UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

AUG 31 2006

PROCUREMENT MEMORANDUM 2006-008

MEMORANDUM FOR: **Heads of Contracting Offices**

FROM: **Leslie Andrecs, Director**
Acquisition Performance, Policy and Support
Office of Acquisition Management

SUBJECT: **Interim 8(a) Partnership Agreement between SBA and DOC; Cancellation of Procurement Memorandum 99-03**

The purpose of this Procurement Memorandum is to provide the Partnership Agreement (PA) between the U.S. Small Business Administration (SBA) and Department of Commerce delegating procedures for expediting the award of requirements pursuant to section 8(a) of the Small Business Act and SBA's regulations. The Partnership Agreement is included as Attachment 1. This Procurement Memorandum supersedes Procurement Memorandum 99-03*, as amended, and Procurement Memorandum 99-03 is hereby cancelled.

The Procurement Executive has granted class deviations from the Federal Acquisition Regulation (FAR) 52,219-11, 52-219-12, 52.219-17, and 52.219-18 to implement the Partnership Agreement. These deviations are effective until the Partnership Agreement expires or is terminated or a change to the FAR is made that replaces or changes the clauses to meet the Partnership Agreement requirements. The deviation and applicable clauses and prescriptions are included in Attachment 2.

The Partnership Agreement is in effect through September 30, 2006 or until replaced with the successor PA. We are advised SBA is preparing a new PA intended to be in place from October 1, 2006 through September 30, 2009. The fiscal year 2007 PA will be issued immediately upon receipt from SBA.

Please direct any questions on this Procurement Memorandum to Nancy Barrere at **Nbarrere@doc.gov** or 202-482-5519 or to La Juene Desmukes at **Ldesmukes@doc.gov** at 202-482-1472.

Attachments

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* Procurement Memorandum 99-03, Implementation of Affirmative Action in Federal Contracting (Post-Adarand) and FAR Class Deviation to FAR Subpart 19.8 – Contracting with the Small Business Administration (The 8(a) Business Development Program) and Direct 8(a) Process Procedures

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

I. PURPOSE

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

II. OBJECTIVES

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

III. SCOPE

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

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

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

IV. RESPONSIBILITIES

a. The SBA:

1. delegates to the Senior Procurement Executive, for redelegation to all warranted DOC contracting officers, its authority under section 8(a)(1)(A) of the Act to enter into 8(a) prime contracts, and its authority under section 8(a)(1)(B) of the Act to arrange for the performance of such procurement contracts by eligible 8(a) program participants. In accordance with 13 C.F.R. 124.501(a), the SBA delegates only the contract execution function. The SBA remains the prime contractor on all 8(a) contracts, and the 8(a) participant remains the SBA's subcontractor;

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

3. shall review the DOC's offering letters, issue acceptance or rejection letters, and make eligibility determinations;

   (a) Sole source procurements. The SBA will issue an acceptance letter or notification of rejection within 5 working days of receipt of an offering letter. Acceptance shall include a size verification and determinations with respect to all elements of eligibility (e.g., determinations of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility);

   (b) Competitive acquisitions. The SBA will issue an acceptance letter or notification of rejection within 5 working days of receipt of an offering letter. Following receipt of offers, and within 2 working days after a request from the contracting officer, the SBA shall issue an eligibility determination with respect to the apparent awardee. In the case of a negotiated procurement following receipt of initial offers including price, and within 2 working days after a request from the contracting officer, the SBA shall issue an eligibility determination for all firms in the competitive range, if discussions are to be conducted.

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

(c) Requirements under the simplified acquisition threshold (FAR 2.101). The SBA will review the eligibility of the 8(a) participant within 2 working days after receipt of a copy of the signed purchase order document. The purchase order document may be delivered by any means acceptable to the SBA district office. The SBA shall provide a copy of any negative eligibility determination to the contracting activity and the 8(a) participant. Absent receipt of a negative eligibility determination from the SBA within 2 working days, the 8(a) contractor will be authorized to begin performance. No offering or acceptance letter is required for requirements processed under the simplified acquisition procedures threshold;

4. shall review all proposed joint ventures involving 8(a) participants for approval before contract;

5. shall provide 8(a) participants with assistance in contract negotiations when requested by either the 8(a) firm or the DOC contracting officer;

6. shall retain its appeal authority in accordance with FAR 19.810;

7. shall retain the right to perform on-site contract surveillance reviews;

8. shall retain the responsibility for compliance with all applicable provisions of 13 C.F.R. Part 124, including determining eligibility;

9. shall select an appropriate 8(a) participant when the DOC submits an open offering letter for a sole source requirement; and

10. will issue a letter to the DOC Office of Small and Disadvantaged Business Utilization, with a copy to the appropriate senior procurement executive (FAR 2.101 and DFARS 202.101), on a regular basis identifying accepted requirements for which award documents have not been received by the SBA district office.

b. The Department of Commerce:

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

2. shall submit the offering letter for sole source requirements to the SBA's district office responsible for servicing the selected 8(a) Participant, when an 8(a) firm has been identified;

3. shall submit an open offering letter for sole source requirements to the SBA district office that services the geographical area where the DOC contracting activity is located, when the DOC has not identified a specific 8(a) participant for a requirement;

4. shall submit the offering letter for competitive 8(a) procurements to the SBA district office that services the geographical area where the DOC's contracting activity is located, <u>except</u> that offering letters for construction work will be sent to the SBA district office located in the geographical area where the work will be performed, or, in the case of construction contracts to be performed overseas, to the SBA Headquarters;

5. shall retain responsibility for compliance with all applicable provisions of the FAR and any DOC regulations, unless a deviation is obtained;

6. shall provide a copy of any contract, as defined in FAR 2.101, including basic contracts, orders, modifications, and purchase orders, executed under this PA to the SBA servicing district office within 15 working days of the date of award. Repeated failure to timely provide the required documents to the SBA may result in suspension or rescission of this PA for that particular DOC agency;

7. shall retain the option to use tripartite procedures to award 8(a) contracts and purchase orders to 8(a) participants as specified in FAR Part 19;

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

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

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

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

10. shall ensure that all contracts comply with the work performance requirements, in accordance with FAR 19.811-3(e);

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

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

13. cannot use contracts that have not been offered to and accepted by the SBA into the 8(a) BD program for the DOC's 8(a) negotiated goals.

V. CONTRACT EXECUTION

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

VI. TERM

This PA will take effect as soon as both the SBA Administrator and the DOC Senior Procurement Executive have signed it. It will remain in effect until September 30, 2006.

VII. AMENDMENT

This PA may be amended, in writing, at any time by mutual agreement of the SBA's Associate Deputy Administrator for Government Contracting and Business Development and DOC's Senior Procurement Executive.

VIII. TERMINATION

Either SBA or DOC may terminate this PA upon 90 days advance written notice to the other party.

IX. PENALTIES

a. Contracts that have not been offered to and accepted by the SBA into the 8(a) BD program cannot be used for the DOC's 8(a) negotiated goals.

b. The SBA reserves the option to suspend or rescind the authority of this PA for a particular DOC agency that repeatedly fails to submit copies to the SBA of award documents within 15 working days of award.

X. ADMINISTRATION

For the Department of Commerce:

Director, Acquisition Management and Financial Assistance
and Procurement Executive
14th & Constitution Ave., NW, Room 6422
Washington, DC 20230
MSade@doc.gov
(202) 482-4248

For the SBA:

Associate Deputy Administrator for
Government Contracting and Business Development
409 3rd Street, SW
Washington, DC 20416
(202) 205-6459

XI. ACCEPTANCE

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

Original Signed: Michael S. Sade

Michael S. Sade, Director
Acquisition Management and Financial
Assistance and Procurement Executive
Department of Commerce

Original Signed: Adela Soreano for Hector V. Barreto

Hector V. Barreto
Administrator
U.S. Small Business Administration

(Effective Execution Date: September 29, 2005)

Attachment 2 to
Procurement Memorandum 2006-008

MEMORANDUM FOR THE RECORD

Subject: Class Deviations from FAR 52.219-11, 52.219-12, 52.219-17 and 52.219-18

A deviation is required from the Federal Acquisition Regulation to implement the Partnership Agreement (PA) between the U.S. Small Business Administration and Department of Commerce delegating procedures for the expediting of award of requirements pursuant to section (a) of the Small Business Act.

As Procurement Executive, I hereby grant class deviations from the Federal Acquisition Regulation (FAR) 52,219-11, 52-219-12, 52.219-17, and 52.219-18 to implement the Partnership Agreement. The Partnership Agreement expedites the award pursuant to section 8(a) of the Small Business Act, as amended (15 USC 637(a)) and the Small Business Administration regulations.

These deviations are effective until the Partnership Agreement expires or is terminated or a change to the FAR is made that replaces or changes the clauses to meet the Partnership Agreement requirements. The deviation and applicable clauses and prescriptions are attached.

Michael S. Sade
Director for Acquisition Management
and Procurement Executive

8/30/06
Date

Attachment

Attachment to Class Deviations Memorandum (FAR 52.219-11, 52.219-12, 52.219-17; and 52.219-18) (Ref. PM 2006-008)

Clauses applicable to the Partnership Agreement between the U.S. Small Business Administration and the U.S. Department of Commerce

52.219-11 Special 8(a) Contract Conditions.

Used only in sole-source ($3 million or less) contracts using the procedures established under the SBA/DOC Partnering Agreement and may be prepared in a tri-partitle format.

As prescribed in 19.811-3(a), insert the following clause:

SPECIAL 8(a) CONTRACT CONDITIONS (FEB 1990) (DEVIATION)

The Small Business Administration (SBA) agrees to the following:

(a) *(DELETED)*

(b) *(DELETED)*

(c) Except for novation agreements and advance payments, delegate to the [*insert name of contracting agency*] the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; provided, however, that the [*insert name of contracting agency*] shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under any contract awarded under this contract will be made directly to the subcontractor by the [*insert name of contracting agency*].

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the "Disputes" clause of said subcontract.

(f) To notify the [*insert name of contracting agency*] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(End of clause)

52.219-12 Special 8(a) Subcontract Conditions.

Used only in sole-source ($3 million or less) contracts using the procedures established under the SBA/DOC Partnering Agreement.

As prescribed in 19.811-3(b), insert the following clause:

SPECIAL 8(a) SUBCONTRACT CONDITIONS (FEB 1990) (DEVIATION)

(a) The Small Business Administration (SBA) has delegated to the [*insert name of contracting agency*] authority to enter into an 8(a) contract directly with the participant to furnish the supplies or services as described therein.

(b) The [*insert name of 8(a) contractor*], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. [*insert number of contract*] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the [*insert name of contracting agency*] with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the [*insert name of contracting agency*].

(4) That it will notify the [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the [*insert name of contracting agency*].

(End of clause)

52.219-17 Section 8(a) Award.

Used with all 8(a) competitive contracts awarded under the procedures established under the SBA/DOC Partnering Agreement.

As prescribed in 19.811-3(c), insert the following clause:

SECTION 8(a) AWARD (DEC 1996) (DEVIATION)

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) (*DELETED*)

(2) Except for novation agreements and advance payments, delegates to the [*insert name of contracting activity*] the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; *provided*, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(4) To notify the [*insert name of contracting agency*] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the "Disputes" clause of the subcontract.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the [*insert name of contracting agency*].

(End of clause)

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

Used with all 8(a) competitive awards under the procedures established under the SBA/DOC Partnering Agreement.

As prescribed in 19.811-3(d), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) CONCERNS (JUNE 2003) (DEVIATION)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made directly by [*insert name of contracting agency*] to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement*. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The [*insert name of SBA's contractor*] will notify the [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

Alternate I (Apr 2005). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following paragraph (a)(3) to paragraph (a) of the clause:

(3) The offeror's approved business plan is on the file and serviced by [*Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA*].

Alternate II (Dec 1996). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(c), delete paragraph (d)(1).