Subpart 19.8 - Contracting with the Small Business Administration (The 8(a) Program)

Parent topic: Part 19 - Small Business Programs

19.800 General.

(a) 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 award subcontracts for performing those contracts to firms eligible for program participation. This program is the "8(a) Business Development Program," commonly referred to as the "8(a) program." A small business that is accepted into the 8(a) program is known as a "participant." SBA's subcontractors are referred to as "8(a) contractors." As used in this subpart, an 8(a) contractor is an 8(a) participant that is currently performing on a Federal contract or order that was set aside for 8(a) participants.

(b) Contracts *may* be awarded to the SBA for performance by eligible 8(a) participants on either a sole source or competitive basis.

(c) Acting under the authority of the program, the SBA certifies to an agency that SBA is competent and responsible to perform a specific contract. The *contracting officer* has the discretion to award the contract to the SBA based upon mutually agreeable terms and conditions.

(d) The *contracting officer shall* comply with 19.203 before deciding to *offer* an *acquisition* to a small business *concern* under the 8(a) program. For *acquisitions* above the *simplified acquisition threshold*, the *contracting officer shall* consider 8(a) set-asides or sole source awards before considering small business set-asides.

(e) When SBA has delegated its 8(a) program contract execution authority to an agency, the *contracting officer must* refer to its agency supplement or other policy directives for appropriate guidance.

19.801 [Reserved]

19.802 Determining eligibility for the 8(a) program.

Determining the eligibility of a small business to be a participant in the 8(a) program is the responsibility of the SBA. SBA's regulations on eligibility requirements for participation in the 8(a) program are found at 13 CFR 124.101 through 124.112. SBA designates the *concern* as an 8(a) participant in the Dynamic Small Business Search (DSBS) at *https://web.sba.gov/pro-net/search/dsp_dsbs.cfm* . SBA's designation also appears in the *System for Award Management (SAM*).

19.803 Selecting acquisitions for the 8(a) Program.

Through their cooperative efforts, the SBA and an agency match the agency's requirements with the capabilities of 8(a) participants to establish a basis for the agency to contract with the SBA under the program. Selection is initiated in one of three ways:

(a) The SBA advises the *contracting activity* of an 8(a) participant's capabilities through a search letter and requests the *contracting activity* to identify *acquisitions* to support the participant's business plans. In these instances, the SBA will provide at a minimum the following information in order to enable the *contracting activity* to match an *acquisition* to the participant's capabilities:

(1) Identification of the participant and its owners.

(2) Background information on the participant, including any and all information pertaining to the participant's technical ability and capacity to perform.

(3) The participant's present production capacity and related facilities.

(4) The extent to which *contracting* assistance is needed in the present and the future, described in terms that will enable the agency to relate the participant's plans to present and future agency requirements.

(5) If *construction* is involved, the request *shall* also include the following:

(i) A participant's capabilities in and qualifications for accomplishing various categories of *construction* work typically found in North American Industrial Category System subsector 236 (*construction* of buildings), subsector 237 (heavy and civil engineering *construction*), or subsector 238 (specialty trade contractors).

(ii) The participant’s capacity in each *construction* category in terms of estimated dollar value (*e.g.*, electrical, up to $100,000).

(b) The SBA identifies a specific requirement for one or more 8(a) participant(s) and sends a requirements letter to the agency's *Office of Small and Disadvantaged Business Utilization*, or for the Department of Defense, Office of Small Business Programs, requesting the *contracting office offer* the *acquisition* to the 8(a) program. In these instances, in addition to the information in paragraph (a) of this section, the SBA will provide-

(1) A clear identification of the *acquisition* sought; *e.g.*, project name or number;

(2) A statement as to how the required equipment and real property will be provided in order to ensure that the participant will be fully capable of satisfying the agency's requirements;

(3) If *construction*, information as to the bonding capability of the participant(s); and

(4) Either-

(i) If a sole source request-

(A) The reasons why the participant is considered suitable for this particular *acquisition*; *e.g.*, previous contracts for the same or similar supply or service; and

(B) A statement that the participant is eligible in terms of its small business size status relative to the assigned NAICS code, business support levels, and business activity targets; or

(ii) If competitive, a statement that at least two 8(a) participants are considered capable of satisfying the agency's requirements and a statement that the participants are also eligible in terms of their small business size status relative to the assigned NAICS code, business support levels, and business activity targets. If requested by the *contracting office*, SBA will identify at least two such participants and provide information concerning the participants' capabilities.

(c) Agencies *may* also review other proposed *acquisitions* for the purpose of identifying requirements which *may* be offered to the SBA. Where agencies independently, or through the self marketing efforts of an 8(a) participant, identify a requirement for the 8(a) program, they *may offer* on behalf of a specific 8(a) participant, for the 8(a) program in general, or for 8(a) competition.

19.804 Evaluation, offering, and acceptance.

19.804-1 Agency evaluation.

In determining the extent to which a requirement *should* be offered in support of the 8(a) program, the agency *should* evaluate-

(a) Current and future plans to acquire the specific items or work that 8(a) participants are seeking to provide, identified in terms of-

(1) Estimated quantities of the *supplies* or services required or the estimated number of *construction* projects planned;

(2) Length of contract, including *option* periods (see 19.812(d)); and

(3) Performance or delivery requirements, including–

(i) Required monthly production rates, when applicable; and

(ii) For *construction*, the geographical location where work is to be performed;

(b) The impact of any delay in delivery;

(c) Whether the items or work have previously been acquired using small business set-asides, and the date the items or work were acquired;

(d) Problems encountered in previous *acquisitions* of the items or work from the 8(a) participants or other contractors; and

(e) Any other pertinent information about known 8(a) participants, the items, or the work. This includes any information concerning the participants' *products* or capabilities. When necessary, the *contracting* agency *shall* make an independent review of the factors in 19.803(a) and other aspects of the participants' capabilities which would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) program.

19.804-2 Agency offering.

(a) After completing its evaluation, the *contracting office shall* notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work, including 8(a) contracts that are reserved in accordance with 19.503. The notification, referred to as an offering letter, *shall* identify the time frames within which resulting 8(a) awards *must* be completed in order for the agency to meet its responsibilities. The offering letter *shall* also contain the following information applicable to each prospective contract:

(1) A description of the work to be performed or items to be delivered, and a copy of the statement of work, if available.

(2) The estimated period of performance.

(3) The NAICS code that applies to the principal nature of the *acquisition*.

(4) The anticipated dollar value of the requirement, including *options*, if any.

(5) Any special restrictions or geographical limitations on the requirement (for *construction*, include the location of the work to be performed).

(6) Any special capabilities or disciplines needed for contract performance.

(7) The type of contract anticipated.

(8) The *acquisition* history, if any, of the requirement, including the names and addresses of any small business contractors that have performed this requirement during the previous 24 months.

(9) A statement that prior to the offering no *solicitation* for the specific *acquisition* has been issued as a small business, *HUBZone*, service-disabled veteran-owned small business set-aside, or a set-aside under the Women-Owned Small Business (WOSB) Program, and that no other public communication (such as a notice through the *Governmentwide point of entry (GPE*)) has been made showing the *contracting* agency's clear intention to set-aside the *acquisition* for small business, *HUBZone* small business, service-disabled veteran-owned small business *concerns*, or a set-aside under the WOSB Program.

(10) Identification of any particular 8(a) participant designated for consideration, including a brief justification, such as-

(i) The 8(a) participant, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) program; or

(ii) The *acquisition* is a follow-on or renewal contract and the nominated 8(a) participant is the incumbent.

(11) Bonding requirements, if applicable.

(12) Identification of all 8(a) participants which have expressed an interest in being considered for the *acquisition*.

(13) Identification of all SBA field offices that have asked for the *acquisition* for the 8(a) program.

(14) A request, if appropriate, that a requirement with an estimated contract value under the

applicable competitive threshold be awarded as an 8(a) competitive contract (see 19.805-1(d)).

(15) A request, if appropriate, that a requirement with a contract value over the applicable competitive threshold be awarded as a sole source contract (see 19.805-1(b)).

(16) Any other pertinent and reasonably available data.

(b)

(1) An agency offering a *construction* requirement for which no specific *offeror* is nominated *should* submit it to the SBA District Office for the geographical area where the work is to be performed.

(2) An agency offering a *construction* requirement on behalf of a specific *offeror should* submit it to the SBA District Office servicing that *concern*.

(3) Sole source requirements, other than *construction*, *should* be forwarded directly to the district office that services the nominated 8(a) participant. If the *contracting officer* is not nominating a specific 8(a) participant, the offering letter *should* be forwarded to the district office servicing the geographical area in which the *contracting office* is located.

(c) All requirements for 8(a) competition, other than *construction*, *should* be forwarded to the district office servicing the geographical area in which the *contracting office* is located. All requirements for 8(a) *construction* competition *should* be forwarded to the district office servicing the geographical area in which all or the major portion of the *construction* is to be performed. All requirements, including *construction*, *must* be synopsized through the GPE. For *construction*, the synopsis *must* include the geographical area of the competition set forth in the SBA's acceptance letter.

19.804-3 SBA acceptance.

(a) Upon receipt of the *contracting office*'s offering letter, SBA will determine whether to accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the *contracting office in writing* within 10 working days of receipt of the *offer* if the contract is likely to exceed the *simplified acquisition threshold* and within two working days of receipt if the contract is at or below the *simplified acquisition threshold*. The *contracting office may* grant an extension of these time periods, if requested by SBA.

(1) For *acquisitions* exceeding the *simplified acquisition threshold*, if SBA does not respond to an offering letter within ten working days, the *contracting office may* seek SBA's acceptance through the Associate Administrator for Business Development. The *contracting office may* assume that SBA has accepted the requirement into the 8(a) program if it does not receive a reply from the Associate Administrator for Business Development within five calendar days of receipt of the *contracting office*'s request.

(2) For *acquisitions* not exceeding the *simplified acquisition threshold*, when the *contracting office* makes an *offer* to the 8(a) program on behalf of a specific 8(a) participant and does not receive a reply to its offering letter within two working days, the *contracting office may* assume the *offer* is accepted and proceed with award of an 8(a) contract.

(b) As part of the acceptance process, SBA will review the appropriateness of the NAICS code

designation assigned to the requirement by the *contracting officer*.

(1) SBA will not challenge the NAICS code assigned to the requirement by the *contracting officer* if it is reasonable, even though other NAICS codes *may* also be reasonable.

(2) If SBA and the *contracting officer* are unable to agree on a NAICS code designation for the requirement, SBA *may* refuse to accept the requirement for the 8(a) program, appeal the *contracting officer*'s determination to the *head of the agency* pursuant to 19.810, or appeal the NAICS code designation to the SBA Office of Hearings and Appeals under subpart C of 13 CFR part 134.

(c) *Sole source 8(a) awards*. If an appropriate match exists, SBA will advise the *contracting officer* whether it will participate in contract negotiations or whether SBA will authorize the *contracting officer* to negotiate directly with the identified 8(a) participant. Where SBA has delegated its contract execution functions to a *contracting* agency, SBA will also identify that delegation in its acceptance letter. For a joint venture, SBA will determine eligibility as part of its acceptance of a sole-source requirement and will approve the joint venture agreement prior to award in accordance with 13 CFR 124.513(e).

(1) Sole source award where the *contracting officer* nominates a specific 8(a) participant. SBA will determine whether an appropriate match exists where the *contracting officer* identifies a particular participant for a sole source award.

(i) Once SBA determines that a *procurement* is suitable to be accepted as an 8(a) sole source contract, SBA will normally accept it on behalf of the 8(a) participant recommended by the *contracting officer*, provided that the 8(a) participant complies with the requirements of 13 CFR 124.503(c)(1).

(ii) If an appropriate match does not exist, SBA will notify the 8(a) participant and the *contracting officer*, and *may* then nominate an *alternate* 8(a) participant.

(2) Sole source award where the *contracting officer* does not nominate a specific 8(a) participant. When a *contracting officer* does not nominate an 8(a) participant for performance of a sole source 8(a) contract, SBA will select an 8(a) participant for possible award from among two or more eligible and qualified 8(a) participants. The selection will be based upon relevant factors, including business development needs, compliance with competitive business mix requirements (if applicable), financial condition, management ability, technical capability, and whether award will promote the equitable distribution of 8(a) contracts. (For *construction* requirements see 13 CFR 124.503(d)(1)).

19.804-4 Repetitive acquisitions.

In order for repetitive *acquisitions* to be awarded through the 8(a) program, there *must* be separate *offers* and acceptances. This allows the SBA to determine-

(a) Whether the requirement *should* be a competitive 8(a) award;

(b) A nominated 8(a) participant's eligibility, and whether or not it is the same 8(a) participant that performed the previous contract;

(c) The effect that contract award would have on the equitable distribution of 8(a) contracts; and

(d) Whether the requirement *should* continue under the 8(a) program.

19.804-5 Basic ordering agreements and blanket purchase agreements.

(a) The *contracting office shall* submit an offering letter for, and SBA *must* accept, each order under a basic ordering agreement (BOA) or a blanket purchase agreement (BPA) issued under part 13 (see 13.303), in addition to the agency offering and SBA accepting the BOA or BPA itself.

(b) SBA will not accept for award on a sole-source basis any order that would cause the total dollar amount of orders issued under a specific BOA or BPA to exceed the competitive threshold amount in 19.805-1.

(c) Once an 8(a) participant's program term expires, the participant otherwise exits the 8(a) program, or becomes other than small for the NAICS code assigned under the BOA or the BPA, SBA will not accept new orders under the BOA or BPA for the participant.

19.804-6 Indefinite delivery contracts.

(a) Separate *offers* and acceptances are not required for individual orders under *multiple-award contracts* (including the Federal Supply Schedules managed by GSA, multi-agency contracts or Governmentwide *acquisition* contracts, or indefinite-delivery, indefinite-quantity (IDIQ) contracts) that have been set aside for exclusive competition among 8(a) contractors, and the individual order is to be competed among all 8(a) contract holders. SBA's acceptance of the original contract is valid for the term of the contract. *Offers* and acceptances are required for individual orders under *multiple-award contracts* that have not been set aside for exclusive competition among 8(a) contractors.

(b) The *contracting officer may* issue an order on a sole source basis when—

(1) The *multiple-award contract* was set aside for exclusive competition among 8(a) participants;

(2) The order has an estimated value less than or equal to the dollar thresholds set forth at 19.805-1(a)(2); and

(3) The offering and acceptance procedures at 19.804-2 and 19.804-3 are followed.

(c) The *contracting officer may* issue an order directly to one 8(a) contractor in accordance with 19.504(c)(1)(ii) when—

(1) The *multiple-award contract* was reserved for 8(a) participants;

(2) The order has an estimated value less than or equal to $8.5 million for *acquisitions* assigned manufacturing NAICS codes and $5.5 million for all other *acquisitions*; and

(3) The offering and acceptance procedures at 19.804-2 and 19.804-3 are followed.

(d) An 8(a) contractor *may* continue to accept new orders under the contract, even if it exits the 8(a) program, or becomes other than small for the NAICS code(s) assigned to the contract.

(e) Agencies *may* continue to take credit toward their prime *contracting* small disadvantaged business or small business goals for orders awarded to 8(a) contractors, even after the contractor's 8(a) program term expires, the contractor otherwise exits the 8(a) program, or the contractor becomes other than small for the NAICS code(s) assigned under the 8(a) contract. However, if an

8(a) contractor rerepresents that it is other than small for the NAICS code(s) assigned under the contract in accordance with 19.301-2 or, where ownership or control of the 8(a) contractor has changed and SBA has granted a waiver to allow the contractor to continue performance (see 13 CFR 124.515), the agency *may* not credit any subsequent orders awarded to the contractor towards its small disadvantaged business or small business goals.

19.805 Competitive 8(a).

19.805-1 General.

(a) Except as provided in paragraph (b) of this section, an *acquisition* offered to the SBA under the 8(a) program *shall* be awarded on the basis of competition limited to eligible 8(a) participants when-

(1) There is a reasonable expectation that at least two eligible and responsible 8(a) participants will submit *offers* and that award can be made at a *fair market price*; and

(2) The anticipated total value of the contract, including *options*, will exceed $8.5 million for *acquisitions* assigned manufacturing North American *Industry* Classification System (NAICS) codes and $5.5 million for all other *acquisitions*.

(b) Where an *acquisition* exceeds the competitive threshold (see paragraph (a)(2) of this section), the SBA *may* accept the requirement for a sole source 8(a) award if-

(1) There is not a reasonable expectation that at least two eligible and responsible 8(a) participants will submit *offers* at a *fair market price*; or

(2) SBA accepts the requirement on behalf of a *concern* owned by an Indian tribe or an Alaska Native Corporation.

(c) A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount *shall* not be divided into several requirements for lesser amounts in order to use 8(a) sole source procedures for award to a single firm.

(d) The SBA Associate Administrator for Business Development *may* approve a *contracting office*'s request for a competitive 8(a) award below the competitive thresholds. Such requests will be approved only on a limited basis and will be primarily granted where technical competitions are appropriate or where a large number of responsible 8(a) participants are available for competition. In determining whether a request to compete below the threshold will be approved, the SBA Associate Administrator for Business Development will, in part, consider the extent to which the *contracting activity* is supporting the 8(a) program on a noncompetitive basis. The agency *may* include recommendations for competition below the threshold in the offering letter or by separate correspondence to the SBA Associate Administrator for Business Development.

19.805-2 Procedures.

(a) *Offers shall* be solicited from those sources identified in accordance with 19.804-3.

(b) The SBA will determine the eligibility of the apparent successful *offeror*. Eligibility is based on

section 8(a) program criteria (see 13 CFR 124.501(g) and 19.816(c)).

(1) In either negotiated or sealed bid competitive 8(a) *acquisitions* SBA will determine the eligibility of the apparent successful *offeror* and advise the *contracting office* within 5 working days after receipt of the *contracting office*'s request for an eligibility determination.

(i) If SBA determines that the apparent successful *offeror* is *ineligible*, the *contracting office* will then send to SBA the identity of the next highest evaluated *offeror* for an eligibility determination. The process is repeated until SBA determines that an identified *offeror* is eligible for award.

(ii) If the *contracting officer* believes that the apparent successful *offeror* (or the *offeror* SBA has determined eligible for award) is not responsible to perform the contract, the *contracting officer must* refer the matter to SBA for Certificate of Competency consideration under subpart 19.6.

(2) For a two-step design-build *procurement*, an 8(a) participant *must* be eligible for award under the 8(a) program on the initial date for receipt of phase one *offers* specified in the *solicitation* (see 13 CFR 124.507(d)(3).

(3) In any case in which an 8(a) participant is determined to be *ineligible*, SBA will notify the 8(a) participant of that determination.

(c) Any party with information questioning the eligibility of an 8(a) participant to continue participation in the 8(a) program or for the purposes of a specific 8(a) award *may* submit such information to the SBA in accordance with 13 CFR 124.112(c).

(d)

(1) SBA does not certify joint ventures, as entities, into the 8(a) program.

(2) A *contracting officer may* consider a joint venture for contract award. SBA does not approve joint ventures for competitive awards (but see 13 CFR 124.501(g) for SBA's determination of participant eligibility).

19.806 Pricing the 8(a) contract.

(a) The *contracting officer shall* price the 8(a) contract in accordance with subpart 15.4. If required by subpart 15.4, the SBA *shall* obtain *certified cost or pricing data* from the 8(a) contractor. If the SBA requests audit assistance to determine the proposed price to be fair and reasonable in a *sole source acquisition*, the *contracting activity shall* furnish it to the extent it is available.

(b) An 8(a) contract, sole source or competitive, *may* not be awarded if the price of the contract results in a cost to the *contracting* agency which exceeds a *fair market price*.

(c) If requested by the SBA, the *contracting officer shall* make available the data used to estimate the *fair market price* within 10 working days.

(d) The negotiated contract price and the estimated *fair market price* are subject to the concurrence of the SBA. In the event of a disagreement between the *contracting officer* and the SBA, the SBA *may* appeal in accordance with 19.810.

19.807 Estimating fair market price.

(a) The *contracting officer shall* estimate the *fair market price* of the work to be performed by the 8(a) contractor.

(b) In estimating the *fair market price* for an *acquisition* other than those covered in paragraph (c) of this section, the *contracting officer shall* use cost or price analysis and consider commercial prices for similar *products* and services, available in-house cost estimates, data (including *certified cost or pricing data*) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency.

(c) In estimating a *fair market price* for a repeat purchase, the *contracting officer shall* consider recent award prices for the same items or work if there is comparability in quantities, conditions, terms, and performance times. The estimated price *should* be adjusted to reflect differences in specifications, plans, transportation costs, packaging and packing costs, and other circumstances. Price indices *may* be used as guides to determine the changes in labor and material costs. Comparison of commercial prices for similar items *may* also be used.

19.808 Contract negotiation.

19.808-1 Sole source.

(a) The SBA *may* not accept for negotiation a sole-source 8(a) contract that exceeds $30 million unless the *requesting agency* has completed a justification in accordance with the requirements of 6.303.

(b) The SBA is responsible for initiating negotiations with the agency within the time established by the agency. If the SBA does not initiate negotiations within the agreed time and the agency cannot allow additional time, the agency *may*, after notifying the SBA, proceed with the *acquisition* from other sources.

(c) The SBA *should* participate, whenever practicable, in negotiating the *contracting* terms. When mutually agreeable, the SBA *may* authorize the *contracting officer* to negotiate directly with the 8(a) participant. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award.

(d) An 8(a) participant *must* represent that it is a small business in accordance with the size standard corresponding to the NAICS code assigned to the contract.

(e) A *concern must* be a current participant in the 8(a) program at the time of an 8(a) sole-source award.

(f) An 8(a) participant owned by an Alaska Native Corporation, Indian Tribe, Native Hawaiian Organization, or Community Development Corporation *may* not receive an 8(a) sole-source award that is a follow-on contract to an 8(a) contract, if the predecessor contract was performed by another 8(a) participant (or former 8(a) participant) owned by the same Alaska Native Corporation, Indian Tribe, Native Hawaiian Organization, or Community Development Corporation (See 13 CFR 124.109 through 124.111).

19.808-2 Competitive.

In competitive 8(a) *acquisitions*, including follow-on 8(a) *acquisitions*, subject to part 15, the *contracting officer* conducts negotiations directly with the competing 8(a) participants. Conducting competitive negotiations among eligible 8(a) participants prior to SBA's formal acceptance of the *acquisition* for the 8(a) program *may* be grounds for the SBA's not accepting the *acquisition* for the 8(a) program.

19.809 Preaward considerations.

19.809-1 Preaward survey.

The *contracting officer should* request a *preaward survey* of the 8(a) participant whenever considered useful. If the results of the *preaward survey* or other information available to the *contracting officer* raise substantial doubt as to the participant's ability to perform, the *contracting officer shall* refer the matter to SBA for Certificate of Competency consideration under subpart 19.6.

19.809-2 Limitations on subcontracting and nonmanufacturer rule.

(a) *Limitations on subcontracting.* To be awarded a contract or order under the 8(a) program, the 8(a) participant is required to perform—

(1) For services (except *construction*), at least 50 percent of the cost incurred for personnel with its own employees;

(2) For *supplies* or *products* (other than a *procurement* from a nonmanufacturer of such *supplies* or *products*), at least 50 percent of the cost of manufacturing the *supplies* or *products* (not including the cost of materials);

(3) For general *construction*, at least 15 percent of the cost with its own employees (not including the cost of materials); and

(4) For *construction* by special trade contractors, at least 25 percent of the cost with its own employees (not including the cost of materials).

(b) *Compliance period.* An 8(a) contractor is required to comply with the limitations on subcontracting—

(1) For a contract under the 8(a) program, either by the end of the base term and then by the end of each subsequent *option* period or by the end of the performance period for each order issued under the contract, at the *contracting officer*'s discretion; and

(2) For an order competed exclusively among contractors who are 8(a) participants or for an order issued directly to one 8(a) contractor in accordance with 19.504(c)(1)(ii), by the end of the performance period for the order.

(c) *Waiver.* The applicable SBA District Director *may* waive the provisions in paragraph (b)(1)

requiring a participant to comply with the limitations on subcontracting for each period of performance or for each order. Instead, the SBA District Director *may* permit the participant to subcontract in excess of the limitations on subcontracting where the SBA District Director makes a written determination that larger amounts of subcontracting are essential during certain stages of performance.

(1) The 8(a) participant is required to provide the SBA District Director written assurance that the participant will ultimately comply with the requirements of this section prior to contract completion. The *contracting officer shall* review the written assurance and inform the 8(a) participant of their concurrence or nonconcurrence. The 8(a) participant can only submit the written assurance to the SBA District Director upon concurrence by the *contracting officer*.

(2) The *contracting officer* does not have the authority to waive the provisions of this section requiring an 8(a) participant to comply with the limitations on subcontracting for each period of performance or order, even if the agency has a Partnership Agreement with SBA.

(3) Where the 8(a) participant does not ultimately comply with the limitations on subcontracting by the end of the contract, SBA will not grant future waivers for the 8(a) participant.

(d) *Nonmanufacturer rule.* See 19.505(c) for application of the nonmanufacturer rule, inclusive of waivers and exceptions to the nonmanufacturer rule.

19.810 SBA appeals.

(a) The SBA Administrator *may* submit the following matters for determination to the *agency head* if the SBA and the *contracting officer* fail to agree on them:

(1) The decision not to make a particular *acquisition* available for award under the 8(a) Program.

(2) A *contracting officer*'s decision to reject a specific 8(a) participant for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) program.

(3) The terms and conditions of a proposed 8(a) contract, including the *contracting officer*'s NAICS code designation and estimate of the *fair market price*.

(4) A *contracting officer*'s decision that an *acquisition* previously procured under the 8(a) program is a new requirement not subject to the release requirements at 13 CFR 124.504(d)(1) (see 19.815(a) and (d)(1)).

(b)

(1) Notification by SBA of an intent to appeal to the *agency head*-

(i) *Must* be received by the *contracting officer* within 5 working days after SBA is formally notified of the *contracting officer*'s decision; and

(ii) *Must* be provided to the *contracting* agency Director for the Office of Smalland Disadvantaged Business Utilization or, for the Department of Defense, the Director of the Office of Small Business Programs.

(2) SBA *must* send the written appeal to the *agency head* within 15 working days of SBA's notification of intent to appeal or the appeal *may* be considered withdrawn. Pending issuance of a decision by the *agency head*, the *contracting officer shall* suspend action on the *acquisition*. The *contracting officer* need not suspend action on the *acquisition* if the *contracting officer* makes a written determination that urgent and compelling circumstances that significantly affect the interests of the *United States* will not permit waiting for a decision.

(c) If the SBA appeal is denied, the decision of the *agency head shall* specify the reasons for the denial, including the reasons why the selected participant was determined incapable of performance, if appropriate. The decision *shall* be made a part of the contract file.

19.811 Preparing the contracts.

19.811-1 Sole source.

(a) The contract to be awarded by the agency to the SBA *shall* be prepared in accordance with agency procedures and in the same detail as would be required in a contract with a business *concern*. The *contracting officer shall* use the Standard Form 26 as the award form, except for *construction* contracts, in which case the Standard Form 1442 *shall* be used as required in 36.701(a).

(b) The *contracting officer shall* prepare the contract that the SBA will award to the 8(a) participant in accordance with agency procedures, as if awarding the contract directly to the 8(a) participant, except for the following:

(1) The award form *shall* cite 41 U.S.C. 3304(a)(5) or 10 U.S.C. 3204(a)(5) (as appropriate) as the authority for use of other than *full and open competition*.

(2) Appropriate clauses *shall* be included, as necessary, to reflect that the contract is between the SBA and the 8(a) contractor.

(3) The following items *shall* be inserted by the SBA:

(i) The SBA contract number.

(ii) The effective date.

(iii) The typed name of the SBA's *contracting officer*.

(iv) The *signature* of the SBA's *contracting officer*.

(v) The date signed.

(4) The SBA will obtain the *signature* of the 8(a) contractor prior to signing and returning the prime contract to the *contracting officer* for *signature*. The SBA will make every effort to obtain *signatures* and return the contract, and any subsequent bilateral modification, to the *contracting officer* within a maximum of 10 working days.

(c) Except in *procurements* where the SBA will make advance payments to its 8(a) contractor, the agency *contracting officer may*, as an alternative to the procedures in paragraphs (a) and (b) of this

subsection, use a single contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. The single contract document *shall* contain the information in paragraphs (b) (1), (2), and (3) of this subsection. Appropriate blocks on the Standard Form (SF) 26 or 1442 will be asterisked and a continuation sheet appended as a tripartite agreement which includes the following:

(1) Agency *acquisition* office, prime contract number, name of agency *contracting officer* and lines for *signature*, date signed, and effective date.

(2) The SBA office, the SBA contract number, name of the SBA *contracting officer*, and lines for *signature* and date signed.

(3) Name and lines for the 8(a) subcontractor's *signature* and date signed.

(d) For *acquisitions* not exceeding the *simplified acquisition threshold*, the *contracting officer may* use the alternative procedures in paragraph (c) of this subsection with the appropriate simplified *acquisition* forms.

19.811-2 Competitive.

(a) The contract will be prepared in accordance with 14.408-1(d), except that appropriate blocks on the Standard Form 26 or 1442 will be asterisked and a continuation sheet appended as a tripartite agreement which includes the following:

(1) The agency *contracting activity*, prime contract number, name of agency *contracting officer*, and lines for *signature*, date signed, and effective date.

(2) The SBA office, the SBA subcontract number, name of the SBA *contracting officer* and lines for *signature* and date signed.

(b) The process for obtaining *signatures shall* be as specified in 19.811-1(b)(4).

19.811-3 Contract clauses.

(a) The *contracting officer shall* insert the clause at 52.219-11, Special 8(a) Contract Conditions, in contracts between the SBA and the agency when the *acquisition* is accomplished using the procedures of 19.811-1(a) and (b).

(b) The *contracting officer shall* insert the clause at 52.219-12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor when the *acquisition* is accomplished using the procedures of 19.811-1(a) and (b).

(c) The *contracting officer shall* insert the clause at 52.219-17, Section 8(a) Award, in competitive *solicitations* and contracts when the *acquisition* is accomplished using the procedures of 19.805 and in sole source awards which utilize the alternative procedure in 19.811-1(c).

(d) The *contracting officer shall* insert the clause at 52.219-18, Notification of Competition Limited to Eligible 8(a) Participants, in competitive *solicitations* and contracts when the *acquisition* is accomplished using the procedures of 19.805. Use the clause at 52.219-18 with its *Alternate* I when competition is to be limited to 8(a) participants within one or more specific SBA districts pursuant to

19.804-2.

(e) For contracts or orders resulting from this subpart, see 19.507(e) for use of 52.219-14, Limitations on Subcontracting, and 19.507(h) for use of 52.219-33, Nonmanufacturer Rule.

19.812 Contract administration.

(a) The *contracting officer shall* assign contract administration functions, as required, based on the location of the 8(a) contractor (see Federal Directory of Contract Administration Services *Components* (available via the Internet at https://piee.eb.mil/pcm/xhtml/unauth/index.xhtml)).

(b) The agency *shall* distribute copies of the contract(s) in accordance with part 4. All contracts and modifications, if any, *shall* be distributed to both the SBA and the 8(a) contractor in accordance with the timeframes set forth in 4.201.

(c) To the extent consistent with the *contracting activity*'s capability and resources, 8(a) contractors furnishing requirements *shall* be afforded production and technical assistance, including, when appropriate, identification of causes of deficiencies in their *products* and suggested corrective action to make such *products* acceptable.

(d) For 8(a) contracts exceeding 5 years including *options*, the *contracting officer shall* verify in DSBS or SAM that the *concern* is an SBA-certified 8(a) participant no more than 120 days prior to the end of the fifth year of the contract. If the *concern* is not an SBA-certified 8(a) participant, the *contracting officer shall* not exercise the *option* (see 13 CFR 124.521(e)(2)).

(e) An 8(a) contract, whether in the base or an *option* year, *must* be terminated for convenience if the 8(a) contractor to which it was awarded transfers ownership or control of the firm or if the contract is transferred or novated for any reason to another firm, unless the Administrator of the SBA waives the requirement for contract termination (13 CFR 124.515). The Administrator *may* waive the termination requirement only if certain conditions exist. Moreover, a waiver of the requirement for termination is permitted only if the 8(a) contractor's request for waiver is made to the SBA prior to the actual relinquishment of ownership or control, except in the case of death or incapacity where the waiver *must* be submitted within 60 calendar days after such an occurrence. The clauses in the contract entitled "Special 8(a) Contract Conditions" and "Special 8(a) Subcontract Conditions" require the SBA and the 8(a) subcontractor to notify the *contracting officer* when ownership of the firm is being transferred. When the *contracting officer* receives information that an 8(a) contractor is planning to transfer ownership or control to another firm, the *contracting officer shall* take action immediately to preserve the *option* of waiving the termination requirement. The *contracting officer shall* determine the timing of the proposed transfer and its effect on contract performance and mission support. If the *contracting officer* determines that the SBA does not intend to waive the termination requirement, and termination of the contract would severely impair attainment of the agency's program objectives or mission, the *contracting officer shall* immediately notify the SBA *in writing* that the agency is requesting a waiver. Within 15 business days thereafter, or such longer period as agreed to by the agency and the SBA, the *agency head must* either confirm or withdraw the request for waiver. Unless a waiver is approved by the SBA, the *contracting officer must* terminate the contract for convenience upon receipt of a written request by the SBA. This requirement for a convenience termination does not affect the Government's right to terminate for default if the cause for termination of an 8(a) contract is other than the transfer of ownership or control.

19.813 Protesting an 8(a) participant's eligibility or size status.

(a) The eligibility of an 8(a) participant for a sole source or competitive 8(a) requirement *may* not be challenged by another 8(a) participant or any other party, either to SBA or any administrative forum as part of a bid or other contract protest (see 13 CFR 124.517).

(b) The size status of an 8(a) participant nominated for an 8(a) sole source contract *may* not be protested by another 8(a) participant or any other party.

(c) The size status of the apparent successful *offeror* for competitive 8(a) awards *may* be protested. The filing of a size status protest is limited to-

(1) Any *offeror* whom the *contracting officer* has not eliminated for reasons unrelated to size;

(2) The *contracting officer*; or

(3) The SBA District Director in either the district office serving the geographical area in which the *contracting activity* is located or the district office that services the apparent successful *offeror*, or the Associate Administrator for Business Development.

(d) Protests of competitive 8(a) awards *shall* follow the procedures at 19.302. For additional information, refer to 13 CFR 121.1001.

19.814 Requesting a formal size determination (8(a) sole source requirements).

(a) If the size status of an 8(a) participant nominated for award of an 8(a) sole source contract is called into question, a request for a formal size determination *may* be submitted to SBA pursuant to 13 CFR 121.1001(b)(2)(ii) by-

(1) The 8(a) participant nominated for award of the particular sole source contract;

(2) The *contracting officer* who has been delegated SBA's 8(a) contract execution functions, where applicable, or the SBA program official with authority to execute the 8(a) contract;

(3) The SBA District Director in the district office that services the 8(a) participant or the Associate Administrator for Business Development; or

(4) The SBA Inspector General.

(b) SBA's Government *Contracting* Area Director will issue a formal size determination within 15 business days, if possible, after SBA receives the request for a formal size determination.

(c) An appeal of an SBA size determination *shall* follow the procedures at 19.302.

19.815 Release and notification requirements for non-8(a) procurement.

(a) Once a requirement has been accepted by SBA into the 8(a) program, any follow-on requirements (see definition at 13 CFR 124.3) *shall* remain in the 8(a) program unless—

(1) SBA agrees to release the requirement from the 8(a) program for a follow-on, non-8(a) *procurement* in accordance with 13 CFR 124.504(d) (see paragraph (b) of this section); or

(2) There is a mandatory source (see 8.002 or 8.003; also see paragraph (f) of this section).

(b) To obtain release of a requirement for a follow-on, non-8(a) *procurement*, (other than a mandatory source listed at 8.002 or 8.003), the *contracting officer shall* make a written request to, and receive concurrence from, the SBA Associate Administrator for Business Development.

(c)

(1) The written request to the SBA Associate Administrator for Business Development *shall* indicate

(i) Whether the agency has achieved its small disadvantaged business goal;

(ii) Whether the agency has achieved its *HUBZone*, SDVOSB, WOSB, or small business goal(s); and

(iii) Whether the requirement is critical to the business development of the 8(a) contractor that is currently performing the requirement.

(2) Generally, a requirement that was previously accepted into the 8(a) program will only be released for *procurements* outside the 8(a) program when the *contracting activity* agency agrees to set aside the requirement under the small business, *HUBZone*, SDVOSB, or WOSB programs.

(3) The requirement that a follow-on *procurement must* be released from the 8(a) program in order for it to be fulfilled outside the 8(a) program does not apply to task or *delivery orders* offered to and accepted into the 8(a) program, where the basic contract was not accepted into the 8(a) program.

(d)

(1) When a *contracting officer* decides that a requirement previously procured under the 8(a) program is a new requirement and not a follow-on requirement to an 8(a) contract(s), the *contracting officer shall* coordinate with and submit a written notice to the SBA District Office servicing the 8(a) incumbent firm and to the SBA *procurement* center representative (or, if a *procurement* center representative is not assigned, see 19.402(a)) indicating that the agency intends to procure the requirement outside the 8(a) program (see 19.810(a)(4)).

(2) The written notice *shall* include a copy of the *acquisition* plan, if available; the *performance work statement (PWS*), statement of work (SOW), or *statement of objectives (SOO*) for the new contract requirement; and the values of the existing 8(a) contract(s) and the new contract requirement.

(e)

(1) When a *contracting officer* decides to procure a follow-on requirement to an 8(a) contract using an existing, limited competition *contracting* vehicle that is not available to all 8(a) participants, and the current or previous 8(a) contract was available to all 8(a) participants, the *contracting officer shall* coordinate with and submit a written notice to the SBA District Office servicing the 8(a) incumbent firm and to the SBA *procurement* center representative (or, if a *procurement* center representative is not assigned, see 19.402(a)) indicating the intent to do so.

(2) The written notice *shall* include a copy of the *acquisition* plan, if available; the PWS, SOW, or SOO for the new contract requirement; and the values of both contracts.

(f)

(1) When a mandatory source will be used for a follow-on requirement to an 8(a) contract, the *contracting officer should* submit a written notice to the SBA Associate Administrator for Business Development of the intent to do so at least 30 days prior to the end of the contract or order in accordance with 13 CFR 124.504(d)(4)(ii).

(2) The written notice *should* include a written determination that a mandatory source will be used to fulfill the requirement.

19.816 Exiting the 8(a) program.

(a) Except as provided in paragraph (c) of this section, when a contractor exits the 8(a) program, it is no longer eligible to receive new 8(a) contracts. However, the contractor remains under contractual obligation to complete existing contracts, and any priced *options* that *may* be exercised.

(b) If an 8(a) contractor is suspended from the program (see 13 CFR 124.305), it *may* not receive any new 8(a) contracts unless the head of the *contracting* agency makes a determination that it is in the best interest of the Government to issue the award and SBA adopts that determination.

(c) A contractor that has completed its term of participation in the 8(a) program *may* be awarded a competitive 8(a) contract if it was an 8(a) participant eligible for award of the contract on the initial date specified for receipt of *offers* contained in the *solicitation*, and if the contractor continues to meet all other applicable eligibility criteria (see 13 CFR 124.507(d)).

(d) SBA's regulations on exiting the 8(a) program are found at 13 CFR 124.301 through 124.305, and 13 CFR 124.507(d).