

TITLE: CIB 98-15 New Streamlined Awd. Procedures for 8(a) Contracts

June 9, 1998

MEMORANDUM FOR CONTRACTING OFFICERS AND NEGOTIATORS

TO: Distribution List FAC

From: M/OP/OD, Marcus L. Stevenson, Procurement Executive

Subject: New Streamlined Award Procedures for 8(a) Contracts

CONTRACT INFORMATION BULLETIN 98 - 15

The Small Business Administration (SBA) has launched a new pilot program to delegate 8(a) contract signature authority to individual agencies. This program is effective for one year, until terminated or extended, beginning in May of 1998.

The SBA has delegated its authority under Section 8(a)(1)(A) of the Small Business Act (15 USC 637(a) as amended) to USAID to enter into 8(a) prime contracts, and its authority under Section 8(a)(1)(B) of the Act to subcontract the performance of that contract to an eligible 8(a) Program Participant. I hereby re-delegate said 8(a) contracting authority to all Contracting Officers at USAID. This delegation shall be in effect until the authority from the SBA is withdrawn.

USAID has signed a Memorandum of Understanding (MOU) with the SBA that will eliminate the tripartite agreement and allow us to execute a single contract document to serve as the legal instrument between USAID and the 8(a) contractor. The MOU, which is attached to this CIB, explains the new award procedures and the responsibilities of the parties. Of the USAID responsibilities, the Office of Small and Disadvantaged Business Utilization(OSDBU), not the Office of Procurement, shall:

1. submit summary reports of all 8(a) contractin activities, as required by the MOU, to the SBA's Assistant Administrator for Business Development, Office of Minority Business Enterprise, on a quarterly basis; and
2. ensure that all applicable requirements of 13 CFR 124 are followed.

The SBA has obtained a class deviation from the 8(a) award procedures contained in Federal Acquisition Regulation (FAR)19.8, which will be sent to all Contracting Officers and negotiators when it is received by the Agency.

The MOU may be amended at any time by mutual agreement between the SBA's Associate Administrator for Minority Enterprise Development (AA/MED) and USAID's Procurement Executive. All amendments will be in writing. The MOU may be terminated by either the SBA's AA/MED or USAID's Procurement Executive upon thirty

(30) days advance written notice. If the test program is successful, the MOU and all delegations of authority may be extended.

I have also signed a class deviation to FAR subparts 19.8 and 52.2 (attached) to implement model language that will be incorporated in the FAR following promulgation of an SBA final rule. Use the model language attached to the deviation for your 8(a) contracting actions.

Attachments

- 1) Memorandum of Understanding between USAID and SBA
- 2) Class Deviation w/attachment

MEMORANDUM OF UNDERSTANDING
between the
U.S. SMALL BUSINESS ADMINISTRATION
and the
U.S. Agency for International Development

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) between the U.S. Small Business Administration (SBA) and the U.S. Agency for International Development (USAID) is to establish streamlined procedures for the award of requirements pursuant to Section 8(a) of the Small Business Act (15 USC 637(a) as amended), hereinafter referred to as "the Act."

II. OBJECTIVES

- a. To reduce the interval between the time USAID sends offering letter to SBA and SBA's acceptance of the offering to a maximum of five (5) working days.
- b. To eliminate SBA approval of contracts executed under the authority of this MOU.
- c. To establish a uniform policy and procedure regarding the application of Simplified Acquisition Procedures (SAP) to the 8(a) contracting process, when applicable.

III. SCOPE

This MOU 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 CFR) and SBA's Minority Enterprise Development Program Regulations (13 CFR 124).

This MOU encompasses all competitive and non-competitive (sole source) acquisitions offered by USAID and accepted by the SBA into the 8(a) program, including but not limited to:

Acquisition of Commercial Items (FAR Part 12), awards under Simplified Acquisition Procedures (FAR Part 13), awards resulting from Sealed Bids (FAR Part 14), Contracting by Negotiation (FAR Part 15), and Construction and Architect-Engineering Contracts (FAR Part 36).

This MOU shall apply to all SBA and USAID contracting activities:

** See Attachment 1 to this MOU

IV. RESPONSIBILITIES

a. The SBA shall:

1. delegate to USAID, with specific authority to re-delegate to warranted contracting officers, as appropriate, 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 subcontract the performance of that contract to an eligible 8(a) Program Participant (hereinafter referred to as "8(a) Participant.");
2. establish and implement uniform procedures for use by SBA Headquarters and SBA District Offices in conjunction with this MOU. As minimum, these procedures shall inform the SBA HQ and District Offices of this MOU, and establish a procedure for communicating the offer/acceptance of 8(a) requirements within five (5) working days between the time the SBA receives an offer letter from a USAID contracting activity and the SBA acceptance letter is issued;
3. review offer letters from USAID contracting activities and issue acceptance letters, where appropriate, within five (5) working days of receipt. Acceptance goes to all elements of eligibility (e.g., determinations of adverse impact, Standard Industrial Classified (SIC) code appropriateness, and program eligibility). In accordance with FAR 19.805-2(c), the SBA will make a determination of eligibility as of the date of the Participant's initial offer which includes price;
4. provide 8(a) Participants with assistance on proposal development and/or contract negotiations when requested;
5. select an appropriate 8(a) Participant when USAID submits an "open" offer letter for a sole source requirement;
6. retain the right to appeal contract disagreements to the USAID Administrator on behalf of the Participant pursuant to 13 CFR 124.320(b);
7. reserve the right to perform on-site contract surveillance reviews at USAID contracting activities to ensure compliance with this MOU and applicable regulations, identify problems, and recommend corrective action; and
8. reserve the right to withdraw any delegation of contract authority issued as a result of this MOU.

b. USAID shall:

1. determine which requirements are suitable to be offered to the 8(a) program in accordance with FAR Subpart 19.8, and, where appropriate, identify, in conjunction with the appropriate servicing SBA office(s), 8(a) Participants capable of performing these requirements;

2. submit the offer letter for new sole source requirements, for which an 8(a) Participant has been selected, to the SBA District Office servicing the selected 8(a) Participant;

3. submit the "open" offer letter to SBA HQ, where an 8(a) Participant has not been selected for a requirement;

4. submit the offer letter for competitive 8(a) requirements to SBA HQ;

5. advertise all competitive 8(a) procurements in the Commerce Business Daily (CBD), in accordance with FAR 19.805.

6. ensure that all contracts awarded pursuant to this MOU contain special provisions requiring contracting officers to coordinate with the SBA, prior to initiating action, on matters regarding contract termination and novation proceedings relating to contracts executed pursuant to this MOU;

7. to the extent necessary, submit requirements to Agency legal counsel for review and determination of legal sufficiency in accordance with USAID procedures;

8. submit a summary report of all 8(a) contracting activities to the SBA's Assistant Administrator for Business Development, Office of Minority Business Enterprise, on a quarterly basis. The report will be provided in electronic format and shall include the total number of actions, total dollars awarded; and break out individually the 8(a) contractors' names and addresses, SBA case number (if one has been provided), requirement/contract number, award amount, award date, contract type, period of contract performance; and, as appropriate, the modification number, type, date, and amount;

8. ensure that all applicable requirements of 13 CFR 124 are followed;

9. include the SBA servicing District Office on contract distribution lists, and annotate the SBA requirement number on initial award document (not on subsequent modification documents);

V. EXECUTION

Following SBA acceptance of a USAID requirement, and subsequent solicitation, where appropriate, the cognizant Contracting Officer shall execute a prime contract (or purchase order) between USAID and the 8(a) participant.

Contract execution shall be on
Standard Form 26 (Award of Supplies/Services),

Optional Form 347 (Purchase Order/Simplified Acquisition/Delivery Order/Task Order), Standard Form 1442 (Award of Construction), or Standard Form 1449 (Award of Commercial Items), as appropriate.

A single copy of the appropriate form shall be used. The "Issued by" block shall identify the awarding USAID contracting activity. The cognizant SBA District office for the Participant shall be identified in the award document.

The 8(a) Participant's name and address shall be listed in the block labeled "contractor."

Each participating USAID contracting activity shall issue the procurement instrument numbers. An SBA subcontract number will not be issued.

A single USAID Contracting Officer signature may be used in executing the contract or purchase order. (An SBA Contracting Officer signature will not be required.) The Contracting Officer's title shall include the appropriate USAID contracting activity as illustrated below:

Contracting Officer for the U.S. Agency for
International Development, USAID/Cairo
Contracting Officer for the U.S. Agency for International Development

VI. MEASURE OF EFFECTIVENESS

To determine the effectiveness of these streamlined procedures, USAID will accumulate data which may include awarded amounts under both contract and Simplified Acquisition Procedures, Procurement Administrative Lead Times (PALT), or number of awards. Specific data tracking elements will be defined during the initial period of implementation.

VII. TERM

This MOU will become effective on the date of mutual acceptance by the SBA and USAID, and will remain in effect for one year, at which time, it may be renewed by mutual agreement between SBA and USAID.

VII. AMENDMENTS

This MOU may be amended at any time by mutual agreement between the SBA's AA/MED and USAID's Procurement Executive.

All amendments will be in writing.

IX. TERMINATION

This MOU may be terminated by either the SBA's AA/MED or USAID's Procurement Executive upon thirty (30) days advance written notice.

X. ADMINISTRATION

The following persons are points of contact for administrative matters pertaining to this MOU:

Marcus L. Stevenson
Procurement Executive
U.S. Agency for International
Development
Washington, DC 20523
(202)712-5130

William R. Fisher
Associate Administrator for
Minority Enterprise Development
U.S. Small Business Administration
(202)205-6423

Arthur E. Collins, Jr.
Assistant Administrator for Program
Development
U.S. Small Business Administration
(202)205-6423

XI. ACCEPTANCE

The undersigned parties hereby accept the terms of this MOU:

J. Brian Atwood, Administrator
U.S. Agency for International Development

Aida Alvarez, Administrator
U.S. Small Business Administration

Ivan Ashley, Director
Office of Small and Disadvantaged
Business Utilization/Minority
Resource Center
U.S. Agency for International Development

Richard L. Hayes
Associate Deputy
Administrator for Government
Contracting and Minority Enterprise
Development
U.S. Small Business Administration

Marcus L. Stevenson
Procurement Executive
U.S. Agency for International Development

William A. Fisher
Acting Associate Administrator for
Minority Enterprise Development
U.S. Small Business Administration

Attachment 1 - List of USAID Contracting Activities

Contracting Activities in Washington:

The Office of Procurement (M/OP)
RRB 7.08-099
Washington, DC 20523

Office of the Inspector General
Budget and Acquisition
RRB 8.07-042
Washington, DC 20523

Contracting Activities Overseas:

USAID/Accra
Department of State
Washington, DC 20521-2020

USAID/Addis Ababa
Department of State
Washington, DC 20521-2030

USAID/Almaty
Department of State
Washington, DC 20521-7030

USAID/Amman
Unit # 70206
APO AE 09892-0206

USAID/Antananarivo
Department of State
Washington, DC 20521-2040

USAID/Asmara
Department of State
Washington, DC 20521-7170

USAID/Bamako
Department of State
Washington, DC 20521-2050

USAID/Bogota
American Embassy
USAID 5101
APO AA 34038

USAID/Budapest
Unit #25402
APO AE 09213-5270

USAID/Cairo
Unit # 64902
APO AE 09839-4902

USAID/Conakry
Department of State
Washington, DC 20521-2110

USAID/Cotonou
Department of State
Washington, DC 20521-2120

USAID/Dakar
Department of State
Washington, DC 20521-2130

USAID/Dar Es Salaam
Department of State
Washington, DC 20521-2140

USAID/Dhaka
Department of State
Washington, DC 20521-6120

USAID/Guatemala
Unit # 3324
APO AA 34024

USAID/Harare
Department of State
Washington, DC 20521-2180

USAID/Jakarta
American Embassy
Box # 4
APO AP 96520

USAID/Kampala
Department of State
Washington, DC 20521-2190

USAID/Kathmandu
Department of State
Washington, DC 20521-6190

USAID/Kiev
Department of State
Washington, DC 20521-5850

USAID/Kingston
Department of State
Washington, DC 20521-3210

USAID/La Paz
Unit # 3914
APO AA 34032

USAID/Lima
Unit # 3760
APO AA 34031

USAID/Managua
Unit # 2715 Box # 9
APO AA 34021

USAID/Manila
APO AP 96440

USAID/Maputo
Department of State
Washington, DC 20521-2330

USAID/Moscow
American Embassy
PSC 77
APO AE 09721

USAID/New Delhi
Department of State
Washington, DC 20521-9000

USAID/Port Au Prince
Department of State
Washington, DC 20521-3400

USAID/Pretoria
Department of State
Washington, DC 20521-9300

USAID/Rwanda
Department of State
Washington, DC 20521-2210

REDSO/EA/Nairobi
Unit 64102
APO AE 09831-4102

Regional Center for Southern Africa
(RCSA)
USAID/Gaborone
Department of State
Washington, DC 20521-2170

USAID/San Salvador
Unit # 3110
APO AA 34023

USAID/Tblisi
Department of State
Washington, DC 20521-3180

USAID/Tegucigalpa
Unit # 2927
APO AA 34022

USAID/Warsaw
American Embassy
Unit # 25402
APO AE 09213-5010

June 8, 1998

ACTION MEMORANDUM TO THE PROCUREMENT EXECUTIVE

THRU: M/OP/OD, James D. Murphy

FROM: M/OP/P, Kathleen J. O'Hara

SUBJECT: Class Deviation from FAR 19.8
OP-DEV-98-5c

Issue: To approval a class deviation from FAR subpart 19.8 and FAR part 52 to implement changes to the 8(a) contract award process resulting from a Memorandum of Understanding (MOU) signed with the Small Business Administration (SBA).

Discussion: The SBA has launched a pilot program to delegate 8(a) contract signature authority to individual agencies. USAID signed an MOU with the SBA under which SBA delegated to USAID the authority to make contract awards under the 8(a) program. The Civilian Agency Acquisition Council (CAAC) sent a copy of the appropriate FAR changes to the civilian agencies that signed the MOU. Changes to the FAR will be forthcoming; in the meantime the CAAC requests each agency to issue a class deviation implementing the changes. The changes are attached.

CAAC letter 98-3 serves as evidence of consultation with the Chairman of the CAAC, as provided in FAR 1.404(a)(1).

This deviation is applicable to all 8(a) contracts entered into by USAID contracting officers. The deviation is valid until two years from date of signature, or the changes are incorporated in the FAR (following promulgation of an SBA final rule), whichever occurs first.

Recommendation: That you approve this class deviation by signing below.

APPROVED:

DISAPPROVED: _____

DATED:

ATTACHMENT

Direct 8(a) Contracting
Model Coverage

Small Business Programs (FAR Part 19)

Subpart 19.800 General

Add subparagraph (d):

(d) Utilizing Memoranda of Understanding (MOUs), the SBA has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act to the Senior Procurement Executives of various Federal procuring activities. If an agency is covered by an MOU, a contract may be awarded directly, to an 8(a) firm on either a sole source or competitive basis. The SBA reserves the right to withdraw any delegation issued as a result of an MOU; however, any such withdrawal shall have no effect on contracts currently awarded under the MOU.

19.803 Selecting acquisitions for the 8(a) Program.

Add 19.803-70 to read:

19.803-70 Simplified procedures for 8(a) acquisitions under MOUS.

Procuring activities may use the simplified acquisition procedures of Part 13 to issue purchase orders or contracts, not exceeding \$100,000, to 8(a) Participants. The following applies to such acquisitions:

- (a) Neither offering letters to, nor acceptance letters from the SBA are required.
 - (b) The procuring activity will use the SBA's PRO-Net database on the Internet (<http://www.sba.gov>) to establish that the selected 8(a) firm is a current program participant.
 - (c) The contracting officer will issue the purchase order directly to the 8(a) firm.
 - (d) Once an 8(a) contractor has been identified, the agency contracting officer will establish the price with the selected 8(a) contractor and prepare and issue a purchase order or contract in accordance with the provisions of Part 13. The applicable clauses prescribed in 19.811-3 shall be included in the award document.
 - (e) The Contracting Officer will forward to the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within five days after the order is issued 19.804-2 Agency offering.
- (a) When applicable, this notification must identify that the offering is in accordance with the MOU identified in 19.800.

19.804-3 SBA Acceptance.

Add new 19.804-70 which will read:

19.804-70 SBA Acceptance under MOUs for acquisitions exceeding \$100,000.

(a) Acceptance of requirements covered by MOU's on acquisitions that exceed \$100,000.

(1) The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 5 working days of receipt of the offer

(2) The SBA may request, and the contracting agency may grant, an extension beyond the five-day limit.

(3) SBA's acceptance letters should be faxed or e-mailed to the offering contracting agency.

(4) If the procuring activity has not received an acceptance or rejection of the offering from SBA within 5 days of SBA's receipt of the offering letter, the procuring activity may assume that the requirement has been accepted and proceed with the acquisition.

(b) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

19.805 Competitive 8(a).

19.805-2 Procedures.

Add to 19.805-2 new paragraphs (a) and (c)(3) to read as follows:

(a) 8(a) acquisitions may also be conducted using simplified acquisition procedures (see Part 13). The award process is significantly streamlined where an MOU is in place.

(c)(3) For requirements exceeding \$100,000 processed under the MOU cited in 19.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid requirements) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA will determine the eligibility of the firm(s) and advise the contracting officer within 2 working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer will submit information on the next low offeror or next apparent successful offeror (as applicable) to the cognizant SBA field office.

19.806 Pricing the 8(a) contract.

Add paragraph (a) to read:

(a) When required by Subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor if the contract is being awarded under the MOU cited in 19.800.

19.808-1 Sole source.

Add new paragraphs 19.808-1 (a) and (b) to read:

(a) If the acquisition is conducted under an MOU cited in 19.800, the 8(a) contractor is responsible for negotiating with the agency within the time established by the agency. If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the agency may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under an MOU cited in 19.800, the agency is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in negotiations.

19.811-1 Sole Source.

19.811-1. Add new paragraph(d)to read as follows:

(d)If the award is to be made under an MOU cited in 19.800, the contract to be awarded by the procuring activity to the 8(a) firm shall be prepared in accordance with the procuring activity's normal procedures, given contract type and dollar amount, that the procuring activity would use for a similar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 253 (c)(5) or 10 U.S.C. 2304 (c)(5) (as appropriate) and 15 U.S.C. 637(a)as the authority for use of other than full and open competition.

(2) Appropriate contract clauses shall be included, as necessary, to reflect that the acquisition is an 8(a) contract made under the authority of an MOU, cited in 19.800.

(3) The procuring activity shall include SBA's requirement number on the contract unless the acquisition does not exceed \$100,000.

(4) A single award document shall be used between the agency and the 8(a) contractor. As such, a single signature by the agency's contracting officer who is identified as having concurrent authority under an MOU cited in 19.800 to enter into 8(a) contracts will suffice (i.e.. an SBA signature will not be required). The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "awarded to" or "contractor name" block on the appropriate forms.

19.811-2 Competitive.

Add paragraphs (a) and (b) to read as follows

(a) If the award is to be made under delegation of 8(a) contracting authority, competitive contracts for 8(a) firms will be prepared in accordance with the same standards as 8(a) sole source contracts. See 19.811-1.

(b) If the acquisition is conducted under an MOU cited in 19.800, the process for obtaining signatures shall be as specified in 19.811-1(d).

19.811-3 Contract Clauses.

Add paragraphs 19.811-3(d)(3) and (f) to read:

(d)(3) The clause at 52.219-18 will be used with the Alternate (Deviation) at 52.219-18, when the acquisition is processed under the MOU cited in 19.800.

(f) The contracting officer shall insert the clause at 52.219-70XX, Section 8(a) Direct Award, in direct award contracts and purchase orders processed under the MOU cited at 19.800; the clauses at 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.

19.812 Contract Administration.

Add 19.812 (d) to read:

(d) Awards under the MOU cited in 19.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause entitled, Section 8(a) Direct Award, that requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

Part 52

Solicitation Provisions and Contract Clauses

52.219-18 Alternate for acquisitions under 19.800 (Deviation) (June 1998)

When the acquisition is processed under the MOU cited in 19.800, substitute the following for the paragraph (c) in 52.219-18:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

52.219-70XX Section 8(a) Direct Awards.

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

Section 8(a) Direct Award (June 1998)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the [Insert Agency Name]. SBA does retain 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 Contracting Officer 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 contractor agrees:

(1) to notify the Contracting Officer, simultaneous 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 for termination prior to the actual relinquishing of ownership and control.

(2) it will adhere to the requirements of 52.219-14. Limitations on Subcontracting.
(End of clause)