a) program effective October 1, 2000 through June 30, 2003.

II. WARRANTS

Under the terms of the PA, 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 of 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 PA shall contain a cover sheet (Attachment G) providing information to potential offerors.

IV. GUIDELINES

The Office of Small and Disadvantage Business Utilization (OSDBU) will continue to serve as the HHS point of contact for the streamlined 8 (a) award program.

OSDBU SHALL:

- a. Serve as liaison with the OPDIVs and the SBA through provisions of the referenced PA; and
- b. Monitor, evaluate, and report on OPDIVs performance under the PA.
- c. Receive copies of all contractual actions (i.e., offering letters, basic awards and modifications) executed in accordance with the provisions of this PA.

V. PROCESSING REQUIREMENTS

A. COMPETITIVE - OTHER THAN CONSTRUCTION

1. The Contracting Officer (CO) for HHS 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 Attachment F.
- (b) Submit a copy of the offering letter to the OSDDBU, DHHS.
- (c) If the CO 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 CO may assume that the requirement has been accepted on the 6th working day and proceed with the acquisition.
- (d) Synopsise the procurement in the www.FedBizOpps.gov.
- (e) Upon completion of its evaluation, submit a request for determination of eligibility for the apparent successful offeror(s) those in the competitive range, if discussions are to be held (in negotiated acquisitions) or the low offeror (in sealed bid requirements) to the SBA servicing district office.

Notification must include the firm's name, the date of proposal, the North American Industry Classification System (NAICS) code of the procurement, and the size standard of the NAICS code. Note that a concern's size is determined as of the date of its selfcertification 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 CO believes that the apparent successful offeror 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 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 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 CO for HHS 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 CO 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 OSDDBU, HHS.
- (c) After acceptance by the SBA district office, the CO will synopsise the procurement in the www.FedBizOpps.gov. Such 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 NAICS of the procurement, and the size standard for the NAICS code. Please note that a concern's size is determined as of the date of its selfcertification 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 PA 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 SEA 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, and to the cognizant SBA office simultaneously, copies of all contract actions including but not limited to the award document, modifications, task orders, delivery orders issued under the authority of the PA. Contracts issued under the referenced PA will be issued bilaterally, and purchase orders issued under simplified acquisition procedures under the PA will be issued unilaterally. The SBA will not be a signatory on contracts or purchase orders issued under the PA.
 - (b) May request in writing that existing requirements accepted before the effective date of the referenced PA, but not yet awarded, be converted to the procedures and provisions of the PA. 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 PA.
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 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.

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 PA that is consistent with the attached model coverage. SEE ATTACHMENT C