

(3) For sole source requirements offered on behalf of a specific Participant, to the SBA district office servicing that concern.

(c) An offering letter must contain the following information:

(1) A description of the work to be performed;

(2) The estimated period of performance;

(3) The NAICS code that applies to the principal nature of the acquisition;

(4) The anticipated dollar value of the requirement, including options, if any;

(5) Any special restrictions or geographical limitations on the requirement;

(6) The location of the work to be performed for construction procurements;

(7) Any special capabilities or disciplines needed for contract performance;

(8) The type of contract to be awarded, such as firm fixed price, cost reimbursement, or time and materials;

(9) The acquisition history, if any, of the requirement;

(10) The names and addresses of any small business contractors which have performed on this requirement during the previous 24 months;

(11) A statement that prior to the offering no solicitation for the specific acquisition has been issued as a small business set-aside, or as a small disadvantaged business set-aside if applicable, and that no other public communication (such as a notice in the Commerce Business Daily) has been made showing the procuring activity's clear intent to use any of these means of procurement;

(12) Identification of any specific Participant that the procuring activity contracting officer nominates for award of a sole source 8(a) contract, if appropriate, including a brief justification for the nomination, such as one of the following:

(i) The Participant, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) BD program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent;

(13) Bonding requirements, if applicable;

(14) Identification of all Participants which have expressed an interest in being considered for the acquisition;

(15) Identification of all SBA field offices which have requested that the requirement be awarded through the 8(a) BD program;

(16) A request, if appropriate, that a requirement whose estimated contract value is under the applicable competitive threshold be awarded as an 8(a) competitive contract; and

(17) Any other information that the procuring activity deems relevant or which SBA requests.

**§ 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 its offer for the 8(a) program if the procuring activity does not receive a reply to its offer within five days.

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(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 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 within the geographical boundaries served by another district office within the same state, or may nominate a Participant having 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 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 con-

tract. 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, including Multiple Award Contracts.*

(1) *Contracts set-aside for exclusive competition among 8(a) Participants.*

(i) A task or delivery order contract, Multiple Award Contract, or order issued against a Multiple Award Contract that is set-aside exclusively for 8(a) Program Participants, partially set-aside for 8(a) Program Participants or reserved solely for 8(a) Program Participants must follow the established 8(a) competitive procedures. This includes an offering to and acceptance into the 8(a) program, SBA eligibility verification of the apparent successful offerors prior to contract award, compliance with the performance of work requirements set forth in §124.510, and compliance with the nonmanufacturer rule (see §121.406(b)), if applicable.

(ii) An agency is not required to offer or receive acceptance of individual orders into the 8(a) BD program if the task or delivery order contract or Multiple Award Contract was set-aside exclusively for 8(a) Program Participants, partially set-aside for 8(a) Program Participants or reserved solely for 8(a) Program Participants, and the individual order is to be competed among all 8(a) contract holders.

(iii) A concern awarded a task or delivery order contract or Multiple

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Award Contract that was set-aside exclusively for 8(a) Program Participants, partially set-aside for 8(a) Program Participants or reserved solely for 8(a) Program Participants 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, agencies may not take SDB or small business credit for an order where the concern has been asked by the procuring agency to recertify its size, 8(a) or SDB 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).

(iv) An agency may issue a sole source award against a Multiple Award Contract that has been set-aside exclusively for 8(a) Program Participants, partially set-aside for 8(a) Program Participants or reserved solely for 8(a) Program Participants if the required dollar thresholds for sole source awards are met. Where an agency seeks to award an order on a sole source basis (*i.e.*, to one particular 8(a) contract holder without competition among all 8(a) contract holders), the agency must offer and SBA must accept the order into the 8(a) program on behalf of the identified 8(a) contract holder.

(2) *Allowing orders issued to 8(a) Participants under Multiple Award Contracts that were not set-aside for exclusive competition among eligible 8(a) Participants to be considered 8(a) awards.* In order for an order issued to an 8(a) Participant and placed against a Multiple Award Contract to be considered an 8(a) award, where the Multiple Award contract was not initially set-aside, partially set-aside or reserved for exclusive competition among 8(a) Participants, the following conditions must be met:

(i) The order must be offered to and accepted into the 8(a) BD program;

(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.

(3) *Reserves.* A procuring activity must offer and SBA must accept a requirement that is reserved for 8(a) Participants (*i.e.*, an acquisition where the contracting officer states an intention to make one or more awards to only 8(a) Participants under full and open competition). However, a contracting officer does not have to offer the requirement to SBA where the acquisition has been reserved for small businesses, even if the contracting officer states an intention to make one or more awards to several types of small business including 8(a) Participants since any such award to 8(a) Participants would not be considered an 8(a) contract award.

(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 the Simplified Acquisition Threshold.* The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micro-purchase Threshold but not exceeding the Simplified Acquisition Threshold (defined 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 making an award to a small business under the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

(2) *Acquisitions Valued Above the Simplified Acquisition Threshold.* (i) The contracting officer shall set aside any acquisition with an anticipated dollar

value exceeding the Simplified Acquisition Threshold (defined 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. However, after conducting market research, the contracting officer shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD, HUBZone, SDVO SBC or WOSB programs before setting aside the requirement as a small business set-aside. There is no order of precedence among 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 System for Award Management (SAM) (or any successor system) 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.

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**§ 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) *Prior intent to award as a small business set-aside, or use the HUBZone, Service Disabled Veteran-Owned Small Business, or Women-Owned Small Business programs.* The procuring activity

issued a solicitation for or otherwise expressed publicly a clear intent to award the contract as a small business set-aside, or to use the HUBZone, Service Disabled Veteran-Owned Small Business, or Women-Owned Small Business programs prior to offering the requirement to SBA for award as an 8(a) contract. However, the AA/BD may permit the acceptance of the requirement under extraordinary circumstances.

(b) *Competition prior to offer and acceptance.* The procuring activity competed a requirement among Participants prior to offering the requirement to SBA and receiving SBA's formal acceptance of the requirement.

(1) Any competition conducted without first obtaining SBA's formal acceptance of the procurement for the 8(a) BD program will not be considered an 8(a) competitive requirement.

(2) SBA may accept the requirement for the 8(a) BD program as a competitive 8(a) requirement, but only if the procuring activity agrees to resolicit the requirement using appropriate competitive 8(a) procedures.

(c) *Adverse impact.* SBA has made a written determination that acceptance of the procurement for 8(a) award would have an adverse impact on an individual small business, a group of small businesses located in a specific geographical location, or other small business programs. The adverse impact concept is designed to protect small business concerns which are performing Government contracts awarded outside the 8(a) BD program, and does not apply to follow-on or renewal 8(a) acquisitions. SBA will not consider adverse impact with respect to any requirement offered to the 8(a) program under Simplified Acquisition Procedures.

(1) In determining whether the acceptance of a requirement would have an adverse impact on an individual small business, SBA will consider all relevant factors.

(i) In connection with a specific small business, SBA presumes adverse impact to exist where:

(A) The small business concern has performed the specific requirement for at least 24 months;