

September 20, 2023

FAR Class Deviation Regarding the Small Business Administration (SBA) Memorandum, “Impact of Recent Court Decision (Ultima Servs. Corp. v. Dep’t of Ag. (E.D. Tenn.)) on the Use of the 8(a) Program”

Action: Contracting officers shall -

- Use the procedures at FAR subpart 19.8 regarding offer and acceptance under the 8(a) Program and the FAR deviations to paragraphs 19.804-3(a)(1) and (a)(2) as shown in the Attachment; and
- Follow the guidelines in this memorandum to verify a concern’s eligibility for the 8(a) Program in lieu of using the System for Award Management or presuming acceptance of a requirement by the SBA prior to making an award under the 8(a) Program.

Except as noted above, contracting officers shall **not** make an award to an 8(a) concern unless the offeror receives from SBA an affirmative determination of acceptance of the requirement into the 8(a) Program after July 19, 2023, and the offeror provides a copy of the SBA re-qualification letter prior to contract award. This SBA letter is the affirmative determination of social disadvantage after July 19, 2023, for the offeror.

SBA’s list of 8(a) participants eligible for award is available for government-only review within OMB’s MAX.gov platform on the SBA Office of Policy, Planning and Liaison (OPPL) Collaboration page.

Deviation: See Attachment of this document for the FAR text being amended by this class deviation.

Effective Date: This deviation is effective immediately and remains in effect until it is rescinded.

Point of Contact: Questions regarding this deviation may be directed to Procurement.Policy@usda.gov.

Attachment
(Deviation to FAR text)

Baseline is accurate through FAC 2023-05, to be effective September 22, 2023.

- Additions to baseline made by this deviation are indicated by **[bolded text in brackets]**
- Deletions to baseline made by this deviation are indicated by ~~strikethroughs~~
- Five asterisks (*****) indicate that there no revisions between the preceding and following parts or sections
- Three asterisks (***) indicate that there are no revisions between the material shown within a section and/or subsection

Part 19 - Small Business Programs

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

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19.804 Evaluation, offering, and acceptance.

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19.804-3 SBA acceptance.

(a) Upon receipt of the contracting office's offering letter, SBA will determine whether to accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the contracting office in writing within 10 working days of receipt of the offer if the contract is likely to exceed the simplified acquisition threshold and within two working days of receipt if the contract is at or below the simplified acquisition threshold. The contracting office may grant an extension of these time periods, if requested by SBA.

(1) For acquisitions exceeding the simplified acquisition threshold, if SBA does not respond to an offering letter within ten working days, the contracting office may seek SBA's acceptance through the Associate Administrator for Business

Development. The contracting office **[must receive SBA's decision of acceptance before proceeding with award of an 8(a) contract]** ~~may assume that SBA has accepted the requirement into the 8(a) program if it does not receive a reply from the Associate Administrator for Business Development within five calendar days of receipt of the contracting office's request.~~

(2) For acquisitions not exceeding the simplified acquisition threshold, **[the contracting office must receive SBA's decision of acceptance before proceeding with award of an 8(a) contract]** ~~when the contracting office makes an offer to the 8(a) program on behalf of a specific 8(a) participant and does not receive a reply to its offering letter within two working days, the contracting office may assume the offer is accepted and proceed with award of an 8(a) contract.~~

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