OFFICE OF THE UNDER SECRETARY OF DEFENSE
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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

DEC 29 2009

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT), DASA(P)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION & LOGISTICS MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: New 8(a) Partnership Agreement Between the U.S. Small Business Administration and the Department of Defense

This memorandum provides notification of a new 8(a) Partnership Agreement (PA) between the U.S. Small Business Administration (SBA) and the Department of Defense (DoD), effective through September 30, 2012, by the attached agreement. The PA allows DoD contracting officers to award prime contracts directly to 8(a) Program participants in accordance with Defense Federal Acquisition Regulations Supplement (DFARS) Subpart 219.8 and DFARS Procedures, Guidance, and Information (PGI) 219.8. PGI 219.8 will be updated to incorporate the new agreement.

Under the new 8(a) PA for competitively negotiated procurements, the SBA will no longer review eligibility status for all offerors within the competitive range. The SBA will conduct reviews to determine 8(a) eligibility status sequentially, starting with the apparent successful offeror. If the first offeror does not meet the eligibility requirements, then the SBA will review the second offeror for eligibility.

My staff point of contact for this matter is Ms. Susan Pollack, 703-697-8336 or susan.pollack@osd.mil.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

PARTNERSHIP AGREEMENT
Between
The U.S. Small Business Administration
And
The U.S. Department of Defense

Sections 7(j) and 8(a) of the Small Business Act (the Act) (15 U.S.C. §§ 636 (j) and 63 7(a)) authorize the U. S. Small Business Administration (SBA) to establish a business development program, which is known as the 8(a) Business Development (BD) Program. The 8(a) BD program promotes the development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete in the mainstream of the American economy. (15 U.S.C. § 631(f)(2)). Small business development is accomplished by providing various forms of management, technical, financial and procurement assistance. Additionally, pursuant to section 8(a) of the Act, SBA is authorized to enter into all types of contracts with other Federal agencies and to subcontract the performance of these contracts to qualified Participants in the 8(a) BD Program.

## I. PURPOSE

The purpose of this Partnership Agreement (PA) between SBA and The U.S. Department of Defense is to delegate SBA's contract execution functions to The U.S. Department of Defense per the requirements of 13 C.F.R. § 124.501. The PA sets forth the delegation of authority and establishes the basic procedures for expediting the award of 8(a) contract requirements. This PA replaces all terms and conditions of any previously executed Memorandum of Understanding (MOU) or PA with The U.S. Department of Defense or subordinate agencies on the issue of expediting the award of requirements pursuant to Section 8(a) of the Act.

Failure to sign this PA will require The U.S. Department of Defense to utilize the prescribed processes to contract with the SBA as stated in the Federal Acquisition Regulation (FAR) Subpart 19.8.

## II. OBJECTIVES

A. To delineate the responsibilities as they relate to the oversight, monitoring and compliance with procurement laws and regulations governing 8(a) contracts between SBA and The U.S. Department of Defense;
B. To establish the procedures for offer and acceptance between SBA and The U.S. Department of Defense;
C. To establish that SBA will respond to an offering letter within five *(5)* working days if the contract is valued at more than the simplified acquisition threshold and within two days of receipt if the contract is valued at or below the simplified acquisition thresholds. See 13 C.F.R. §124.503(a)(3);

D. To emphasize that although SBA delegates the authority to sign contracts on its behalf, it remains the prime contractor on all 8(a) contracts awards, modifications, options and purchase orders, and receive copies of all contracts and subsequent modifications;
E. To eliminate SBA's review of contracts and purchase orders executed under the authority of this PA; and
F. To establish uniform policies and procedures regarding application of contracts and purchase orders to the 8(a) contracting process.

## III. SCOPE

The PA provides for the award of contracts, modifications, options and purchase orders under the provisions of Section 8(a) of the Act as implemented by the FAR Subpart 19.8 and SBA's 8(a) BD program regulations found at 13 C.F.R. § 124, (Subpart A).

The PA encompasses all competitive and non-competitive acquisitions of requirements offered by The U.S. Department of Defense contracting offices and accepted by SBA for the 8(a) BD program.

The PA applies to all SBA offices and all The U.S. Department of Defense contracting offices, as defined in FAR § 2.101 and deemed appropriate by the head of the agency, as defined in FAR § 2.101, for The U.S. Department of Defense.

## IV. RESPONSIBILITIES

A. SBA's Responsibilities.

SBA

1. delegates to The U.S. Department of Defense for re-delegation to all warranted The U.S. Department of Defense contracting officers, its authority under section 8(a)(1)(A) of the Act to enter into 8(a) prime contracts, and its authority under section 8(a)(1)(B) of the Act to arrange for the performance of such procurement contracts by eligible 8(a) Participants. In accordance with 13 C.F.R. §124.501(a), SBA delegates its 8(a) contract execution function. SBA remains the prime contractor on all 8(a) contracts and the 8(a) Participant remains the SBA's subcontractor;

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

3. will provide training for The U.S. Department of Defense contracting officers and small business specialists, on the SBA's 8(a) BD program and various aspects of the PA.

4. shall review The U.S. Department of Defense' offering letters, issue acceptance or rejection letters, and make eligibility determinations for award;

(a) Sole Source Procurements.

i. SBA will issue either an acceptance letter or rejection letter within five (5) working days of receipt of an offering letter, unless the District Office requests and the procuring activity agree to an extension of time.
ii. Absent a notification of rejection within five (5) working days of receipt of the offer, acceptance may be assumed on the sixth (6th) working day unless an extension has been requested and accepted.
iii. Acceptance shall include a size verification and determination with respect to all elements of eligibility (i.e., determinations of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility). See citations found at 13 C.F.R. §124.504(c);

(b) Competitive Acquisitions.

i. SBA will issue an acceptance letter or rejection letter within five (5) working days of receipt of an offering letter, unless the District Office requests and the procuring activity agree to an extension of time.
ii. Absent notification of rejection within five (5) working days of receipt of the offer, acceptance may be assumed on the sixth ($6^{th}$) working day.
iii Where SBA does not respond with a notification of rejection the contracting officer may seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD) If the contracting officer does not receive a reply from the AA/BD within five (5) working days of the AA/BD's receipt of the offer, the contracting officer may assume acceptance on the sixth ($6^{th}$) working day.
iv. Within five (5) working days after a request from the contracting officer, SBA shall issue an eligibility determination for the apparent successful offer, as prescribed by SBA's regulations at 13 C.F.R. §124.507(b).
v. For negotiated competitive procurements, following the written request of the procuring activity contracting officer, the SBA will provide an eligibility determination for the apparent successful offeror.

(c) Acquisitions Valued at or Below the Simplified Acquisition Threshold.

i. No offering or acceptance letter is required for requirements accordance with the delegation of authority.
ii. SBA will review the program eligibility of the 8(a) Participant within two (2) working days after a request from the contracting officer.

iii. Absent a notification that the selected 8(a) Participant is ineligible for the award within two (2) working days, the procuring agency may assume the 8(a) Participant is eligible and proceed with award, as prescribed by SBA's regulations at 13 C.F.R. § 124.503(a)(4)(i).

iv. The procuring agency must notify SBA of these 8(a) awards under this authority. See 13 C.F.R. §124.503(a)(4)(ii).

5. shall review and approve all proposed joint venture agreements involving 8(a) Participants before 8(a) contract award;

6. may provide 8(a) Participants with contract negotiation assistance or direct them to appropriate resources where they can obtain technical assistance in contract negotiations when requested by either the 8(a) Participant or The U.S. Department of Defense contracting officer;

7. shall retain its appeal authority in accordance with FAR §19.8 10;

8. shall retain the right to perform on-site agency reviews to ensure contract compliance;

9. may identify a requirement for an 8(a) Participant for a possible award. SBA will submit capability statements to the appropriate procuring activities for the purpose of matching requirements consistent with the 8(a) Participant's capability;

10. shall retain the responsibility for ensuring that 8(a) Participants comply with all applicable provisions relating to continuing eligibility for 8(a) BD Program participation per 13 C.F.R. §124.112.

11. shall select an appropriate 8(a) Participant when The U.S. Department of Defense submits an open offering letter for a sole source requirement.

**B. Responsibilities of the U.S. Department of Defense**

The U.S. Department of Defense

1. shall receive and retain SBA's delegation of contract execution and review functions by reporting all 8(a) contract awards, modifications, options and purchase orders to SBA until such time as the agreement expires or is terminated;

2. shall adhere to all provisions of contractual assistance identified in 13 C.F.R.. §§124.501 through 124.520; as well as the applicable provisions of FAR Subpart 19.8;

3. shall determine which requirements are suitable for offering to the 8(a) BD program in accordance with FAR, Subpart 19.8, and, where appropriate, identify in conjunction with the appropriate SBA servicing office, 8(a) Participants capable of performing these requirements;

4. shall retain responsibility for compliance with the limitations on subcontracting requirement and all applicable provisions of FAR §52.219-14 and any The U.S. Department of Defense regulations;

5. shall include provisions in all contract awards, modifications, options and purchase orders awarded or issued under the 8(a) BD Program that require Program Participants to comply with the Subcontracting Limitations, and shall conduct and document an assessment at the time of contract award of the Participant's ability to comply with the Subcontracting Limitations.

6. shall provide a copy of any signed contract, as defined in FAR §2.101, including modifications, options and purchase orders executed under this PA to the SBA servicing district office within 1 5 working days of the date of award;

7. shall inform contracting officers and other warranted officials and their equivalents who are awarding 8(a) contracts of their responsibilities concerning this agreement;

8. shall ensure that contracting officers and other warranted officials and their equivalents obtain training on their obligations under this PA and the subcontracting limitations of FAR §52.219-14 and 13 C.F.R. §§124.510 and 125.6.

9. shall include monitoring and oversight provisions for all contract awards, modifications, options and purchase orders to ensure that all contracts comply with the performance requirements (Limitations on Subcontracting) of FAR §52.219-14 and 13 C.F.R. §124.5 10 and §125.6;

10. shall request an eligibility determination from SBA's district office responsible for servicing the selected 8(a) Participant when an 8(a) Participant has been identified on all simplified acquisitions valued at or below the simplified acquisition threshold.

11. For purchase orders under the simplified acquisition threshold, shall request an eligibility determination from SBA's district office responsible for servicing the selected 8(a) Participant by providing a signed purchase order with a notification to delay performance clause (DFARS 252.219-7011) notifying the 8(a) Participant that performance of the purchase order may begin on the third working day following receipt of the purchase order absent a determination of ineligibility by SBA. See FAR 19.804-2;

12. shall submit the offering letter for sole source requirements exceeding the simplified acquisition threshold to SBA's district office responsible for servicing the selected 8(a) Participant when the 8(a) Participant has been identified.

13. shall submit an open offering letter for sole source requirements to the SBA district office that services the geographical area where The U.S. Department of Defense' procuring activity is located, when The U.S. Department of Defense has not identified a specific 8(a) Participant for a requirement. See FAR 19.804-2;

14. shall submit the offering letter for competitive 8(a) requirements to the SBA district office that services the geographical area where The U.S. Department of Defense' contracting activity is located. Exceptions: all offering letters for construction work will be sent to the SBA district office located in the geographical area where the work will be performed, or, in the case of construction contracts to be performed overseas, the offering letter shall be submitted to SBA's Headquarters. See FAR 19.804-2;

15. shall request an eligibility determination prior to final award in all 8(a) competitive acquisitions. The eligibility determination requests shall be sent to the SBA offices servicing those firms in the competitive range;

16. shall ensure that all contracts awarded pursuant to this PA contain provisions that require:

    (a) SBA's approval of novation agreements submitted by the 8(a) Participant; and

    (b) advance notice to SBA (as the prime contractor) prior to issuance of a final notice terminating the contract in whole or in part;

17. shall ensure that all NAICS codes for all 8(a) contracts are applied in~ accordance with FAR §19.102;

18. shall add language to every contract stating that, even though SBA may not be identified in section A of the contract, it is still the prime contractor on the

contract;

19. shall provide all proposed 8(a) joint ventures to SBA for approval before 8(a) contract(s) award;

20. cannot count contract dollars as 8(a) unless the procurement requirement was offered and accepted into the 8(a) BD Program by SBA. See 13 C.F.R. § 124.503(i).

21. A contracting officer shall notify SBA in writing of their request to release a requirement from the 8(a) BD program. The written notification should be sent to the cognizant SBA district office serving the geographical area in which the procuring agency is located. The contracting officer shall include the reason(s) for the request, the procurement history of the requirement, the incumbent name, the assigned NAICS code and the Statement of Work. No later than three to five working days from the receipt date of the contracting officer's request, the AA/BD will provide its decision in writing to the contracting officer The final decision rests with the AA/BD.

    If, in the interests of national security, it is necessary to award a contract to a firm that is not an 8(a) BD participant, the head of the contracting activity shall provide a written determination to the SBA AA/BD, documenting the urgent and compelling reasons for doing so.

22. shall provide SBA with access to all non-classified information in contract files so that SBA can perform on-site agency reviews to ensure that procuring agencies are complying with the terms and conditions of this agreement.

## V. CONTRACT EXECUTION

The U.S. Department of Defense' contracting officer may make direct award of a contract to the 8(a) Participant, but only after the requirement has been offered to and accepted by SBA. Acquisitions valued at or below the simplified acquisition threshold, as defined in FAR §2.101, and per 13 C.F.R. §124.503(a)(4)(ii), require no offer or acceptance letter; however, j~ a program eligibility determination of the selected 8(a) Participant from SBA is required; and (b) the procuring activity must notify SBA of all 8(a) awards made under this authority, per 13 C.F.R. §124.503(a)(4)(ii). Contract execution shall be on the appropriate form as specified in FAR or by The U.S. Department of Defense regulation. The "Issued by" block shall identify the awarding The U.S. Department of Defense' office. The SBA district office for the 8(a) Participant shall be identified in the award document. The 8(a) Participant's name and address shall be listed as the contractor. The U.S. Department of Defense' contracting activities are responsible for issuing procurement instrument identification numbers. SBA will not issue subcontract numbers.

## VI. TERM

This PA will take effect as soon as SBA and The U.S. Department of Defense have signed it. It will remain in effect until September 30, 2012.

## VII. AMENDMENT

This PA may be amended, in writing, at any time by mutual agreement of the parties.

## VIII. TERMINATION

Either SBA or The U.S. Department of Defense may terminate this PA upon 30 calendar days advance written notice to the other party.

## IX. CONDITIONS

A. Contracts that have not been offered to and accepted by the SBA into the 8(a) BD Program cannot be reported by the U.S. Department of Defense as having been awarded under the 8(a) BD Program.

B. SBA reserves the right to suspend or rescind the authority of this PA with The U.S. Department of Defense for failure to submit copies to SBA of award and modification documents within 15 working days of award, failure to adequately monitor 8(a) contract compliance requirements, or if the U.S. Department of Defense otherwise fails to follow the terms of this PA.

C. SBA has the right to conduct periodic compliance on-site agency reviews of the files of all contracts awarded pursuant to Section 8(a) authority and this Agreement. The delegated authority may be rescinded when on-site agency review findings indicate a pattern failure to comply with 8(a) program regulations that govern award and administration of such contracts.

## X. ADMINISTRATION

**For The U.S. Department of Defense:**

Linda Oliver
Acting Director,
Office of Small Business Programs
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Arlington, VA 22202
703-604-0157x151

**For SBA:**

Sheila D. Thomas
Director, Office of Program Review
Office of Business Development
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202-205-6613
202-481-5567 (fax)

## XI. ACCEPTANCE

Authorized by and on behalf of their respective agencies, the undersigned parties hereby accept the terms and conditions of this agreement.

For:

**The U.S. Department of Defense**

Linda B. Oliver Dec. 17, 2009

Linda B. Oliver Date
Office of Small Business Programs

For:

**SBA**

for 12/17/09

Joseph G. Jordan Date
Associate Administrator for
Government Contracting and
Business Development

12/18/09

Mina A. Wales Date
Director
Office of Strategic Alliances