§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

(a) Acceptance of the requirement. Upon receipt of the procuring activity’s offer of a procurement requirement, SBA will determine whether it will accept the requirement for the 8(a) BD program. SBA’s decision whether to accept the requirement will be sent to the procuring activity in writing within 10 working days of receipt of the written offering letter if the contract is valued at more than the simplified acquisition threshold, and within two days of receipt of the offering letter if the contract is valued at or below the simplified acquisition threshold, unless SBA requests, and the procuring activity grants, an extension. SBA is not required to accept any particular procurement offered to the 8(a) BD program.

(1) Where SBA decides to accept an offering of a sole source 8(a) procurement, SBA will accept the offer both on behalf of the 8(a) BD program and in support of a specific Participant.

(2) Where SBA decides to accept an offering of a competitive 8(a) procurement, SBA will accept the offer on behalf of the 8(a) BD program.

(3) Where SBA has delegated its contract execution functions to a procuring activity, the procuring activity may assume that SBA accepts the offer if the activity does not receive a reply to its offer within five days.

(4) In the case of procurement requirements valued at or below the Simplified Acquisition Procedures threshold:

(i) Where a procuring activity makes an offer to the 8(a) program on behalf of a specific Program Participant and does not receive a reply to its offer within two days, the procuring activity may assume the offer is accepted and proceed with award of an 8(a) contract;

(ii) Where SBA has delegated its 8(a) contract execution functions to an
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agency, SBA may authorize the procuring activity to award an 8(a) contract without requiring an offer and acceptance of the requirement for the 8(a) program. In such a case, the procuring activity must notify SBA of all 8(a) awards made under this authority.

(5) Where SBA does not respond to an offering letter within the normal 10-day time period, the procuring activity may seek SBA’s acceptance through the AA/BD. The procuring activity may assume that SBA accepts its offer for the 8(a) program if it does not receive a reply from the AA/BD within 5 days of his or her receipt of the procuring activity request.

(b) Verification of NAICS code. As part of the acceptance process, SBA will verify the appropriateness of the NAICS code designation assigned to the requirement by the procuring activity contracting officer.

(1) SBA will accept the NAICS code assigned to the requirement by the procuring activity contracting officer as long as it is reasonable, even though other NAICS codes may also be reasonable.

(2) If SBA and the procuring activity are unable to agree as to the proper NAICS code designation for the requirement, SBA may either refuse to accept the requirement for the 8(a) BD program, appeal the contracting officer’s determination to the head of the agency pursuant to §124.505, or appeal the NAICS code designation to OHA under part 134 of this title.

(c) Sole source award where procuring activity nominates a specific Participant. SBA will determine whether an appropriate match exists where the procuring activity identifies a particular Participant for a sole source award.

(1) Once SBA determines that a procurement is suitable to be accepted as an 8(a) sole source contract, SBA will normally accept it on behalf of the Participant recommended by the procuring activity, provided that:

(i) The procurement is consistent with the Participant’s business plan;

(ii) The Participant complies with its applicable non-8(a) business activity target imposed by §124.509(d);

(iii) The Participant is small for the size standard corresponding to the NAICS code assigned to the requirement by the procuring activity contracting officer; and

(iv) The Participant has submitted required financial statements to SBA.

(2) If an appropriate match exists, SBA will advise the procuring activity whether SBA will participate in contract negotiations or whether SBA will authorize the procuring activity to negotiate directly with the identified Participant. Where SBA has delegated its contract execution functions to a procuring activity, SBA will also identify that delegation in its acceptance letter.

(3) If an appropriate match does not exist, SBA will notify the Participant and the procuring activity, and may then nominate an alternate Participant.

(d) Open requirements. When a procuring activity does not nominate a particular concern for performance of a sole source 8(a) contract (open requirement), the following additional procedures will apply:

(1) If the procurement is a construction requirement, SBA will examine the portfolio of Participants that have a bona fide place of business within the geographical boundaries served by the SBA district office where the work is to be performed to select a qualified Participant. If none is found to be qualified or a match for a concern in that district is determined to be impossible or inappropriate, SBA may nominate a Participant with a bona fide place of business out of state but within a reasonable proximity to the work site. SBA’s decision will ensure that the nominated Participant is close enough to the work site to keep costs of performance reasonable.

(2) If the procurement is not a construction requirement, SBA may select any eligible, responsible Participant nationally to perform the contract.

(3) In cases in which SBA selects a Participant for possible award from among two or more eligible and qualified Participants, the selection will be based upon relevant factors, including
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business development needs, compliance with competitive business mix requirements (if applicable), financial condition, management ability, technical capability, and whether award will promote the equitable distribution of 8(a) contracts.

(e) Formal technical evaluations. Except for requirements for architectural and engineering services, SBA will not authorize formal technical evaluations for sole source 8(a) requirements. A procuring activity:

(1) Must request that a procurement be a competitive 8(a) award if it requires formal technical evaluations of more than one Participant for a requirement below the applicable competitive threshold amount; and

(2) May conduct informal assessments of several Participants' capabilities to perform a specific requirement, so long as the statement of work for the requirement is not released to any of the Participants being assessed.

(f) Repetitive acquisitions. A procuring activity contracting officer must submit a new offering letter to SBA where he or she intends to award a follow-on or repetitive contract as an 8(a) award. This enables SBA to determine:

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

(2) A nominated firm’s eligibility, whether or not it is the same firm that performed the previous contract;

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

(4) Whether the requirement should continue under the 8(a) BD program.

g) Basic Ordering Agreements (BOAs). A Basic Ordering Agreement (BOA) is not a contract under the FAR. See 48 CFR 16.703(a). Each order to be issued under the BOA is an individual contract. As such, the procuring activity must offer, and SBA must accept, each task order under a BOA in addition to offering and accepting the BOA itself.

(1) SBA will not accept for award on a sole source basis any task order under a BOA that would cause the total dollar amount of task orders issued to exceed the applicable competitive threshold amount set forth in §124.506(a).

(2) Where a procuring activity believes that task orders to be issued under a proposed BOA will exceed the applicable competitive threshold amount set forth in §124.506(a), the procuring activity must offer the requirement to the program to be competed among eligible Participants.

(3) Once a concern’s program term expires, the concern otherwise exits the 8(a) BD program, or becomes other than small for the NAICS code assigned under the BOA, new orders will not be accepted for the concern.

(h) Task or Delivery Order Contracts—

(1) Contracts set aside for exclusive competition among 8(a) Participants. (i) A task or delivery order contract that is reserved exclusively for 8(a) Program Participants must follow the normal 8(a) competitive procedures, including an offering to and acceptance into the 8(a) program, SBA eligibility verification of the apparent successful offerors prior to contract award, and application of the performance of work requirements set forth in §124.510, and the nonmanufacturer rule, if applicable, (see §121.406(b).

(ii) Individual orders need not be offered to or accepted into the 8(a) BD program.

(iii) A concern awarded such a contract may generally continue to receive new orders even if it has grown to be other than small or has exited the 8(a) BD program, and agencies may continue to take credit toward their prime contracting goals for orders awarded to 8(a) Participants. However, a concern may not receive, and agencies may not take 8(a), SDB or small business credit, for an order where the concern has been asked by the procuring agency to re-certify its size status and is unable to do so (see §121.404(g)), or where ownership or control of the concern has changed and SBA has granted a waiver to allow performance to continue (see §124.515).

(2) 8(a) credit for orders issued under multiple award contracts that were not set aside for exclusive competition among eligible 8(a) Participants. In order to receive 8(a) credit for orders placed under multiple award contracts that were not initially set aside for exclusive competition among 8(a) Participants:

(i) The order must be offered to and accepted into the 8(a) BD program;
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(ii) The order must be competed exclusively among 8(a) concerns;
(iii) The order must require the concern comply with applicable limitations on subcontracting provisions (see § 125.6) and the nonmanufacturer rule, if applicable, (see § 121.406(b)) in the performance of the individual order; and
(iv) SBA must verify that a concern is an eligible 8(a) concern prior to award of the order in accordance with § 124.507.

(i) Requirements where SBA has delegated contract execution authority. Except as provided in paragraph (a)(4)(i) of this section, where SBA has delegated its 8(a) contract execution authority to the procuring activity, the procuring activity must still offer and SBA must still accept all requirements intended to be awarded as 8(a) contracts.

(j) Contracting Among Small Business Programs.

(1) Acquisitions Valued At or Below $100,000/Simplified Acquisition Threshold. The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding $3,000 ($15,000 for acquisitions as described in the Federal Acquisition Regulation (FAR) at 48 CFR 12.201(g)(1)) but valued below $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from setting aside a contract under the 8(a) BD, HUBZone, SDVO SBC or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted. In addition, the contracting officer must document the contract file showing that the apparent successful offeror’s ORCA certifications and associated representations were reviewed.

(ii) SBA believes that Progress in fulfilling the various small business goals, as well as other factors such as the results of market research, programmatic needs specific to the procuring agency, anticipated award price, and the acquisition history, will be considered in making a decision as to which program to use for the acquisition.


§ 124.504 What circumstances limit SBA’s ability to accept a procurement for award as an 8(a) contract?

SBA will not accept a procurement for award as an 8(a) contract if the circumstances identified in paragraphs (a) through (d) of this section exist.

(a) Reservation as small business set-aside, or HUBZone, service disabled veteran-owned small business, or women-owned small business award. The procuring activity issued a solicitation for or otherwise expressed publicly a clear intent to reserve the procurement as a small business set-aside, or a HUBZone, service disabled veteran-owned small business, or women-owned small business award prior to offering the requirement to SBA for award as an 8(a) contract. The AA/BD may permit the acceptance of the requirement,