



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Procurement
Instruction
Memorandum
No. 98-06
June 24, 1998

MEMORANDUM FOR BUREAU CHIEF PROCUREMENT OFFICERS

THROUGH:

T. J. Garcia, Director
Office of Small Business Programs

FROM:

Annelie M. Kuhn, Acting Director
Office of Procurement

SUBJECT:

SBA/Treasury Memorandum of Understanding;
DTAR Change 98-01

The purpose of this DTAR Change is to provide guidance regarding the Memorandum of Understanding (MOU) that ~~has~~ been established between the Small Business Administration (SBA) and the Department of the Treasury. This MOU will facilitate the streamlining procedures for expediting the award of requirements pursuant to Section 8(a) of the Small Business Act (15 U.S.C. 637(a), as amended).

Attached for your implementation is a copy of the MOU, with Amendment # 1, the DTAR coverage and the Class Deviation. This provides for the award of both contracts and purchase orders under the provisions of Section 8(a) of the Small Business Act as implemented by the Federal Acquisition Regulation (48 C.F.R.) (FAR) and SBA's Minority Enterprise Development Program Regulations (13 C.F.R. 124).

In accordance with the attached MOU, the SBA contract signature authority for 8(a) procurement actions is delegated to the Assistant Secretary for Management and Chief Financial Officer, who redelegated this authority to the Acting Senior Procurement Executive (SPE). The SPE hereby delegates the SBA contract signature authority to the bureau chief procurement officers, who shall re-delegate this authority to their warranted contracting officers.

There will be no need for further SBA approvals after the offer and acceptance of an 8(a) requirement. Furthermore, the MOU shall apply to all SBA field offices throughout the United States, and to all Department of the Treasury procurement offices. Please note the necessity for quarterly reports, which are required in accordance with Section IV.b.9.

Replacement pages are noted in the attachment.

Questions or requests for training may be directed to Dan Sturdivant on (202) 622-0375.

Attachments

cc: Nancy Killefer
Ted Carter

**FAR CLASS DEVIATION TO FAR SUBPART 19.8
SECTION 8(a) DIRECT AWARDS**

In accordance with FAR 1.404 and DTAR 1001.404, I hereby authorize a class deviation from the SBA third party signature requirements of FAR Subpart 19.8. This deviation will allow the Department to implement its Memorandum of Understanding with the SBA which delegates authority to make direct awards to contractors under the 8(a) Program. This deviation will remain in effect until the FAR is amended accordingly.

This deviation has been coordinated with the Chairman of the Civilian Agency Acquisition Council in accordance with FAR 1.404(a)(1).

Annelie M. Kuhn
Annelie M. Kuhn
Acting Senior Procurement Executive

6/23/98
Date

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. SMALL BUSINESS ADMINISTRATION
AND
THE DEPARTMENT OF THE TREASURY**

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) between the **U.S.** Small Business Administration (**SBA**) and the Department of the Treasury **is** to establish streamlining procedures for expediting the award of requirements pursuant to Section 8(a) of the Small Business Act (15 **U.S.C.637(a)**, as amended) (**hereinafter** the "Act").

II. OBJECTIVES

- a. To reduce the interval between the time the Department of the Treasury sends an **offering** letter to SBA and **SBA** acceptance of the offering to a maximum of five workdays.
- b. To eliminate SBA approval of **contracts** executed under the authority of this MOU.
- c. To establish a uniform policy **and** procedure **regarding** application of Simplified Acquisition Procedures (SAP) to the 8(a) contracting process, when applicable.

III. SCOPE

This MOU provides for the award of both contracts and purchase orders under the provisions of **Section 8(a)** of the Small Business Act as implemented by the Federal Acquisition Regulation (48 **C.F.R. (FAR)**) and SBA's Minority Enterprise Development Program regulations (13 **C.F.R.124**).

This MOU encompasses all **new** competitive and non-competitive acquisitions of requirements offered by the Department of the Treasury **and** accepted by the **SBA** into the 8(a) program, including but not limited to: Acquisition of Commercial Items (**FAR Part 12**), awards under the Simplified Acquisition Procedures (**FAR Part 13**), awards resulting from Sealed Bids (**FAR Part 14**), Contracting by Negotiation (**FAR Part 15**), and Construction **and** Architect and Engineering services (**FAR Part 36**).

The **SBA 8(a)** contract signature authority shall be delegated to the Assistant Secretary for Management and Chief Financial Officer who **will** re-delegate to the Treasury Procurement Executive. **This MOW shall apply** to all SBA field offices throughout the United States, **and** to all the Department of the Treasury procurement offices, including the following currently identified procurement offices:

Bureau of Alcohol, Tobacco & Firearms
Room 3290
650 Massachusetts Avenue, NW
Washington, DC 20226

Office of the Comptroller of the Currency
Acquisition Services, 4-13
250 **E Street, SW**
Washington, **DC 20219**

U.S. Customs Service
National Office
Procurement Division
Suite 402.E
1300 Pennsylvania Avenue, NW
Washington, **DC 20229**

U.S. Customs Service
Regional Office
P.O.Box 65905
6026 Lakeside Blvd.
Indianapolis, IN 46278

Departmental Offices
1500 Pennsylvania Avenue, NW
c/o 1310 G. Street NW, Suite 400
Washington, DC 20220

Bureau of Engraving & Printing
Room 708A-06
14th & C Streets, SW
Washington, DC 20228

Federal Law Enforcement Training Center
Building #28
Brunswick, **GA** 31524

Financial Management Service
Room 456B
401-14th Street, **SW**
Washington, **DC 20227**

Internal Revenue Service
National Office
Constellation Centre, Room 700
6009 Oxon Hill Road
Oxon **Hill, MD** 20745

Internal Revenue Service
Northeast Region
110 West **44th** Street, 11th Floor
New York, NY 10036

Internal Revenue Service
Southeast Region
2900 **Woodcock** Blvd., Suite 210
Stop 80-N
Chamblee, **GA 30341**

Internal Revenue Service
Midstates Region
4050 **Alpha** Road
1800 MSRO, 9th Floor
Dallas, TX 75244-4203

Internal Revenue Service
Western Region
1650 Mission Street
Room 312
San Francisco, CA 94103

Internal Revenue Service
Martinsburg Computing Center
P.O.Box 1208
Martinsburg, WV 25402

Internal Revenue Service
Detroit **Computing Center**
985 Michigan Avenue, 9th Floor
Detroit, MI 48226

Office of Thrift Supervision
3rd Floor
1700 G Street, NW
Washington, DC 20552

Bureau of the Public Debt
P.O.Box 1328
Parkersburg, WV 26106-1328

U.S. **Secret Service**
Room 730
1310 L Street, NW
Washington, DC 20223

IV. RESPONSIBILITIES

a. The SBA shall:

1. delegate to a specific position in the Department of the Treasury identified under Item III. **SCOPE** above, who shall redelegate to warranted contracting officers, as appropriate, its authority **under** Secdon 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 subcontract the performance of that contract to **an** eligible 8(a) **Program** Participant (participant);
2. establish and implement **uniform** procedures for use by all **SBA** field offices in conjunction with these streamlined procedures. **As** a minimum, these procedures shall **inform** the field offices of **this MOU and** establish **a** procedure for communicating the offer/acceptance of 8(a) requirements **within 5 working days** between the time the SBA receives an **offer** letter from one of the designated Department of the **Treasury** procurement offices until **an** SBA acceptance letter is issued;
3. The **SBA** shall review and respond to the Department of the **Treasury's** offer letter **and** issue an acceptance letter, where appropriate, within 5 working days of receipt. If **an** offer letter **has** not been accepted within the **5** working day timeframe, the Treasury Procurement Office will contact **SBA** to ascertain the status of the acceptance letter. Acceptance goes to all elements of eligibility (e.g., determinations of adverse impact, **Standard Industrial Classification (SIC)** code appropriateness, **and** program eligibility). SBA will make a **final** determination of size eligibility for the procurement as of the date of the concern's **initial** offer which includes price. Upon receipt of the contractor's initial priced proposal, the cognizant SBA Business Opportunity Specialist (**BOS**) shall be contacted by telephone to ensure the **firm** is still eligible. The **SBA BOS**, at that time, shall respond to the agency via **fax** or e-mail within 2 working days as to the continued eligibility of **the 8(a) firm**;
4. provide 8(a) participants with assistance on proposal development **and/or** contract negotiations **when** requested;
5. **retain** the right to appeal disagreements to the Secretary of the **Department** of the Treasury on behalf of the 8(a) participant **pursuant** to 13 **CFR** 124.320 (b);

6. reserve the right to perform contract surveillance reviews at the Department of the Treasury to ensure compliance with **this** MOU and applicable regulations, identify problems, and recommend corrective action; **SBA** shall maintain the same level of confidentiality for **information** made available under this **MOU** as is required of the Department of the **Treasury** under law, including but not limited to the Privacy Act, **5 U.S.C. § 552a**; the Trade Secrets Act, **18 U.S.C. § 1805**; and the Procurement Integrity Act, **41 U.S.C. § 423**; and
 7. reserve the right to withdraw **any** delegation issued **as** a result of this MOU;
 8. select an appropriate 8(a) participant when the Department of the **Treasury** submits an "open" offer letter for a sole source **requirement**; and
- b. The Department of the Treasury shall:
1. determine which requirements are suitable to be offered 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;
 2. submit the offer letter for new sole source requirements to the **SBA's** District Office responsible for servicing the selected 8(a) participant;
 3. where **an** 8(a) participant **has** not been selected for a requirement, submit the "open" offer letter for sole source requirements to the SBA field office that services the geographical area where the Department of the Treasury **buying** activity is located;
 4. **submit** the ~~offer~~ letter for competitive 8(a) procurements to the SBA field office that services **the** geographical area where the Department of the **Treasury** **buying activity** **is** located, except **that** offer **letters for** construction work will be sent to the **SBA** field office located in the geographical area where the work will be performed;
 5. advertise all 8(a) competitive procurements in the Commerce Business Daily and provide a copy of the announcement to the SBA's coordinating office;
 6. ensure **that** all applicable provisions of the FAR and 13 C.F.R. 124 **are** followed;

7. submit requirements for **review by** the cognizant Department of the **Treasury** bureau legal counsel for determination of legal sufficiency, in accordance with the Department of the **Treasury** procedures;
8. include the **SBA servicing District** Office on contract distribution lists, and annotate **SBA** requirement number on initial **award** document (not on subsequent **modification** documents);
9. report to the SBA's **Assistant** Administrator for Business Development, Office of Minority **Business** Enterprise, **on a quarterly basis**, a *summary* of all 8(a) contracting activities. The report will be provided in electronic format **and** shall include the contractor's name; requirement number; contract number; award amount; award date; contract type and term; and, **as** appropriate, **modification** number, **type**, date, modification amount; **and**
10. ensure that all contracts awarded pursuant to this **MOU** contain special provisions requiring contracting officers to coordinate contract termination **and** novation proceedings relating to contracts executed pursuant to **this MOU** with the SBA prior to **initiating** action.

V. EXECUTION

Following **SBA** acceptance of a Department of the Treasury requirement, and subsequent solicitation, the cognizant CO shall execute a **prime** contract (or purchase order) between the Department of the Treasury and the 8(a) participant. Contract execution shall be on (Standard Forms) SF26 (award of supplies/services), SF347 (simplified acquisitions), SF1442 (award of construction), SF1449 (award of commercial items), or other **Treasury** bureau forms, **as** appropriate. A **single** copy of the appropriate form shall be **used**. The "Issued by" block **shall** identify the awarding Department of the Treasury office. The cognizant **SBA District** office for the participant **shall** be identified in the award document. The participant name and address shall be listed **as** the contractor.

Each participating Department of the Treasury acquisition activity shall issue procurement instrument numbers. (**An SBA** subcontract number **will** not be issued.).

A single Department of the **Treasury** CO signature may be used in executing the contract or purchase order (**An SBA** CO signature will not be required). The CO title shall include the appropriate bureau **as** illustrated below:

Contracting Officer for the
Department of the Treasury **Bureau Procurement Office** (i.e., U. S. **Customs** Service)

VI. MEASURE OF EFFECTIVENESS

To determine the effectiveness of these streamlined procedures, the **Department** of the Treasury will accumulate data which may include awarded **amounts under** both contract **and SAP**, Procurement **Administrative** Lead Times (PALT), or numbers of awards. Specific data tracking elements will be defined during the initial period of implementation.

VII. TERM

This MOU **will** take effect on the **date** of acceptance **and** will **remain in** effect for one year, at **which** time, it may be renewed by mutual agreement of the SBA **and** the Department of the Treasury.

VIII. AMENDMENT

This MOU may be amended at **any** time by mutual agreement of the SBA's AA/MED **and** the Department of the Treasury's Senior Procurement Executive. **Any** amendments **must** be in writing.

IX. TERMINATION

This MOU may be terminated by either the SBA's AA/MED or the Department of the Treasury's Senior Procurement Executive upon thirty (30) **days** advance, written notice.

X. ADMINISTRATION

The **following** persons are points of contact for administrative matters **pertaining** to this MOU :

Mr. Tlaloc J. Garcia
Director, Office of Small Business Programs
Department of the Treasury
Attn: 1310 G Street NW, Ste. 400 West-MMD
1500 Pennsylvania Avenue, NW
Washington, DC 20220
202-622-0530

Mr. William A. Fisher
Acting Associate Administrator
Minority Enterprise Development
U.S. Small Business Administration
202-205-6412

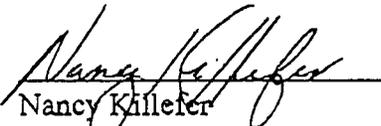
Mr. Arthur E. Collins, Jr.
Assistant Administrator for Business
Development
U.S. Small Business Administration
202-205-6423

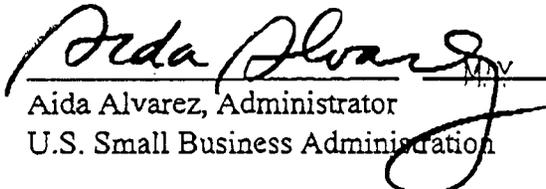
XI, ACCEPTANCE

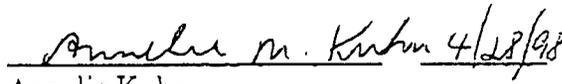
The undersigned **parties** hereby accept the terms of this **MOU** :

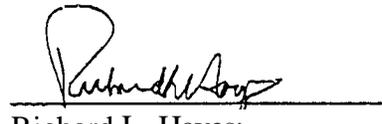
For the Department of the Treasury:

For the Small Business Administration:

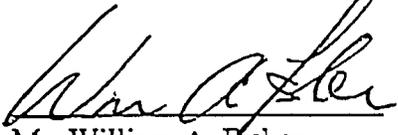
 5/4/98
Nancy Killefer
Assistant Secretary for Management and
Chief Financial Officer

 MAY 6 1998
Aida Alvarez, Administrator
U.S. Small Business Administration

 4/28/98
Annelie Kuhn,
Acting Senior Procurement Executive
Department of the Treasury

 MAY 6 1998
Richard L. Hayes:
Associate Deputy Administrator for Government
Contracting and Minority Enterprise
Development
U.S. Small Business Administration

 4/28/98
Tlaloc J. Garcia
Director, Office of Small Business Programs
Department of the Treasury

 MAY 6 1998
Mr. William A. Fisher
Acting Associate Administrator
Minority Enterprise Development
U.S. Small Business Administration
202-205-6412



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JUN 19 1998

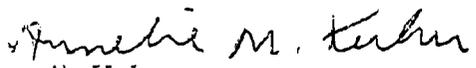
Mr. William Fisher
Acting Associate Administrator
for Minority Enterprise Development
409 Third Street, SW
Washington, DC 20416

Dear Mr. Fisher:

Pursuant to our conversation with Delores Ellis of your staff, the **Treasury** Office of Procurement and Office of **Small** and Disadvantaged Business Utilization recently reviewed DOD's draft guidance regarding direct 8(a) contracting. In accordance with this model coverage for 8(a) simplified acquisition procedures, attached is an amendment to the SBA/Treasury MOU **outlining** these changes. The **original MOU** does not **contain** these accelerated procedures for 8(a) **simplified** acquisitions.

We would appreciate your immediate attention to this proposed amendment. We are anxious to issue implementing instructions to our **bureau procurement** offices.

Sincerely,


Annelie Kuhn,
Acting Senior Procurement Executive
Department of the Treasury

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN
THE U.S SMALL BUSINESS ADMINISTRATION
AND
THE DEPARTMENT OF THE TREASURY

Amendment

This **MOU**, as executed on May 6, 1998 by Administrator Alvarez, is hereby amended as follows:

Add the following:

Simplified procedures for 8(a) acquisitions under \$100,000

Using **FAR Part** 13 procedures, the following applies to such acquisitions:

- a) Neither offering letters to, nor acceptance letters, **from** the SBA are required.
- b) The Treasury procuring activity will use the SBA's PRO-Net database on the Internet (<http://www.sba.gov>) to establish that the selected 8(a) **firm** is a current program participant.
- c) The Treasury contracting officer **will** issue the purchase order directly to the 8(a) firm.
- d) Once **an** 8(a) contractor **has** been identified, the Treasury contracting officer **will** establish the price with the selected 8(a) contractor in accordance **with** the provisions of **Part** 13. The applicable clauses in 19.81 **1-3** shall be included in the award document.
- e) No later than the day that the purchase order is provided to the 8(a) contractor, the Treasury contracting officer shall provide to the cognizant SBA Business Opportunity Specialist, **using** facsimile or electronic **mail**, the following documents:
 - i) a copy of the purchase order; and
 - ii) a notice stating that the purchase order **is** being processed under the **MOU**. **The** notice shall also indicate that the 8(a) contractor will be deemed eligible for award and automatically begin work under the purchase order unless, within **2** working days after SBA's receipt of the purchase order, the 8(a) contractor and the Treasury contracting officer **are** notified that the 8(a) contractor is ineligible for award.

Annelie M. Kuhn 6/19/98
Annelie Kuhn, Date
Acting Senior Procurement Executive
Department of the Treasury

William A. Fisher 6/19/98
William A. Fisher, Date
Acting Associate Administrator
for **Minority** Enterprise Development
U.S. Small Business Administration

Replacement Pages

Remove Pages

19-1 thru 19-2
19-5
52-1 thru 52-2
52-7 thru 52-8
Index-1 and Index-2

Insert Pages

19-1 thru 19-2
19-5 thru 19-8
52-1 thru 52-2
52-7 thru 52-9
Index-1 thru Index-2

Department of the Treasury Acquisition Regulation (DTAR)

PART 1019 - SMALL BUSINESS PROGRAMS

1019.000 scope of part.

Subpart 1019.2 – Policies

- 1019.201 General policy.
- 1019.202 Specific policies.
- 1019.202-1 Encouraging small business participation in acquisitions.
- 1019.202-4 Solicitation.

Subpart 1019.3 – Determination of Status as a Small Business Concern

- 1019.302 Protesting a small business representation.

Subpart 1019.4 – Cooperation with the Small Business Administration

- 1019.401 General.
- 1019.402 Small Business Administration procurement center representatives.

Subpart 1019.5 – Set-Asides for Small Business

- 1019.501 General.
- 1019.503 Setting aside a class of acquisitions.
- 1019.505 Rejecting Small Business Administration recommendations.
- 1019.506 Withdrawing or modifying set-asides.

Subpart 1019.6 – Certificates of Competency

- 1019.602 Procedures.
- 1019.602-1 Referral.
- 1019.602-2 Issuing or denying a certificate of competency (COC).
- 1019.602-3 Resolving differences between the agency and the Small Business Administration.

Subpart 1019.7 – Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

- 1019.705 Responsibilities of the contracting officer under the subcontracting assistance program.
- 1019.705-2 Determining the need for a subcontracting plan.
- 1019.705-3 Preparing the solicitation.
- 1019.705-4 Reviewing the subcontracting plan.

- 1019.705-7 Liquidated damages.
- 1019.708 Solicitation provisions and contract clauses.

Subpart 1019.8 – Contracting with the Small Business Administration (The 8(a) Program)

- 1019.800 General.
- 1019.803 Selecting acquisitions for the 8(a) program.
- 1019.803-71 Simplified Procedures for 8(a) Acquisitions Under MOUs.
- 1019.804 Evaluation, offering and acceptance.
- 1019.804-2 Agency offering.
- 1019.804-3 SBA acceptance.
- 1019.804-370 SBA acceptance under the MOU for acquisitions exceeding \$500,000.
- 1019.805 Competitive 8(a).
- 1019.805-1 General.
- 1019.805-2 Procedures.
- 1019.806 Pricing the 8(a) contract.
- 1019.808 Contract negotiation.
- 1019.808-1 Sole source.
- 1019.811 Preparing the contracts.
- 1019.811-1 Sole source.
- 1019.811-2 Competitive.
- 1019.811-3 Contract clauses.
- 1019.812 Contract administration.
- 1019.812-70 Information.

1019.000 **Scope of part.**

(a) TD P 76-01.B, “Small Business Program Handbook,” (January, 1997), provides detailed information.

Subpart 1019.2 -- Policies

1019.201 **General policy.**

(b) BCPO’s will implement small business programs in accordance with applicable statutes, regulations, and policies (e.g., TD P 76-01.B).

(c) The AS(M) is the Director, Office of Small and Disadvantaged Business Utilization

Department of the Treasury Acquisition Regulation (DTAR)

(OSDBU). The Director, OSDBU has designated a Director, Office of Small Business Programs (OSBP), located in MMD, with duties and functions including those specified at FAR 19.201(c).

(d) BCPO's will appoint Small Business Specialists (SBS) in accordance with TD P 76-01.B.

1019.202 **Specific policies.**

1019.202-1 **Encouraging small business participation in acquisitions.**

(c) CO's may negotiate payment terms less than 30 calendar days to encourage small business participation. A period of less than seven days shall not be prescribed. See FAR 32.906(b). The CO shall make the determination in consultation with the bureau finance office. See 1032.903(b), for comments on restructuring these two provisions, which would be preferable to merely adding to the existing language in 1019.202-1(c).

1019.202-4 **Solicitation.**

(b) To encourage small business participation, particularly where subcontracting opportunities exist or teaming arrangements are feasible, the CO may provide a copy of the Solicitation Mailing List concurrently with the solicitation, or provide a copy to any small business requesting the List. Do not process such requests under FOIA.

Subpart 1019.3 -- Determination of Status as a Small Business Concern

1019.302 **Protesting a small business representation.**

Any protest or appeal involving the SBA should be immediately brought to the attention of the bureau SBS and the OSBP.

Subpart 1019.4 -- Cooperation with the Small Business Administration

1019.401 **General.**

(b) The Director, OSDBU has designated the OSBP to be ~~Treasury~~ liaison with the SBA.

1019.402 **Small Business Administration procurement center representatives.**

(c)(3) Recommended sources shall be included on the list. Consult the PCR if the list is being limited.

(c)(4) If the PCR files an appeal, the SBS shall promptly notify the OSBP.

Subpart 1019.5 -- Set-Asides for Small Business
1019.501 **General.**

(c) CO's shall make available for review by the SBS all proposed open market acquisitions in excess of \$2,500 which have not been unilaterally set-aside for small business. Requisitions shall be provided to the SBS for review upon receipt in the contracting office. If the CO rejects an SBS recommendation, written notice shall be provided to the OSBP within 5 working days.

(d) CO's shall make available for review by the PCR all proposed open market acquisitions in excess of \$100,000 which have not been unilaterally set-aside for small business or the 8(a) program, and shall make available any other such proposed acquisitions exceeding the micro-purchase threshold at the request of the PCR

(g) CO's shall carefully document decisions to award to other than small business based on price reasonableness. Awards may be made to small businesses over large businesses even though their prices may be higher, if they are not unreasonable (i.e., exceed fair market price).

Department of the Treasury Acquisition Regulation (DTAR)

1019.705-4 Reviewing the subcontracting plan.

(a) Detailed instructions for reviewing subcontracting plans are contained in TD P 76-01.B.

(d)(1) Unless waived by the OSBP, prime contractors must be current in their submission of SF 294 and SF 295 reports in order to receive approval of new subcontracting plans.

(d)(6) The CO shall forward all subcontracting plans from the offeror(s) to the bureau SBS for initial review. The SBA PCR shall review all subcontracting plans, after review by the SBS, and prior to forwarding to the OSBP for approval. CO's shall provide the SBSs and the PCR each 5 workdays to review proposed subcontracting plans. Ideally, the SBS and PCR reviews should be performed concurrently. All subcontracting plans shall be submitted to the OSBP at least 10 workdays prior to the contract award date. Upon request, a copy of the proposed prime contract and the **cost** proposal shall be provided. A copy of the lead agency CO's approval of a master or commercial products subcontracting plan shall be attached. The OSBP approval shall be retained in the contract file.

1019.705-7 Liquidated damages.

(d) The CO shall consult with legal counsel, the SBS, and the OSBP prior to making a determination that the contractor failed to make a good faith effort to carry out its plan.

(e) Provide a copy of the **final** decision to the SBS and the OSBP.

1019.708 Solicitation provisions and contract clauses.

(b)(70) Insert the clause at 1052.219-70, "SF 294 and SF 295 Reporting," in all solicitations and contracts requiring a subcontracting plan.

(b)(71) Insert the provision at 1052.219-71, "Subcontracting Plan," in all solicitations that will require a subcontracting plan.

Subpart 1019.8 – Contracting with the Small Business Administration (The 8(a) Program)

1019.800 General.

CO's may contract directly with 8(a) program participants. A contract may be awarded directly to an 8(a) **firm** on a sole source or competitive basis. (See PIM 98-06, including Memorandum of Understanding between the SBA and the Department that establishes streamlined procedures for expediting the award of 8(a) requirements.)

1019.803 Selecting acquisitions for the 8(a) program.

(a) Responses to search letters shall be prepared by the SBS and coordinated with the CO.

(c) Once a product or service **has been** acquired successfully by an acquisition office on the basis of an 8(a) set-aside, all future requirements of that office shall be acquired using 8(a) set-aside procedures. If a CO determines there is no longer a reasonable likelihood that an offer **can** be obtained from a qualified 8(a) concern and award **can** be made at fair market prices, the repetitive set-aside must be withdrawn, using the procedures at 1019.506, prior to proceeding with the procurement on another basis.

1019.803-71 Simplified Procedures for 8(a) Acquisitions Under MOUs.

Contracting activities may use the procedures of FAR Part 13 and DTAR Part 1013 to issue purchase orders or contracts, not exceeding \$100,000, to 8(a) participants. The \$100,000 limitation for use of FAR Part 13 applies to commercial and noncommercial items. The following applies to such acquisitions:

(a) Neither offering letters to, nor acceptance letters from, the SBA **are** required.

(b) The contracting activity shall use the SBA's PRO-Net database on the Internet (<http://www.sba.gov>) to establish that the selected 8(a) firm is a current program participant.

Department of the Treasury Acquisition Regulation (DTAR)

(c) Once an 8(a) contractor **has** been identified, the CO shall establish the price with the selected 8(a) contractor, prepare and issue a purchase order or contract in accordance with the provisions in FAR **Part** 13. The applicable clauses in FAR **Part** 19.811-3 shall be included in the award document.

(d) The CO shall issue the purchase order or contract directly to the 8(a) firm. The CO shall insert FAR clause 52.219-14, Limitations on Subcontracting, and DTAR clause 1052.219-72, Section 8(a) Direct Award, in all purchase orders and contracts awarded under this subsection.

(e) No later than the day that the purchase order is provided to the 8(a) contractor, the Treasury CO shall provide the cognizant SBA Business Opportunity Specialist, using facsimile or electronic mail, the following documents:

(i) a copy of the purchase order; and

(ii) a notice stating that the purchase order is being processed under the MOU. The notice shall also indicate that the 8(a) contractor will be deemed eligible for award and automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the Treasury CO are notified that the 8(a) contractor is ineligible for award.

1019.804 Evaluation, Offering and Acceptance.

1019.804-2 Agency offering.

(a) When applicable, notification shall identify that the offering is in accordance with the MOU identified in 1019.800.

1019.804-3 SBA acceptance.

1019.804-370 SBA acceptance under the MOU for acquisitions exceeding \$100,000.

(a) The SBA's decision whether to accept the requirement shall be transmitted to the contracting agency in writing within five working days of receipt

of the offer.

(b) The SBA may require, and the contracting agency may **grant**, an extension beyond the five day limit.

(c) SBA's acceptance letter should be faxed or e-mailed to the offering contracting activity.

(d) If the offering contracting agency has not received an acceptance or rejection of the offering from SBA within five days of SBA's receipt of the offering letter, the procurement office shall contact SBA to ascertain the **status** of the acceptance letter.

(e) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

(f) The CO shall issue the contract directly to the 8(a) firm. The CO shall insert FAR clause 52.219-14, Limitations on Subcontracting, and DTAR clause 1052.219-72, Section 8(a) Direct Award, in all contracts awarded under this subsection.

(g) The CO shall forward to the SBA District Office service the 8(a) firm a copy of the contract with offer and acceptance letter, or modifications within five days after they **are** issued.

1019.805 Competitive 8(a).

1019.805-1 General.

(a)(2) For IDIQ contracts, the threshold will be applied to the maximum value of the contract, including options.

1019.805-2 Procedures.

(a) 8(a) acquisitions may be conducted using simplified acquisition procedures (see FAR **Part** 13).

(a)(1) For requirements exceeding \$100,000 processed under DTAR 1019.800, the CO shall submit the name, address, and telephone number of the low offeror (in sealed bid acquisitions) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business **Opportunity** Specialist at the field office

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servicing the identified 8(a) firm. The SBA shall determine the eligibility of the firm(s) and **advise** the CO within two working days of receipt of the request. If the **firm** is determined to be ineligible, the CO shall submit information on the next low offeror or next apparent successful offeror, **as** applicable, to the cognizant SBA field office.

1019.806 Pricing the 8(a) contract.

(a) When required by **FAR** Subpart 15.4, the CO shall obtain certified **cost** or pricing data directly from the 8(a) contractor if the contract is being awarded under DTAR 1019.800.

1019.808 Contract negotiation.

1019.808-1 Sole source.

(a) If the acquisition is conducted under DTAR 1019.800, the 8(a) contractor is responsible for negotiating with the CO within the time established by the contracting office. If the 8(a) contractor does not negotiate within the established time and the CO cannot allow additional time, the CO may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under DTAR 1019.800, the CO shall negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in the negotiations.

1019.811 Preparing the contracts.

1019.811-1 Sole source.

(d) If the award is to be made under 1019.800, the contract to be awarded by the contracting activity to the 8(a) **firm** shall be prepared in accordance with the contracting activity's **normal** procedures, given contract type and dollar amount, that the contracting activity would use for a similar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 253 (c)(5) or 10 U.S.C. 2304 (c)(5), **as** appropriate, and **15 U.S.C. 637 (a)** **as** the authority for use of other than full and open competition.

(2) Appropriate contract clauses shall be included, **as** necessary, to reflect that the acquisition is an 8(a) contract made under DTAR 1019.800.

(3) The contracting activity shall include SBA's requirement number on the award document for acquisitions exceeding \$100,000.

(4) **A** single award document shall be used between the agency and the 8(a) contractor. **As** such, a single signature by the agency's contracting officer who is identified under 1019.800 will suffice, i.e., an SBA signature will not be required. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "Awarded to" or "Contractor name" block on the appropriate forms.

1019.811-2 Competitive.

(a) If the award is made under the delegation of 8(a) authority, competitive contracts for 8(a) **firms** shall be prepared in accordance with the same standards **as** 8(a) **firms** shall be prepared in accordance with the same standards **as** 8(a) sole source contracts. See DTAR 1019.811-1.

(b) If the acquisition is conducted under DTAR 1019.800, the process for obtaining signatures shall be **as** specified in DTAR 1019.811-1(d)(4).

1019.811-3 Contract clauses.

(d)(3) The CO shall insert the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III (Deviation), when the acquisition is processed under DTAR 1019.800.

(f) The CO shall insert the clause at DTAR 1052.219-72, Section 8(a) Direct Award, in solicitations and contracts that exceed \$100,000 and are processed under DTAR 1019.800. The clauses at FAR 52.219-11, Special 8(a) Contract Conditions; 52.219-12, Special 8(a) Subcontract Conditions; and 52.219-17, Section 8(a) Award, shall not be used.

1019.812 Contract administration.

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Awards under DTAR 1019.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause entitled, Section 8(a) Direct Award, that requires the 8(a) contractor to notify the SBA and the CO when ownership of the firm is being transferred.

1019.812-70 Information.

CO's shall promptly notify the SBA, and inform the SBS of 8(a) contractor performance problems.

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PART 1052

**SOLICITATION PROVISIONS AND
CONTRACT CLAUSES**

Subpart 1052.2 – Texts of Provisions and Clauses

- 1052.201-70 Contracting Officer’s Technical Representative(COTR)Designation and Authority.
- 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions
- 52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns- Alternate III (Deviation).
- 1052.219-70 SF 294 and SF 295 Reporting.
- 1052.219-71 Subcontracting Plan.
- 1052.219-72 Section 8(a) Direct Awards.
- 1052.228-70 Insurance Requirements.

Subpart 1052.2 -- Texts of Provisions and Clauses

1052.201-70 Contracting Officer’s Technical Representative (COTR) Designation and Authority.

As prescribed in 1001.670-3, insert the following clause:

CONTRACTING OFFICER’S TECHNICAL
REPRESENTATIVE (COTR) DESIGNATION
AND AUTHORITY (SEP 1997)

(a) The contracting officer’s technical representative is _____

_____ [insert name, address and telephone number].

(b) Performance of work under this contract shall be subject to the technical direction of the COTR identified above, or a representative designated in writing. The term “technical direction” includes, without limitation, direction to the contractor that

directs or redirects the labor effort, shifts the work between work areas or locations, fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the specification(s)/work statement. The COTR does not have authority to issue technical direction that:

- (1) constitutes a change of assignment or additional work outside the specification(s)/work statement;
- (2) constitutes a change as defined in the clause entitled “Changes”;
- (3) in any manner causes an increase or decrease in the contract price, or the time required for contract performance;
- (4) changes any of the terms, conditions, or specification(s)/work statement of the contract;
- (5) interferes with the contractor’s right to perform under the terms and conditions of the contract; or,
- (6) directs, supervises or otherwise controls the actions of the contractor’s employees.

(d) Technical direction may be oral or in writing. The COTR shall confirm oral direction in writing within five work days, with a copy to the contracting officer.

(e) The contractor shall proceed promptly with performance resulting from the technical direction issued by the COTR. If, in the opinion of the contractor, any direction of the COTR, or his/her designee, falls within the limitations in (c), above, the contractor shall immediately notify the contracting officer no later than the beginning of the next Government work day.

(f) Failure of the contractor and the contracting officer to agree that technical direction is within the scope of the contract shall be subject to the terms of the clause entitled “Disputes.”

(End of clause)

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1052.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (DEVIATION).

As prescribed in DTAR 1003.870(a), insert the following clause:

CERTIFICATION AND DISCLOSURE **REGARDING** PAYMENTS TO INFLUENCE CERTAIN FEDERAL
TRANSACTIONS (APR 1991)(DEVIATION)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitations on Payments to Influence Certain Federal Transactions, included in ~~this~~ solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989, --

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a Federal contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under ~~this~~ provision or who fails to file or amend the disclosure form to be filed or amended by ~~this~~ provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (DEVIATION).

As prescribed in DTAR 1003.870(b), insert the following clause:

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)
(DEVIATION)

(a) Definitions.

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subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

- (d) **Agreement.** The Contractor agrees not to make any payment prohibited by this clause.
- (e) **Penalties.**

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided by 31 USC 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) **Cost allowability.** Nothing in this clause makes allowable or reasonable any cost which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns - Alternate III (Deviation) (May 1998)

In accordance with 1019.811-3(d)(3), substitute the following for the paragraph (c) in 52.219-18:

(c) Any award resulting from this solicitation will be made directly by the contracting officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

1052.219-70 SF 294 and SF 295 Reporting.

As prescribed in 1019.708(b)(70), insert the following clause:

SF 294 AND SF 295 REPORTING (XXX 1997)

ADDRESSEE	SUBMIT SF 294	SUBMIT SF 295
Contracting Officer (Address shown on front of contract)	Original	Original
Small Business Specialist [Insert Bureau name and address]	Copy	COPY

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Department of the Treasury Office of Small Business Programs (MMD) 1500 Pennsylvania Avenue, NW Room 6100 • Annex Washington, DC 20220	N/A	Copy
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(End of clause)

1052.219-71 Subcontracting Plan.

As prescribed in 1019.708(b)(71), insert the following provision:

SUBCONTRACTING PLAN (JUL 1998)

As part of its initial proposal, each large business offeror shall submit a subcontracting plan, as prescribed in FAR 52.219-9. Use of the subcontracting plan outline contained in Section J of this solicitation is optional, however, plans must contain all elements included in the outline.

(End of provision)

1052.219-72 Section 8(a) Direct Awards

As prescribed in 1019.811-3(f), insert the following clause:

Section 8(a) Direct Awards (May 1998)

(a) **This** purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of the Treasury. SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

[To be completed by the contracting officer at the time of award]

(b) The contracting officer is responsible for

administering the purchase order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The contracting officer shall also coordinate with SBA prior to processing any novation agreement. The contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) to **notify** the contracting officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of control; and,

(2) to adhere to the requirements of FAR 52.219-14, Limitations on Subcontracting.

(End of clause)

1052.228-70 Insurance Requirements.

As prescribed in 1028.310-70 and 1028.311-2, insert a clause substantially as follows. The contracting officer may specify additional kinds (e.g., aircraft public and passenger liability, vessel liability) or increased amounts of insurance.

INSURANCE (JUL 1998)

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In accordance **with** the clause entitled "**Insurance - Work on a Government Installation**" [**or "Insurance-Liability to Third Persons"**] in **Section I**, insurance of the following kinds and minimum **amounts** shall be provided and maintained during the entire **period** of performance of this contract:

(a) Worker's compensation and employer's liability. The contractor shall, **as** a minimum, meet the requirements specified at FAR 28.307-2(a).

(b) General liability. The contractor shall, **as** a minimum, meet the requirements specified at FAR 28.307-2(b).

(c) Automobile liability. The contractor shall, **as** a minimum, meet the requirements specified at FAR 28.307-2(c).

(End of clause)



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