

TO: Executive Committee for Acquisition

SUBJECT: Partnership Agreement on Delegated 8 (a) Contracting Authority

FROM: Terrence J. Tychan
Deputy Assistant Secretary
for Grants and Acquisition management

As you are aware, Section 8 (a) of the Small Business Act (15 U.S.C. 637(a)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. Every Federal agency and department has a obligation to award a specific percentage of its procurement dollars using the 8 (a) program. This percentage is determined by the SBA. In 1995, the Department of Health and Human Services (HHS) awarded 9.8% of its acquisition dollars to 8 (a) companies making HHS one of the largest supporters of the program in government at that time. However, this percentage has steadily declined. In FY 2000 despite HHS's adjusted 8 (a) goal of 4.3%, HHS awarded just 3.3% of its prime contract dollars under this program.

The decrease in 8 (a) awards is not unique to HHS. Federal agencies throughout government have seen a decrease in these types of awards due in large part to acquisition reforms which have made other acquisition methods more expedient than the 8 (a) program. In order to mitigate the continuing decrease in awards under the 8 (a) program, SBA, delegated its signatory authority under a Memorandum of Understanding (MOU) to several Federal agencies in an effort to reduce the time it takes to award 8 (a) contracts.

Since February, 1999 HHS has operated under this MOU with the SBA. As a result of this delegation, the Department has substantially streamlined contract award time. The MOU limited SBA's involvement to certifying contractors under the program and accepting agency requirements on behalf of the 8 (a) contractors. The remaining procurement-related activity, including signature authority, passed to the HHS with no need to revisit the SBA for further approvals.

The attached Partnership Agreement (PA) continues this streamlined approach. It supersedes the existing MOU between SBA and HHS. There are several significant changes within this revised Agreement that we would like to bring to your attention. The changes are as follows:

The language has been made universal for all Federal agencies and Departments to participate in the streamlined contracting process. Previously only 25 Federal Agency had autonomous MOU's with the SBA.

The agreement is for three years as opposed to the one year term of the initial MOU. The PA ends June 30,2003.

The PA requires that agencies include language in every contract stating that even though the SBA may not be identified in Section A of the contract, it is still the prime contractor on the contract.

The PA requires that contracts include provisions that require the SBA's approval of novation agreements submitted by the 8 (a) participant.

The PA requires that contracts include provisions that require notice to the SBA (as prime contractor) prior to issuance of a final notice terminating the contract in whole or in part for default and/or convenience.

The PA requires that all proposed joint ventures involving 8 (a) participants are approved by SBA before contracts are awarded.

Contracting Officers may make direct award of a contract to the 8 (a) participant only after the requirement has been offered to and accepted by the SBA.

Requirements under the simplified acquisition threshold (FAR 2. 10 1) have changed. The SBA will review the eligibility of the 8 (a) participant within 2 working days after receipt of a copy of the signed purchase order document. The purchase order document may be delivered by any means acceptable to the SBA District Office. No offering or acceptance letter is required for requirements processed under the simplified acquisition threshold.

This office has previously issued a class deviation to the requirements in FAR Subpart 19.8 which requires a third party signature from the SBA to implement the MOU. This same deviation now applies to the PA until such time as the FAR is modified to provide regulatory authority for the direct award of contracts to contractors under the streamlined 8 (a) Program provisions. For your convenience, we have attached the GSA provided model language and clauses initially issued under Civilian Agency Acquisition Council

(CAAC) Letter 98-3, dated May 1, 1998 with modifications. These modifications capture the revisions we have agreed to under the PA. Specifically, 52.219-70xx Section 8 (a) Direct Awards. These clauses replace what is currently stated in the FAR as the authority and responsibilities of parties awarding contracts pursuant to Section 8 (a) of the Small Business Act.

The use of this delegation by procurement activities is critical to the Department's ability to obtain and exceed its 4.3% 8 (a) program goal for FY 2001.

Please direct all questions or comments to Arthuretta Martin, Deputy Director, Office of Small and Disadvantage Business Utilization (OSDBU), 202-690-6845 concerning these provisions. OSDBU will continue to be the departmental point of contact for this initiative and will monitor the implementation of this program by all OPDIV's.

Thank you once again for your cooperation and support of the 8 (a) program.

Attachments:

- Attachment A - Partnership Agreement
- Attachment B - 8 (a) PA Implementation Procedures
- Attachment C - Class Deviation
- Attachment D - Civilian Agency Acquisition Council Guidance
- Attachment E - Sample Solicitation Cover Page
- Attachment F - Sample SBA Offering Letter
- Attachment G - Sample Cover Page for SAT