

The image features a large, light gray watermark of the USAID seal in the background. The seal is circular and contains the text "UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT" around the perimeter. In the center of the seal is a shield with a map of the United States, and the word "USAID" is written in a large, bold, sans-serif font across the middle of the shield.

USAID

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U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

October 21, 2001

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

FROM: M/OP, Mark S. Ward, Director

SUBJECT: USAID Procedures for Awards Under the Small Business Administration's (SBA) 8(a) Business Development Program and the Partnership Agreement between SBA and USAID for Expedited Awards

CONTRACT INFORMATION BULLETIN 01-20

This CIB supersedes/consolidates AND cancels the following CIBs:

1. 84-21 - "Notification of OSDBU/MRC Regarding Proposed 8(a) Awards"
2. 97-24 - "New SBA Procedures for 8(a) Requirements"
2. 98-15 and Supplement - "New Streamlined Award Procedures for 8(a) Contracts"
3. 99-8 - "Streamlined Award Procedures for 8(a) Contracts" (amends 98-15)

Reference: FAR 19.8 - Contracting with the Small Business Administration (The 8(a) Program)

Delegation: The Administrators of both USAID and the SBA entered into a Partnership Agreement (PA) that replaces the Memorandum of Understanding attached to CIB 98-15. The Partnership Agreement is Attachment 1 to this CIB. In the PA, SBA delegates to the head of the agency, or designee, for redelegation to warranted federal agency contracting officers, SBA's authority under section 8(a)(1)(A) of the Small Business Act to enter into 8(a) prime contracts (as formerly granted in the MOU). AIDAR 701.601(a)(1) designates the Director of the Office of Procurement to be "head of the Agency" for this purpose. **I hereby redelegate this authority to all USAID warranted contracting officers.**

Summary of Partnership Agreement: On September 27, 2000, the USAID Administrator and the SBA Administrator signed the Partnership Agreement (PA) in Attachment 1. The term of the PA began with their signatures and remains in effect until June 30, 2003. Section II states the PA's objectives. The PA encompasses all competitive and non-competitive acquisitions offered by USAID and accepted by the SBA into the 8(a) program. FAR 19.804-2 contains the offering

procedures, including the appropriate SBA office to which you are to submit the offering letter (section IV.b. of the PA repeats this information).

Overseas contracting officers are to submit the letters as required in FAR 19.804-2(c) and the PA's paragraph IV.b.3 when applicable. However, for competitive requirements and sole source requirements when you have not identified and selected an 8(a) participant, submit your offering letter to:

SBA Headquarters
Office of the Assistant Administrator for Business Development
Room 8000, 409 3rd Street, SW
Washington, DC 20416.

Provide a copy of all offering letters to the Office of Small and Disadvantaged Business Utilization (OSDBU). In fact, we recommend that you forward the offering letter to the appropriate SBA office through OSDBU. The PA revises the SBA acceptance procedures in FAR 19.804-3 by, among other things, shortening the timeframe for SBA's acceptance or notification of rejection from ten (10) to five (5) working days of receipt of an offering letter and allowing the USAID contracting officer to assume acceptance on the sixth day. Therefore, if the offering letter goes through OSDBU, they will confirm the date the appropriate SBA office received it and you will know when you may assume SBA's acceptance of the requirement.

Review and be familiar with all the RESPONSIBILITIES in Section IV and the procedures for CONTRACT EXECUTION in Section V. SBA's responsibilities are covered in paragraph IV.a., while the responsibilities of the federal agency (FA) are in paragraph IV.b. With the exception of paragraph IV.a.1., all of these responsibilities fall on the contracting officer, either in cooperation with OSDBU or as the responsible contracting officer for an award.

Attachment 2 contains the "Summary of Implementation Guidance" previously attached to CIB 97-24. Since much of this guidance has been incorporated into FAR Part 19, Attachment 2 is included only for your convenience. However, in the case of any inconsistencies between the PA and this Implementation Guidance, the PA takes precedence.

This CIB constitutes an agency policy directive complying with FAR 19.800(f).

Direct questions about this CIB to Ms. Diane Howard, M/OP/P, or about the 8(a) Program to Ms. LaVerne Drummond, Acting Director of OSDBU.

Attachments:

1. SBA/USAID Partnership Agreement
2. Summary of Implementation Guidance

PARTNERSHIP AGREEMENT
Between
The U.S. Small Business Administration
And
U.S. Agency for International Development

I. PURPOSE

The purpose of this Partnership Agreement (PA) between the U.S. Small Business Administration (SBA) and the Federal Agency (FA) is to establish basic procedures for expediting the award of requirements pursuant to section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)) (the Act), and the SBA's regulations. This PA replaces all terms and conditions of any previously executed Memorandum of Understanding (MOU).

II. OBJECTIVES

- a. To delineate the responsibilities regarding 8(a) contracts among the SBA and the FA;
- b. To establish the procedures for offer and acceptance between the SBA and the FA;
- c. To reduce the interval between the time FA contracting offices send an offering letter to the SBA and receive an SBA decision on the offering to a maximum of 5 workdays;
- d. To emphasize that the SBA only delegates the authority to sign contracts on their behalf. The SBA remains the prime contractor on all 8(a) contracts;
- e. To eliminate SBA review of contracts and purchase orders executed under the authority of this PA; and
- f. To establish uniform policy and procedures regarding application of purchase orders to the 8(a) contracting process, when applicable.

III. SCOPE

This PA provides for the award of both contracts and purchase orders under the provisions of section 8(a) of the Act as implemented by the Federal Acquisition Regulation (FAR) (48 C.F.R.) and the SBA's 8(a) Business Development Program regulations.

This PA encompasses all competitive and non-competitive acquisitions of requirements offered by the FA contracting offices and accepted by the SBA into the 8(a) program.

This PA applies to all SBA offices and all FA offices deemed appropriate by the head of the agency (as defined in FAR 2.101, Definitions) for the FA.

IV. RESPONSIBILITIES

a. The SBA:

1. delegates to the head of the agency, or designee, for redelegation to warranted FA contracting officers, 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 arrange for the performance of such procurement contracts by eligible 8(a) Program Participants. In accordance with 13 C.F.R. 124.501(a), the SBA delegates only the contract execution function. The SBA remains the prime contractor on all 8(a) contracts, and the 8(a) Participant remains the SBA's subcontractor;

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

3. shall review the Federal agency's offering letters, issue acceptance or rejection letters, and make eligibility determinations:

(a) Sole source procurements. The SBA will issue an acceptance letter or notification of rejection within 5 working days of receipt of an offering letter. Absent a notification of rejection within 5 working days of receipt of the offer, acceptance may be assumed on the 6th working day.

Acceptance

shall include a size verification and determinations with respect to all elements of eligibility (e.g., determinations of adverse impact, Standard Industrial Classification (SIC) code appropriateness and program eligibility);

(b) Competitive acquisitions. The SBA will issue an acceptance letter or notification of rejection within 5 working days

of

receipt of an offering letter. Absent a notification of rejection within 5 working days of receipt of the offer, acceptance may be assumed on the 6th working day.

Following

receipt of bids, and within 2 working days after a request from the contracting officer, the SBA shall issue an eligibility determination for the firm with the lowest

bid.

In the case of a negotiated procurement following receipt of

receipt of initial offers including price, and within 2 working days after a request from the contracting officer, the SBA shall issue an eligibility determination for all firms in the competitive range, if discussions are to be conducted.

The SBA will issue an eligibility determination for all firms with a realistic chance of award within 2 working days after a request from the contracting officer, if no discussions are to be conducted;

(c) Requirements under the simplified acquisition threshold (FAR 2.101). 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. The SBA shall provide a copy of any

negative

eligibility determination to the contracting activity and

the

8(a) Participant. Absent receipt of a negative eligibility determination from the SBA within 2 working days, the 8(a) contractor will be authorized to begin performance. No offering or acceptance letter is required for requirements processed under the simplified acquisition procedures threshold;

4. shall provide 8(a) Participants with assistance in contract negotiations when requested by either the 8(a) firm or the FA contracting officer;
5. shall retain its appeal authority in accordance with FAR 19.810;
6. shall retain the right to perform on-site contract surveillance reviews;
7. shall retain the responsibility for compliance with all applicable provisions of 13 C.F.R. Part 124, including determining eligibility;
8. shall select an appropriate 8(a) Participant when the FA submits an open offering letter for a sole source requirement; and
9. will issue a letter to the FA Office of Small and Disadvantaged Business Utilization, with a copy to the senior procurement Executive (FAR 2.101), on a quarterly basis identifying accepted Requirements for which award documents have not been received by the SBA district office.

b. The Federal agency:

1. shall submit to the SBA, not later than June 30, 2000, copies of any procedures developed to comply with this PA that are in addition to guidance provided by the Civilian Agency Acquisition Council (CAAC);
2. shall determine which requirements are suitable for offering 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;
3. shall submit the offering letter for sole source requirements to

the SBA's district office responsible for servicing the selected

8(a) Participant, when an 8(a) firm has been identified;

4. shall submit an open offering letter for sole source requirements to the SBA district office that services the geographical area where the FA contracting activity is located, when the FA has not identified a specific 8(a) Participant for a requirement;
5. shall submit the offering letter for competitive 8(a) procurements to the SBA district office that services the geographical area where the Federal agency's contracting activity is located, except that offering letters for construction work will be sent to the SBA district office located in the geographical area where the work will be performed, or, in the case of such contracts to be performed overseas, to the SBA Headquarters;
6. shall retain responsibility for compliance with all applicable provisions of the FAR and other applicable acquisition regulations, unless a FAR deviation is obtained;
7. shall provide a copy of any contract, as defined in FAR 2.101, including basic contracts, orders, modifications, and purchase orders, to the SBA servicing district office within 15 calendar days of the date of award. Systemic failure to timely provide the required documents to the SBA may result in suspension or rescission of this PA;
8. shall retain the option to use tripartite procedures to award 8(a) contracts and purchase orders to 8(a) Participants as specified in FAR Pan 19;
9. shall ensure that all contracts awarded pursuant to this PA contain provisions that:

- (a) require the SBA's approval of novation agreements submitted by the 8(a) Participant; and
 - (b) require advance notice to the SBA (as the prime contractor) prior to issuance of a final notice terminating the contract in whole or in part;
10. shall ensure that all Standard Industrial Classification codes for all 8(a) Business Development contracts comply with FAR 19.102;
 11. shall ensure that all contracts comply with the work performance requirements, in accordance with FAR 19.508(e);
 12. shall add language to 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; and
 13. shall ensure that all proposed joint ventures involving 8(a) Participants are approved by SBA before contracts are awarded.

V. CONTRACT EXECUTION

The cognizant FA contracting Officer may make direct award of a contract to the 8(a) Participant, but only after the requirement has been offered to and accepted by the SBA. Acquisitions that employ the simplified acquisition procedures authorized by FAR Part 13, limited to the simplified acquisition threshold (FAR 2.101), require no offer or acceptance. Contract execution shall be on the appropriate form specified in the FAR or the FA's acquisition regulations. The "Issued by" block shall identify the awarding FA office. The cognizant SBA district office for the 8(a) Program Participant shall be identified in the award document. The 8(a) Participant's name and address shall be listed as the contractor. The FA's contracting activities are responsible for issuing procurement instrument identification numbers; the SBA will not issue subcontract numbers.

VI. TERM

This PA will take effect as soon as both the SBA Administrator and the head of the FA have signed it. It will remain in effect until June 30, 2003.

VII. AMENDMENT

This PA may be amended, in writing, at any time by mutual agreement of the SBA's Associate Administrator for 8(a) Business Development (AA/8(a)BD) and the FA's senior procurement executive.

VII. TERMINATION

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

IX. PENALTIES

- a. Contracts that have not been offered to and accepted by the SBA into the 8(a) Business Development program cannot be used for the FA's 8(a) negotiated goals.
- b. The SBA reserves the option to suspend or rescind the authority of this PA if the FA fails to submit copies to the SBA of award documents within 15 working days of award.

X. ADMINISTRATION

For the Federal agency:

Head of the agency, or delegee.

For the SBA:

For USAID

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

Bureau for Management
Director, Office of Procurement
1300 Pennsylvania Avenue, NW
Ronald Reagan Building
Washington, D.C. 20523
(202) 712-5130

Deputy Associate Administrator for

8(a) Business Development
409 3rd Street, SW
Washington, DC 20416
(202) 205-6471

XI. ACCEPTANCE

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

J.B dy Anderson

Administrador

U.S. Agency for International

Development

Aida Alvarez

Administrador

U.S. Small Business Administration

Sept. 27, 2000

SUMMARY OF IMPLEMENTATION GUIDANCE

In order to place more control of the 8(a) program at the local level, several functions are being delegated to the district office. These changes are part of the continuing effort to streamline the Minority Enterprise Development (MED) program and make it more responsive to local market needs. These changes will help provide better service to our customers - 8(a) program participants and procuring agencies, and will also lead to greater programmatic efficiency and effectiveness.

Effective June 1, 1997, the following 8(a) requirement processing functions shall be delegated to district offices:

- Competitive requirements, including construction;
- Sole source open requirements; and
- Defense Fuel Supply Center (DFSC) requirements.

The following paragraphs describe changes in requirement processing.

DECENTRALIZED PROCESSING OF REQUIREMENTS

I. Processing 8(a) competitive requirements:

A. Competitive Requirements Other than Construction

1. Offer: The procuring agency shall forward competitive 8(a) requirements directly to the district office having jurisdiction over the geographical area in which the buying activity is located (hereinafter, the cognizant district office).

All competitive requirements shall be entered, upon receipt, into SACS/MEDCOR by the cognizant district office.

The cognizant district office shall review the statement of work, and verify the appropriateness of the assigned SIC code.

2. Adverse Impact: Upon receipt of a competitive 8(a) offer for a requirement previously performed by a small business concern, the cognizant district office shall conduct an adverse impact determination. Note that such determination shall be made prior to acceptance or rejection of the requirement.
3. Acceptance: If the cognizant district office decides to accept a competitive requirement, within fifteen (15) days of receipt of the requirement, it shall notify the procuring agency by issuance of an acceptance letter. The letter shall document acceptance of the requirement, and authorize the procuring agency to synopsise the requirement in the Commerce Business Daily. If the office decides to turn the

requirement back, within ten (10) days of receipt of the requirement, it shall so notify the procuring agency in writing.

4. **Advisory Responsibility Determination:** If, during a competitive process, a contracting officer questions an 8(a) firm's ability to perform, and determines that a pre-award survey is necessary, the district office where that firm is located (hereinafter, the servicing district office) shall review the survey and may request issuance of an advisory responsibility determination from the Government Contracting (GC) Area Office. If an advisory determination has been requested, the GC recommendation shall be taken into consideration when determining whether the firm is competent and responsible to perform.
5. **Determination of Eligibility:** Upon completion of its evaluation, the procuring agency shall submit a request for determination of eligibility for the apparent successful offeror directly to the servicing district office. The procuring agency's notification of the successful offeror must include the firm's name and the date of the firm's proposal. If the firm's size is questioned, the servicing district office shall make a determination pursuant to 13 C.F.R. 121.603(b).

Within five (5) business days of notification of the successful offeror, the servicing district office shall confirm eligibility of the offeror to receive the contract award, and will notify the procuring agency in writing. If a firm is found ineligible, the servicing district office shall inform the procuring agency in writing, and request that the agency consider the next lowest offer/bid for contract award.

6. **Award:** The procuring agency shall, upon receipt of the servicing district office's positive determination of eligibility, forward the contract document directly to the servicing district office for execution.
7. **Protests and Appeals:** Protests and appeals shall be processed pursuant to 13 C.F.R 121.1001, 121.1101, and 124.320, and the Federal Acquisition Regulations (FAR).

B. Competitive Construction Requirements

Competitive construction requirements shall be processed as described above, with the following exceptions.

1. **Geographical Area of Competition:** Upon SBA's acceptance of a competitive construction requirement, the procuring agency shall synopsise the procurement in the Commerce Business Daily. Such synopsis shall include the geographical area of competition as determined by the district director of the cognizant district office (i.e., the 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. For purposes of determining eligibility for award of construction

requirements, the term "firms located within the geographical of competition" shall mean: (1) firms having principal places of business within the geographical are of competition; and (2) firms having offices with at least one full time employee located within the geographical area of competition.

The district director of the cognizant district office may, at his/her discretion expand the geographical area of competition beyond the area over which district office has jurisdiction. (See the immediately following paragraph.) The decision may be neither appealed nor protested to MED Headquarters. Any unresolved discrepancies between the district director and the procuring activity regarding the geographical area will be adjudicated by the Associate Administrator for Minority Enterprise Development.

2. Coordination: The district director of the cognizant district office shall responsible for coordinating competitive construction requirements. In establishing a geographical area of competition beyond the jurisdiction of cognizant district office, the district director of that office shall coordinate, consult, and collaborate with director(s) of affected district offices.

If a competitive construction requirement cannot be competed within the portfolio of the cognizant district office, the geographical area of competition may be expanded to included the following jurisdictions in descending order of precedence:

- a. District(s) adjacent to the cognizant district office located in the same state
- b. District(s) adjacent to the cognizant district office located in the region;
- c. The remainder of the region in which the cognizant district office is located; then
- d. District(s) adjacent to the cognizant district office, regardless of regional location.

For example, a competitive requirement for construction of a facility in Connecticut must be reserved for competition among 8(a) firms in the Hartford District Office portfolio. If no firms in the Hartford District Office portfolio can perform the work, the requirement may be reserved for competition among firms in the portfolios of the adjacent Districts of Providence and Boston. If no capable firms can be identified in these districts, the work may be reserved for competition among firms located anywhere in Region I. If no capable firms can be identified in Region I, the work may be reserved for competition among firms located in the adjacent New York District, located in Region II.

II. Processing Sole Source Open Requirements

A. Other than Construction

Non-construction contract opportunities below competitive thresholds that are offered to the 8(a) program, without nomination of a specific firm by the procuring agency, shall be forwarded for processing to the district office having jurisdiction over the geographical area in which the buying activity is located. Upon district office request, DBD shall:

1. Provide a listing of firms having the appropriate Standard Industrial Classification Code in their business plans; and
2. Assist the district office in disseminating information regarding the requirement among district offices servicing the firms identified in 11.A.I.1, above.

B. Construction

Construction contract opportunities below competitive thresholdsthat are offered to the 8(a) program, without nomination of a specific firm by the procuring agency, shall be forwarded for processing to the district office having jurisdiction over the geographical area in which all or the greatest portion of the construction is to be performed.

Upon district office request, DBD shall:

1. Provide a listing of firms having the appropriate Standard Industrial Classification Code in their business plans; and
2. Assist the district office in disseminating information regarding the requirement among district offices servicing the firms identified in H. B.1 above.

III. Processing Defense Fuel Supply Center Requirements

- A. DFSC's Fuel Energy programs shall no longer be coordinated at SBA Headquarters. These programs include Direct Delivery (ground fuels, intoplane and bunkers), Domestic Bulk (East/Gulf Coast and Inland West Coast) and Alternative Fuels (Natural Gas and Coal). With the exception of DFSC's coal program, these requirements, which are open, shall be synopsisized in the Commerce Business Daily as sources-sought requirements.
- B. When an 8(a) firm has responded to the sources-sought synopsis, DFSC shall provide the firm with a qualification package that includes criteria necessary for qualification evaluation. This package may include, but is not limited to, the information listed in the Defense Logistic Agency and the SBA Memorandum of Agreement. Based on the information provided to DFSC by the 8(a) firm, DFSC shall determine specific items that are suitable for 8(a) reservation. The firm shall be required to provide a copy of its 8(a) certification letter as part of the qualification package.

- C. Upon receipt of notification, DFSC shall issue the solicitation directly to the interested 8(a) firm. To be considered for an 8(a) reservation, the interested 8(a) firm must respond to the solicitation. DFSC shall evaluate proposals and determine the acceptability of the qualification package. Evaluation factors may include supply commitments, transportation commitments, and the firm's capability to perform. Should the firm be determined acceptable, DFSC shall issue an offering letter on behalf of the 8(a) firm to the servicing district office.
- D. Most coal requirements are not open buys. However, for those exceptions in which a requirement is open, the offering shall be forwarded to the district office having jurisdiction over the location where the work shall be performed.

IMPLEMENTATION

All requirements in Headquarters DBD on June 1, 1997, will be completed by DBD. All requirements received in Headquarters DBD after June 1, 1997, will be forwarded to the appropriate district office by fax or overnight mail for processing. These changes are being communicated to the acquisition community by the following activities:

- . Letters to Offices of Small and Disadvantaged Business Utilization (SADBU's);
- . Letters to contracting officials on requirements processed by Headquarters DBD;
- . Letters to contracting officials who forward requirements to Headquarters DBD for processing, that are received in DBD on or after June 1, 1997; and
- . Proposed change to Federal Acquisition Regulations (FAR) Paragraphs 19.804-2(b)(2) and 19.804-2(c), per FAR Case 95-028.

On re-negotiation of the Memorandum of Understanding between SBA and the National Security Agency for processing of 8(a) requirements, processing of such requirements will be delegated to district offices, and specific guidance provided.

