



JUL 22 2008

PROCUREMENT MEMORANDUM 2008-04

ACTION

MEMORANDUM FOR: HEADS OF CONTRACTING OFFICES

FROM: Helen Hurcombe *Helen Hurcombe*
Senior Procurement Executive
and Director for Acquisition Management

SUBJECT: 8(a) Partnership Agreement between the Small Business Administration and Department of Commerce

Purpose

The purpose of this Procurement Memorandum (PM) is to provide acquisition personnel with the Partnership Agreement between the U.S. Small Business Administration (SBA) and the Department of Commerce (DOC) that allows the direct award of 8(a) contracts and purchase orders. This Procurement Memorandum provides a class deviation from Federal Acquisition Regulation (FAR) Subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program) and applicable FAR Part 52 provisions and contract clauses.

The Partnership Agreement is effective through September 30, 2009, and replaces the prior agreement covered under PM 2006-008, as amended.

Policy

The Partnership Agreement delegates authority to the Senior Procurement Executive to enter into 8(a) prime contracts and purchase orders. The Procurement Executive has authorized a class FAR deviation (Attachment B) to applicable portions of FAR Subpart 19.8, and FAR Part 52. Under the class deviation, the authority to enter into 8(a) prime contracts and purchase orders is re-delegated to Contracting Officers.

When awarding 8(a) contracts and purchase orders, contracting officers shall operate in accordance with the terms of the Partnership Agreement and take full advantage of the streamlined procedures. Contracting officers shall review the responsibilities and procedures for 8(a) awards as outlined in the Partnership Agreement and work closely with their respective Small Business Specialists and the Office of Small and Disadvantaged Business Utilization (OSDBU).

The Partnership Agreement contains the procedures for submitting an offering letter to the appropriate SBA office and the addresses of SBA District Offices may be found at <http://www.sba.gov/localresources/index.html> . Contracting officers shall provide a copy of all offering letters to the OSDDBU at Ldesmukes@doc.gov when they are transmitted to SBA.

Actions Required

- Under this delegated authority, Contracting Officers shall monitor and ensure 8(a) contract compliance requirements in accordance with applicable regulations in FAR Parts 19, 42, 52, and 13 Code of Federal Regulation Part 124.
- Contracting Officers shall follow requirements in the Partnership Agreement and operate in accordance with the class deviation to FAR Subpart 19.8 and FAR Part 52 applicable provisions and contract clause to implement the agreement.
- Contracting Officers shall participate in SBA-provided 8(a) Business Development program training. Acquisition personnel will be notified regarding availability of this training.

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

Attachments: A - Partnership Agreement
B - Class FAR Deviation

cc: Acquisition Community
Acquisition Council

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

Sections 7(j) and 8(a) of the Small Business Act (the Act) (15 U.S.C. §§ 636 (j) and 637(a)) authorize the U. S. Small Business Administration (SBA) to establish a business development program, which is known as the 8(a) Business Development Program or 8(a) 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 contract the performance of these contracts to qualified Participants in the 8(a) BD program. 15 U.S.C. § 637(a).

I. PURPOSE

The purpose of this Partnership Agreement (PA) between SBA and the U.S. Department of Commerce is to delegate SBA's contract execution functions to the U.S. Department of Commerce per the requirements of 13 C.F.R. § 124.501. This 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 Commerce 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 Commerce 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 Commerce;
- B. To establish the procedures for offer and acceptance between SBA and the U.S. Department of Commerce;

- C. To reduce the time between when the U.S. Department of Commerce's contracting office sends an offering letter to SBA and it receives SBA's decision regarding the contract offering to a maximum of five (5) working days;
- 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 and as such, must receive copies of the contract and any 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 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 FAR Subpart 19.8 and SBA's 8(a) BD program regulations found at 13 C.F.R. §124.

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

This PA applies to all SBA offices and all the U.S. Department of Commerce 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 Commerce.

IV. RESPONSIBILITIES

A. SBA

1. delegates to the U.S. Department of Commerce for re-delegation to all warranted U.S. Department of Commerce 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. shall review the U.S. Department of Commerce's 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.
 - 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.
 - 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).
- (b) Competitive acquisitions.
- i. SBA will issue an acceptance letter or rejection letter within five (5) working days of receipt of an offering letter.
 - 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.
 - iii. Within two (2) working days after a request from the contracting officer, SBA shall issue an eligibility determination for the apparent awardee or, in the case of a negotiated procurement, all firms in the competitive range, as prescribed by SBA's regulations at 13 C.F.R. § 124.507.
 - iv. In the case of a negotiated procurement, following receipt of initial offers including price, and within two (2) working days after a request from the contracting officer, SBA shall issue an eligibility determination for all firms in the competitive range, if discussions are to be conducted.
 - v. SBA will issue an eligibility determination for all firms with a realistic chance of award within two (2) working days after a request from the contracting officer, if no discussions are to be conducted.
- (c) Simplified acquisition threshold.
- i. SBA will review the program eligibility of the 8(a) Participant within two (2) working days after a request from the contracting officer. SBA's review is limited to program eligibility only.
 - ii. No offering or acceptance letter is required for requirements processed under the simplified acquisition procedures threshold.
 - iii. Absent a notification that the selected 8(a) Participant is ineligible for the award within two (2) working days of receipt of the offer, the 8(a) Participant's eligibility to receive the award may be assumed on the third (3rd) working day.

4. shall review and approve all proposed joint venture agreements involving 8(a) Participants before contract award;
5. 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 Commerce contracting officer;
6. shall retain its appeal authority in accordance with FAR § 19.810;
7. shall retain the right to perform on-site contract agency reviews and audits to ensure compliance as stated in the SBA's Standard Operating Procedure (SOP) 80 05 3, Chapter 12: 8(a) Agency Review;
8. 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) Participants' capability;
9. 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. § 124.211.
10. shall select an appropriate 8(a) Participant when the U.S. Department of Commerce submits an open offering letter for a sole source requirement; and
11. will issue a letter to the U.S. Department of Commerce's Office of Small and Disadvantaged Business Utilization, with a copy to the appropriate senior procurement executive (FAR Part 2, Subpart 2.101), identifying accepted requirements for which contract (to include any resultant modifications) award documents have not been received by the SBA district office.

B. The U.S. Department of Commerce:

1. shall receive and retain SBA's delegation of contract execution and review functions by reporting all 8(a) contract awards, modifications, and options 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 the FAR Subpart 19.8;

3. shall determine which requirements are suitable for offering to the 8(a) BD program in accordance with FAR Part 19, 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 inform contracting officers and other warranted officials who are awarding 8(a) contracts of their responsibilities concerning this agreement;
5. through the contracting officer or other warranted official, shall monitor and ensure 8(a) contract compliance requirements with applicable regulations as cited in FAR Parts 19, 42 and 52 and 13 C.F.R. Part 124;
6. shall include monitoring and oversight provisions for all SBA delegated authority contract awards, modifications, options and purchase orders to ensure that all contracts comply with the work performance requirements in accordance with FAR § 19.811-3(e) and 13 C.F.R. § 124.510;
7. 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 under \$100K prior to issuance of the purchase order;
8. shall ensure that all contracting officers, small business specialists, etc. participate in 8(a) BD program contract training when conducted by the SBA;
9. shall submit the offering letter for sole source requirements exceeding the simplified acquisition threshold of \$100K to SBA's district office responsible for servicing the selected 8(a) Participant, when an 8(a) Participant has been identified;
10. 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 Commerce's contracting activity is located, when the U.S. Department of Commerce has not identified a specific 8(a) Participant for a requirement;
11. shall submit the offering letter for competitive 8(a) requirement to the SBA district office that services the geographical area where the U.S. Department of Commerce's contracting activity is located. Exceptions: the 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, offering letter shall be submitted to SBA's Headquarters;

12. shall submit a request for eligibility determination to the SBA district office servicing the apparent awardee. In the case of a negotiated procurement, following receipt of initial offers including price, the contracting officer may request an eligibility determination for all firms in the competitive range, if discussions are to be conducted. The eligibility determination requests shall be sent to the SBA offices servicing those firms in the competitive range;
13. shall submit competitive 8(a) requirements and sole source requirements for which no specific 8(a) Participant had been nominated to the SBA district office servicing the geographical area in which the procuring activity is located;
14. shall submit competitive and open construction requirements to the SBA district office serving the geographical area in which the work is to be performed or in the case of overseas contracts to the Office of 8(a) Business Development located at SBA Headquarters;
15. shall retain responsibility for compliance with all applicable provisions of the FAR and any the U.S. Department of Commerce regulations, unless a deviation is obtained;
16. 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;
17. shall provide a signed copy of the purchase order to the SBA servicing office within 15 days of the award;
18. shall request an eligibility determination prior to final award in all 8(a) competitive acquisitions;
19. shall retain the option to use tripartite procedures to award 8(a) contracts and purchase orders to 8(a) Participants as specified in FAR Subpart 19.8;
20. shall ensure that all contracts awarded pursuant to this PA contain provisions that:
 - (a) require SBA's approval of novation agreements submitted by the 8(a) Participant; and

- (b) require advance notice to SBA (as the prime contractor) prior to issuance of a final notice terminating the contract in whole or in part;
- 21. shall ensure that all NAICS codes for all 8(a) contracts are applied in accordance with FAR § 19.102;
- 22. 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;
- 23. shall provide all proposed joint ventures involving 8(a) Participants to SBA for approval before contract(s) award; and
- 24. cannot use contracts that have not been offered to and accepted by SBA into the 8(a) BD program for the U.S. Department of Commerce's 8(a) negotiated goals.

V. CONTRACT EXECUTION

The U.S. Department of Commerce 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 that employ the simplified acquisition procedures authorized by FAR Part 13, limited to the simplified acquisition threshold, as defined in FAR § 2.101, require no offer or acceptance letter; however, a program eligibility determination of the selected 8(a) Participant from SBA is required. Contract execution shall be on the appropriate form specified in the FAR or the U.S. Department of Commerce regulation. The "Issued by" block shall identify the awarding the U.S. Department of Commerce 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 Commerce's 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 Commerce have signed it. It will remain in effect until September 30, 2009.

VII. AMENDMENT

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

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VIII. TERMINATION

Either SBA or the U.S. Department of Commerce 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 SBA into the 8(a) BD program cannot be used for the U.S. Department of Commerce's 8(a) negotiated goals.
- B. SBA reserves the option to suspend or rescind the authority of this PA with the U.S. Department of Commerce 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 Commerce otherwise fails to follow the terms of this PA.

X. ADMINISTRATION

For The U.S. Department of Commerce:

Nancy Barrere
Procurement Analyst
Office of Acquisition Management
Commerce Acquisition Performance, Policy & Support
Room 1854
Washington, DC 20230
(202) 482-5519
(202) 482-0546

For SBA:

Jacqueline B. West
Assistant Administrator for Program Review
Office of Business Development
409 3rd Street, SW
Washington, DC 20416
(202) 205-7581
(202) 481-4527

XI. ACCEPTANCE

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

Al Sligh, Jr.
Procurement Executive and
Director for Acquisition Management
and Financial Assistance
The U.S. Department of Commerce

Al Sligh, Jr. 6/7/07
Date

Paul S. Hsu
Associate Deputy Administrator for
Government Contracting and
Business Development

Paul S. Hsu 6/7/07
Date

Carol Littell
Acting Associate Administrator for
Strategic Alliances

Carol J. Littell 6-26-07
Date

**Class Deviation from the Federal Acquisition Regulation (FAR)
Subpart 19.8 and Part 52 regarding Section 8(a) Awards**

Determination and Findings


Under the authority granted by the Civilian Agency Acquisition Council (CAAC) Letter 98-3, Direct 8(a) Contracting, the Department of Commerce has authorized a class deviation from the Federal Acquisition Regulation (FAR) 19.8, 52.219-11, 52.219-12, 52.219-17, and 52.219-18, to implement the Partnership Agreement between the U.S. Small Business Administration and the Department of Commerce.

Findings


The FAR requires the procuring agencies to issue a prime contract with the SBA, which in turn subcontracts performance of the contract to the 8(a) firm. The CAAC Letter 98-3 allows agencies that have entered into the Partnership Agreement with SBA to award contracts directly to the 8(a) concerns. Since the affected regulations do not reflect the revised process permitted by the Partnership Agreement, the SBA and FAR regulations must be amended. The FAR will be amended following the promulgation of a SBA modification to their regulation. The deviations to FAR coverage necessary to implement the 8(a) Partnership Agreement are attached to this Determination and Findings.

Determination

In accordance with FAR 1.404, I have issued this class deviation. Consultation and approval for this class deviation is granted under CAAC Letter 1998-03. This class deviation shall remain in effect until the SBA-DOC Partnership Agreement is rescinded or upon the effective date of pertinent FAR changes, whichever occurs first.



Helen Hurcombe
Senior Procurement Executive
and Director for Acquisition Management



Date

Attachment

Full Text of Deviated FAR Parts

Class FAR Deviation from FAR Subpart 19.8 and Part 52 regarding Section 8(a) Awards

The following is the full text of the Deviated FAR language to Implement the 8(a) Partnership Agreement between SBA and DOC

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

19.800 General. (DEVIATION)(JULY 2008)

(a) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. The SBA's subcontractors are referred to as "8(a) contractors."

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

(c) When, acting under the authority of the program, the SBA certifies to an agency that the SBA is competent and responsible to perform a specific contract, the contracting officer is authorized, in the contracting officer's discretion, to award the contract to the SBA based upon mutually agreeable terms and conditions.

(d) The SBA refers to this program as the 8(a) Business Development (BD) Program.

(e) Before deciding to set aside an acquisition in accordance with Subpart 19.5, 19.13, or 19.14, the contracting officer should review the acquisition for offering under the 8(a) Program. If the acquisition is offered to the SBA, SBA regulations (13 CFR 126.607(b)) give first priority to HUBZone 8(a) concerns.

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

[(f) By Partnership Agreement (PA) dated June 26, 2007 between the U.S. Small Business Administration (SBA) and the U.S. Department of Commerce (DOC), the SBA delegated to the DOC Procurement Executive authority under paragraph 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. However, the SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract award, and retains appeal rights under FAR 19.810. The SBA delegates only the authority to sign contracts on its behalf. Consistent with the provisions of the PA, this authority is hereby re-delegated to DOC contracting officers. Under the PA, a contract may be awarded directly to an 8(a) firm on either a sole source or competitive basis. An SBA signature on the contract is not required.]

19.811-3 Contract clauses. (DEVIATION)(JULY 2008)

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

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

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

(d) The contracting officer shall insert the clause at 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805.

(1) The clause at 52.219-18 with its Alternate I will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts pursuant to 19.804-2.

(2) The clause at 52.219-18 with its Alternate II will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f)(4) and (5)).

[(3) The contracting officer shall insert the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III (Deviation) (July 2008), when the acquisition is processed under the PA cited in 19.800.]

(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in any solicitation and contract resulting from this subpart.

[(f) The contracting officer shall insert the clause at 52.219-71, Section 8(a) Direct Award (Deviation) (July 2008),” in direct contracts and purchase orders processed under the PA cited in 19.800; and 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.

[(g) The contracting officer shall insert the clause at 52.219-72, Notification to Delay Performance (Deviation) (July 2008), in solicitations and purchase orders issued under the PA cited in 19.800.]

19.812 Contract administration. (DEVIATION)(JULY 2008)

(a) The contracting officer shall assign contract administration functions, as required, based on the location of the 8(a) contractor (see Federal Directory of Contract Administration Services Components (available via the Internet at <http://www.dcms.mil/casbook/casbook.htm>)).

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

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

(d) An 8(a) contract, whether in the base or an option year, must be terminated for convenience if the 8(a) concern to which it was awarded transfers ownership or control of the firm

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

[(e) Awards under the Partnership Agreement cited in 19.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at 52.219-71, Section 8(a) Direct Award (Deviation) (July 2008), which requires the contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.]

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns – Alternate III. (DEVIATION)(JULY 2008)

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

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS. (DEVIATION)(JULY 2008).

(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 to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.~~

[(c) Any award resulting from this solicitation shall be made directly by the contracting officer 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)

[52.219-71 Section 8(a) Direct Award. (DEVIATION)(JULY 2008)

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

Section 8(a) Direct Award (Deviation)(July 2008)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to a Partnership Agreement between the Small Business Administration (SBA) and the Department of Commerce (DOC). Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing 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 officers at time of award]

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

(c) The 8(a) 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 prior to the actual relinquishing of ownership or control; and

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

(End of Clause)]

[52.219-72 Notification to Delay Performance. (DEVIATION)(JULY 2008)

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

Notification to Delay Performance (Deviation)(July 2008)

The Contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the Contractor receives notification from the Small Business Administration that it is ineligible for this 8(a) award, or otherwise receives instructions from the contracting officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a determination of ineligibility is issued within the 2-day period, the purchase order shall be considered cancelled.

(End of Clause)]
