



U.S. Small Business
Administration



U.S. Small Business
Administration

SBA's Learning Series:

Session 9

8(a) Contracting Actions

Not intended for public distribution

Hosts

**David Diercks, Procurement Center Representative
SBA Office of Government Contracting,
Area IV**

**Pak Sa Dewhurst, Procurement Center Representative
SBA Office of Government Contracting,
Area IV**

Welcome to “SBA Virtual Learning 2025”

1. Questions answered during the final 10 minutes.
2. Technical problems: Contact your IT admin who manages Teams settings for your organization.
3. Captioning available for this presentation.
4. We cover the “**SBA Quick Reference**” as time allows.
5. For more SBA training visit the SBA Learning Center website <https://www.sba.gov/tools/sba-learning-center/search/training>

The APEX Accelerator Program

The APEX Accelerators are a vital resource partner.

- APEX Accelerator have a name change and a new website.
- Its new name is the National APEX Accelerator Alliance. The new website is <https://www.napex.us/>
- Recordings have been posted to a new URL and they are current to November 6, 2024.
- The website recordings are at: <https://www.napex.us/category/sba-webinars/>

Small Business Administration YouTube Page

SBA YouTube page posts past “First Wednesday” programming at links below.

FY2023

- October 5, 2022 – 8(a) Business Development Program Updates: <https://youtu.be/Yl5Sp0dP1aE>
- November 2, 2022 – Surety Bond Guarantee Program: <https://youtu.be/QlZJiMLcc5o>
- December 7, 2022 – Subcontracting Program: <https://youtu.be/gMaeeGl8CBs>
- January 4, 2023 – Surveillance Review Program: <https://youtu.be/euUX4Jv6kRI>
- February 1, 2023 – HUBZone Program: <https://youtu.be/YGnS8e6idCc>
- March 1, 2023 – The Mentor Protégé Program: <https://youtu.be/A9KbCm4FP1c>
- April 5, 2023 – Non-Manufacture Rule (NMR): <https://youtu.be/AqwYMWoe9f0>
- May 3, 2023 – Size Program: https://youtu.be/45WZ_oPb1GY
- Jun 7, 2023 – Legislature and Regulatory Updates: <https://youtu.be/ljx9lajQJNY>
- July 5, 2023 – Market Research: [SBA First Wednesday Market Research - July 13, 2023](https://youtu.be/SBA_First_Wednesday_Market_Research_-_July_13,_2023)
- August 2, 2023 – Service-Disabled Veteran Owned Program (SDVOSB): <https://youtu.be/QxcxJISRhnw>

FY2024

- October 4, 2023 - Certificate Of Competency: <https://youtu.be/VDZ-uuCLlWw>
- November 1, 2023 - 8(a) Program Updates: <https://youtu.be/6fN3dK0EShs>
- December 6, 2023 - Timber Program : <https://youtu.be/sa29iONBtfk>
- January 3, 2024 - Compliance Reviews: https://youtu.be/WmZn_oa13-o
- February 7, 2024 – Limitations on Subcontracting: <https://youtu.be/fYtGi6zhjXM>
- March 6, 2024 – Mentor Protégé Program: <https://youtu.be/ULmCzTe4c04>
- April 3, 2024 – Women-Owned Small Business Program: <https://youtu.be/E-R17-5lBn4>
- *May 9, 2024 - Participation Plans & Subcontracting Plans: <https://youtu.be/6OBLwxqdoZM>
- June 5, 2024 – Legislative and Regulatory Update: <https://youtu.be/iajaPOhtgHI>
- July 11, 2024 – HUBZone: <https://youtu.be/MJ9iL8dTOmk>
- August 7, 2024 – Market Research: <https://youtu.be/zg4ceGaqveE>

FY2025

- October 2, 2024 – SBA Size and Affiliation: <https://youtu.be/il5o6YEONc0>
- November 6, 2024 - Procurement Center Representative - An advocate, A Resource: https://youtu.be/_eJwz2S934Y
- December 4, 2024 – Small Business Plans (Pre-Award): <https://youtu.be/WQ4z3WRrUu8>
- January 16, 2025 - Small Business Plans (Post-Award): <https://youtu.be/B2yJIACfq6w>
- February 5, 2025 – Other Transaction Authority (OTA): <https://youtu.be/Hd10cTVnifo>
- March 5, 2025 – Surveillance Review: https://youtu.be/Cx_nlOLVij0
- April 2, 2025 – Set-Asides & Reserves: <https://youtu.be/ER-qoupVABc>

FIRST WEDNESDAY VIRTUAL LEARNING SERIES
FY 2025 SCHEDULE

1:00 to 2:00 PM Central Time
2:00 to 3:00 PM Eastern Time

FY 2025	Date	Topic
1	October 2, 2024	SBA Size and Affiliation
2	November 6, 2024	PCR: An Advocate, A Resource
3	December 4, 2024	Subcontracting Plans (Pre-Award)
4	*January 16, 2025	Subcontracting Plans (Post-Award)
5	February 5, 2025	Other Transaction Authority (OTA)
6	March 5, 2025	Surveillance Review
7	April 2, 2025	Set-Asides/Reviews
8	May 7, 2025	Certificate of Competency Program
9	June 4, 2025	8(a) Contracting Actions
10	July 2, 2025	Regulatory Updates
11	August 6, 2025	TBA

The program schedule is for information only and is subject to change

*Schedule Revisions may occur Due to Holiday or Programming Conflict

One Continuous Learning Point

- Self-service process for one CLP of credit: Many of you want to receive credit for today's training. You will be glad to know that today's training is worth one CLP. The slide presentation will include the training certificate on Slide 10. Fill, download the training certificate, copy and submit it through regular channels.
- If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to sbalearning@sba.gov.

“SBA 1st Wednesday Virtual Learning 2025”

This Certificate is awarded to

Insert Your Name Here

For completion of
8(a) Contracting Actions

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01. Recommendation of One CLP.



Thomas Krusemark
Acting Director, Area IV
SBA Office of Government Contracting

06/04/2025

Date

SBA First Wednesday

8(a) Contracting Actions

Presented by

Jill Nagy-Reynolds

**Business Opportunity Specialist
U.S. Small Business Administration
Columbus District Office**

Shanda Harris

**Business Opportunity Specialist
U.S. Small Business Administration
Columbus District Office**

SBA First Wednesdays Series
Wednesday, June 4, 2025

Today's Agenda

1. 8(a) Agency Offer
2. SBA Acceptance Letters
3. Adverse Impact Determinations
4. 8(a) Release Requests
5. New Requirement Determinations
6. 8(a) Joint Venture Considerations

8(a) Agency Offer Letters

8(a) Contracting Actions

8(a) Agency Offer Letters and SBA Acceptance Letters

Agency 8(a) Offer Letters

(SBA SOP 80 05 8, Chapter 4A: Contracts -General Processing Requirements)

What is an Agency 8(a) Offering Letter?

- A procuring activity indicates its intent to award a requirement under the 8(a) program by submitting an offering letter to SBA.

To Which SBA Office Does a Procuring Activity Submit an 8(a) Offering Letter?

- **Sole source requirements** offered on behalf of a specific Participant (“matched” requirements) must be submitted to the **DO servicing** that concern.
- **Competitive requirements** and open sole source requirements, except for construction, must be submitted to the **DO serving the geographical area in which the procuring activity is located**.
- **All construction requirements** must be submitted to the **DO serving the geographical area in which the work is to be performed**, except for contracts to be performed overseas.
- Construction requirements to be performed overseas must be submitted to SBA Office of Management and Technical Assistance (OMTA) via e-mail @ omta@sba.gov.

8(a) Contracting Actions

8(a) Agency Offer Letters and SBA Acceptance Letters

Agency 8(a) Offer Letters

(SBA SOP 80 05 8, Chapter 4A: Contracts -General Processing Requirements)

What is an 8(a) SBA Acceptance Letter?

An acceptance letter is SBA's formal notification that it accepts a requirement into the 8(a) BD program for sole source or competitive award. See 13 CFR § 124.503 and FAR 19.804-3.

What are the time frames for SBA's Acceptance or Rejection of a Requirement?

- If the requirement **does not exceed the simplified acquisition threshold**, SBA may authorize the procuring activity to award the contract without offering the requirement to the relevant DO. In this case, the procuring activity must provide a file copy of any awards to the SBA DO within 5 working days of issuance.
- If the requirement is **greater than the simplified acquisition threshold**, the DO must accept or reject an offering within 5 working days of receipt, or the procuring activity may assume that SBA has accepted it and proceed with the procurement. If the 5-day timeframe cannot be met, SBA may request an extension within 1 working day of receipt.

8(a) Contracting Actions

8(a) Agency Offer Letters

13 CFR 124.502(c)

What Information Must be Included in an 8(a) Offering Letter?

(c) An agency 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, including specifically whether the requirement is a follow-on requirement, and whether any portion of the contract was previously performed by a small business outside of the 8(a) BD program;

8(a) Contracting Actions

8(a) Agency Offer Letters

13 CFR 124.502(c)

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

- (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;

8(a) Contracting Actions

8(a) Agency Offer Letters

Agency 8(a) Offer Letters

13 CFR 124.502 (c)

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

- (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;
- (17) A statement that the necessary justification and approval under the Federal Acquisition Regulation has occurred where a requirement whose estimated contract value exceeds \$25,000,000, or \$100,000,000 in the case of Department of Defense contracts, is offered to SBA as a sole source requirement on behalf of a specific Participant; and
- (18) Any other information that the procuring activity deems relevant or which SBA requests.

SBA Acceptance Letters

8(a) Contracting Actions

SBA Acceptance Letters

SBA Acceptance Letters

(SBA SOP 80 05 8, Chapter 4A: Contracts -General Processing Requirements)

On Whose Behalf Does SBA Accept an 8(a) Requirement?

As part of the acceptance process, SBA will verify the appropriateness of the NAICS code assigned by the procuring activity. In general, SBA will accept the NAICS code assigned as long as it is reasonable, even though other NAICS codes may also be reasonable.

If SBA and the procuring activity disagree over the NAICS code assigned, the SBA District Office should make every effort to resolve the matter through discussion with the procuring activity. If negotiations fail, SBA may reject the requirement, appeal the designation to the head of the procuring agency pursuant to 13 CFR § 124.505, or appeal the NAICS code assigned to OHA. See 13 CFR § 124.503(b).

8(a) Contracting Actions

SBA Acceptance Letters

13 CFR 124.503(c) How Does SBA Accept a Procurement for Award Through the 8(a) BD Program?

(c) *Sole Source Award Where a 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;
 - (iv) The Participant has submitted required financial statements to SBA; and
 - (v) The Participant can demonstrate that it, together with any similarly situated entity, will meet the limitations on subcontracting provisions set forth in [§ 124.510](#).

8(a) Contracting Actions

SBA Acceptance Letters

13 CFR 124.506 - At What Dollar Threshold Must an 8(a) Procurement be Competed Among Eligible Participants?

Other Important Considerations

(a) *Competitive Thresholds*

1. The Federal Acquisition Regulatory Council (FAR Council) has the responsibility of adjusting each acquisition-related dollar threshold on October 1, of each year [41 U.S.C. 431a\(c\)](#). The 8(a) BD Program contains acquisition-related dollar thresholds subject to inflationary adjustments. The FAR Council shall publish a notice of the adjusted dollar thresholds in the Federal Register. The adjusted dollar thresholds shall take effect on the date of publication.
2. A procurement offered and accepted for the 8(a) BD program must be competed among eligible Participants if:
 - (i) There is a reasonable expectation that at least two eligible Participants will submit offers at a fair market price;
 - (ii) The anticipated contract award price will **exceed \$7 Million for contracts with Manufacturing NAICS codes, and \$4.5 Million for all other contracts;** and
 - (iii) The requirement has not been accepted by SBA for award as a sole source 8(a) procurement on behalf of a tribally-owned or ANC-owned concern.

8(a) Contracting Actions

SBA Acceptance Letters

SBA Acceptance Letters

13 CFR 124.506 - At What Dollar Threshold Must an 8(a) Procurement be Competed Among Eligible Participants?

Other Important Considerations

(b) *Exemption from Competitive thresholds for Participants owned by Indian Tribes, ANCs and NHOs*

(1) A Participant concern owned and controlled by an Indian Tribe or an ANC may be awarded a sole source 8(a) contract where the anticipated value of the procurement exceeds the applicable competitive threshold if SBA has not accepted the requirement into the 8(a) BD program as a competitive procurement.

(5) An agency may not award an 8(a) sole source contract for an amount exceeding **\$25,000,000, or \$100,000,000 for an agency of the Department of Defense**, unless the contracting officer justifies the use of a sole source contract in writing and has obtained the necessary approval under the Federal Acquisition Regulation.

8(a) Contracting Actions

SBA Acceptance Letters

13 CFR 124.503 How Does SBA Accept a Procurement for Award Through The 8(a) BD Program?

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 business days** of receipt of the written offering letter if the contract **is valued at more than the simplified acquisition threshold, and within two business 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 and the procuring activity may agree to a shorter timeframe for SBA's review under a Partnership Agreement delegating 8(a) contract execution functions to the agency. SBA is not required to accept any particular procurement offered to the 8(a) BD program.

8(a) Contracting Actions

SBA Acceptance Letters

SBA Acceptance Letters

13 CFR 124.503 How Does SBA Accept a Procurement for Award Through the 8(a) BD Program?

- (a)(1): **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. SBA will determine the eligibility of the Participant identified in the offering letter, using the same analysis set forth in [§ 124.501\(g\)](#). Where a procuring agency offers a sole source 8(a) procurement on behalf of a joint venture, SBA will conduct an eligibility review of the lead 8(a) party to the joint venture as part of its acceptance, and will approve the joint venture prior to award pursuant to [§ 124.513\(e\)](#).
- (a)(2): **Competitive 8(a) Procurement**, SBA will accept the offer on behalf of the 8(a) BD program. SBA will determine the eligibility of the apparent successful offeror pursuant to [§ 124.507\(b\)](#).
- (a)(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.

8(a) Contracting Actions

SBA Acceptance Letters

SBA Acceptance Letters

13 CFR 124.503 How Does SBA Accept a Procurement for Award Through the 8(a) BD Program?

(a)(4) For 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. (ii) Where SBA has delegated its 8(a) contract execution functions to an agency through a signed Partnership Agreement, SBA may authorize the procuring activity to award an 8(a) contract below the simplified acquisition threshold without requiring an offer and acceptance of the requirement for the 8(a) BD program. However, the procuring activity **must request SBA to determine the eligibility of the intended awardee prior to award**. SBA shall review the 8(a) Participant's eligibility and issue an eligibility determination within two business days after a request from the procuring activity. If SBA does not respond within this timeframe, the procuring activity may assume the 8(a) Participant is eligible and proceed with award. The procuring activity shall provide a copy of the executed contract to the SBA servicing district office within fifteen business days of award.

8(a) Contracting Actions

SBA Acceptance Letters

SBA Acceptance Letters

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

(a)(5) Where SBA does not respond to an offering letter within the normal 10 business-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 business days of his or her receipt of the procuring activity request.

8(a) Contracting Actions

SBA Acceptance Letters

SBA Acceptance Letters

13 CFR 124.504 - What Circumstances Limit SBA's Ability to Accept a Procurement for Award as an 8(a) Contract, and When Can a Requirement be Released from the 8(a) BD Program?

- a. Prior intent to award as a small business set-aside, or use the HUBZone, VetCert, or Women-Owned Small Business programs.***

A procuring activity, for itself or for another end user, 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, VetCert, or Women-Owned Small Business programs prior to offering the requirement to SBA for award as an 8(a) contract.

8(a) Contracting Actions

SBA Acceptance Letters

SBA Acceptance Letters

13 CFR 124.504 - What Circumstances Limit SBA's Ability to Accept a Procurement for Award as an 8(a) Contract, and When Can a Requirement be Released from the 8(a) BD Program?

1. However, SBA may accept the requirement into the 8(a) BD program where the AA/BD determines that there is a reasonable basis to cancel the initial solicitation or, if a solicitation had not yet been issued, a reasonable basis for the procuring agency to change its initial clear expression of intent to procure outside the 8(a) BD program (e.g., the procuring agency's needs have changed since the initial solicitation was issued such that the solicitation no longer represents its current needs; or appropriations that were no longer available for the requirement as anticipated in one fiscal year are available in the succeeding fiscal year).
 - i. A change in strategy only (i.e., an agency seeking to solicit through the 8(a) BD program instead of through another previously identified program) will not constitute a reasonable basis for SBA to accept the requirement into the 8(a) BD program.
 - ii. (ii) The AA/BD may coordinate with the D/GC, where appropriate, before accepting a requirement into the 8(a) BD program to ensure that another SBA program is not adversely affected.

8(a) Contracting Actions

8(a) Agency Offer Letters and SBA Acceptance Letters

SBA Acceptance Letters

13 CFR 124.504 - What Circumstances Limit SBA's Ability to Accept a Procurement for Award as an 8(a) Contract, and When Can a Requirement be Released from the 8(a) BD Program?

(b) **Competition prior to offer and acceptance.** The procuring activity competed a requirement among 8(a) Participants prior to offering the requirement to SBA and did not clearly evidence its intent to conduct an 8(a) competitive acquisition.

Adverse Impact Determinations

8(a) Contracting Actions ***Adverse Impact Determinations***

What Does Adverse Impact Mean, and How Does It Affect Acceptance Into the 8(a) BD Program?

SBA SOP 80 05 8 Chapter 4A: Contracts-General Processing Requirements

- Adverse impact means that SBA has determined that acceptance of the procurement for an 8(a) award could have a detrimental effect 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 that are performing contracts awarded outside the 8(a) BD program and does not apply to follow-on or renewal 8(a) acquisitions or to new requirements. SBA will not consider adverse impact with respect to any requirement offered to the 8(a) BD Program under Simplified Acquisition procedures.

8(a) Contracting Actions ***Adverse Impact Determinations***

When Will SBA Determine Adverse Impact With Respect to a Specific Small Business?

SBA SOP 80 05 8 Chapter 4A: Contracts-General Processing Requirements

Adverse Impact will be Presumed if the Following Conditions are Met:

- (1) The small business has performed the previous requirement for a period of at least 24 months;
 - (2) The small business is performing the previous requirement at the time it is offered to the 8(a) BD program or the performance period for the previous contract ended within 30 calendar days of the date the requirement was offered to the 8(a) BD program; and
 - (3) For a requirement of one year or less, the dollar value of the previous contract was 25 percent or more of its most recent annual gross sales, including those of its affiliates, if any; or for multi-year contracts, the dollar value of the previous contract for the last twelve month period was 25 percent or more of its gross sales, including those of its affiliates.
- If **Adverse Impact is found**, the requirement will not be accepted into the 8(a) BD program. **SBA will make its determination within 15 calendar days** of receipt of the Agency Offer letter.

8(a) Contracting Actions ***Adverse Impact Determinations***

How Will SBA Determine Adverse Impact With Respect to a Specific Small Business?

SBA SOP 80 05 8 Chapter 4A: Contracts-General Processing Requirements

- To make an adverse impact determination, SBA should obtain a business credit report (BCR) on the incumbent firm. If a BCR is not available, or if there is a question about the accuracy of the BCR data, the DO will instruct the firm to submit SBA Form 355, “Application for Small Business Size Determination.” Additionally, SBA may require the incumbent to provide financial statements, employment records, tax returns and any other documentation required to perform an objective review and analysis of the facts. The firm should be advised of the information and documentation required and the date they must be received by SBA.
- If the incumbent fails to submit the requested data, SBA may find no adverse impact on the small business incumbent. Care must be taken to examine all relevant factors before reaching a determination of adverse impact. The DO may need to request that the procuring activity grant it an extension of time to respond to allow for a comprehensive adverse impact analysis. ***See 13 CFR § 124.504(c).***

8(a) Contracting Actions ***Adverse Impact Determinations***

Adverse Impact Determinations

SBA SOP 80 05 8 Chapter 4A: Contracts-General Processing Requirements

How Will SBA Determine Adverse Impact With Respect to a Specific Small Business?

To make an adverse impact determination, SBA should obtain a business credit report (BCR) on the incumbent firm. If a BCR is not available, or if there is a question about the accuracy of the BCR data, the DO will instruct the firm to submit SBA Form 355, “Application for Small Business Size Determination.”

Additionally, SBA may require the incumbent to provide financial statements, employment records, tax returns and any other documentation required to perform an objective review and analysis of the facts. The firm should be advised of the information and documentation required and the date they must be received by SBA.

8(a) Contracting Actions

Adverse Impact Determinations

How Will SBA Determine Adverse Impact With Respect to a Specific Small Business?

SBA SOP 80 05 8 Chapter 4A: Contracts-General Processing Requirements

The SBA District Office BOS/BDS Will Determine Whether:

- a. A small business has performed the previous requirement for a period of at least 24 months;
- b. A small business is performing the previous requirement at the time it is offered to the 8(a) BD program or the performance period for the previous contract ended within 30 days of the date the requirement was offered to the 8(a) BD program; and
- c. For a requirement of one year or less, the dollar value of the previous contract was 25 percent or more of its most recent annual gross sales, including those of its affiliates, if any; or for multi-year contracts, the dollar value of the previous contract for the last twelve-month period was 25 percent or more of its gross sales, including those of its affiliates.
- d. If adverse impact is found, the requirement **will not be accepted** into the 8(a) BD Program.

8(a) Contracting Actions ***Adverse Impact Determinations***

Can Acceptance of a New Requirement Into the 8(a) BD Program Result in Adverse Impact? ***SBA SOP 80 05 8 Chapter 4A: Contracts-General Processing Requirements***

- Acceptance of a new requirement into the 8(a) BD program cannot result in adverse impact. A “new requirement” is one which has not been previously acquired by the procuring activity. **See 13 CFR § 124.504(c)(1)(ii).**

8(a) Release Requests

8(a) Contracting Actions

8(a) Release Requests

When Will SBA Release a Request from the 8(a) BD Program? (SBA SOP 80 05 8, Chapter 4A: Contracts -General Processing Requirements)

- Once SBA has accepted a sole source 8(a) procurement on behalf of a particular Program Participant, SBA will attempt to retain that requirement in the 8(a) BD Program where the procuring activity is unable to come to an agreement to award an 8(a) contract to the Participant.
- In such a case, the SBA will attempt to match another Participant in the 8(a) portfolio to the requirement.
- Where the procuring activity provides **convincing information** that no other Participant is capable of performing the requirement at a fair price, SBA may withdraw its acceptance and authorize the procuring activity to reprocure thorough another means.
- Where a procurement is awarded as an 8(a) contract, its follow-on or renewable contract **must stay** in the 8(a) BD Program unless the AA/BD agrees to release the requirement for non 8(a) competition.

8(a) Contracting Actions

8(a) Release Requests

When Will SBA Release a Request from the 8(a) BD Program? *(13 CFR 124 504 (d) - Release for Non-8(a) or Limited 8(a) Competition)*

- (1) Except as set forth in [paragraph \(d\)\(4\)](#) of this section, where a procurement is awarded as an 8(a) contract, its follow-on requirement must remain in the 8(a) BD program unless SBA agrees to release it for non-8(a) competition.

Where a procurement will contain work currently performed under one or more 8(a) contracts, and the procuring agency determines that the procurement should not be considered a follow-on requirement to the 8(a) contract(s), the procuring agency must coordinate with the SBA District Office **servicing the 8(a) incumbent firm and the SBA Procurement Center Representative assigned to the contracting activity** initiating a non-8(a) procurement action that it intends to procure such specified work outside the 8(a) BD program through a requirement that it considers to be new.

Such notification must identify the scope and dollar value of any work previously performed through another 8(a) contract and the scope and dollar value of the contract determined to be new.

8(a) Contracting Actions

8(a) Release Request

When Will SBA Release a Request from the 8(a) BD Program? **(13 CFR 124 504 (d) - Release for Non-8(a) or Limited 8(a) Competition) (Cont..)**

Additionally, a procuring agency must coordinate with SBA where it seeks to reprocur a follow-on requirement through a pre-existing limited contracting vehicle which is not available to all 8(a) BD Program Participants and the previous/current 8(a) award was not so limited. If a procuring agency would like to fulfill a follow-on requirement outside of the 8(a) BD program, it must make a written request to and receive the concurrence of the AA/BD to do so.

In determining whether to release a requirement from the 8(a) BD program, SBA will consider:

- (i) Whether the agency has achieved its SDB goal;
- (ii) Where the agency is in achieving its HUBZone, SDVO, WOSB, or small business goal, as appropriate; and
- (iii) Whether the requirement is critical to the business development of the 8(a) Participant that is currently performing it.

8(a) Contracting Actions

8(a) Release Request Procedures

How Will SBA Release a Requirement from the 8(a) BD Program?

(SBA SOP 80 05 8, Chapter 4A: Contracts - #42, Pg. 152)

Release Request – List of Required Documents from Procuring Activity

1. Requirement's Procurement History
2. A justification/rationale for why the release is being sought and the procuring activity's re-procurement strategy for the requirement, including which socio-economic program will be used to acquire the goods and services.
3. NAICS code assigned to the requirement
4. Whether the procuring activity has achieved its SDB goal
5. Whether the procuring activity is achieving its HUBZone, Service-Disabled Veteran-Owned Small Business, and small business goals (as appropriate)
6. The procuring activity's willingness to offer SBA a new requirement to offset the loss of the instant requirement (including description of the requirement, NAICS Code, anticipated dollar amount and date of award and 8(a) award type (competitive or sole source)).
- 7. The official results of any market research** conducted by the procuring agency.
8. A signed copy of the activity's offering letter and SBA's Acceptance Letter
9. Other relevant documentation as applicable.

8(a) Contracting Actions

8(a) Release Request

Processing the 8(a) Release a Request

The District Office and BOS Role

In general, 8(a) release requests will be processed by the **SBA District that services the 8(a) incumbent firm**. 8(a) competitive release requests may also be processed by the SBA District office where the agency is geographically located.

Upon receipt of an 8(a) release request, the processing SBA District BOS/BDS will review the request for completeness.

Special consideration will be given to the Agency's market research and justification for the 8(a) release.

- What market research did the Agency use in determining that no 8(a) firms were capable in performing the work - (GSA Schedule Research, Sources Sought Notifications, Requests for Information, DSBS search)?
- Is the reason for release justified?
- The SBA District BOS/BDS will request additional information if/when needed.

8(a) Contracting Actions

8(a) Release Request

Processing the 8(a) Release a Request

The District Office and BOS Role

In addition to the Agency's market research, the processing BOS/BDS is responsible for conducting their own, independent market research.

Independent Market Research May Include:

1. Researching the SBA Dynamic Small Business Search and filtering by active 8(a) Firms as well as the requirement NAICS code.
2. Coordinating with the Agency to send out requests for Capabilities Statements to the 8(a) Portfolio to determine qualified 8(a) Firms. Capabilities Statement requests can be sent out to 8(a) Firms at the SBA District office level or on a nationwide level.
3. Comparing independent market research responses to the market research report submitted by the Agency.
4. If independent market research responses match with the market research report submitted by the Agency, and the release appears justified, the resulting analysis may request approval of the request.
5. If independent market research determines that there are sufficient 8(a) firms that can perform the work, the resulting analysis may deny the request.

8(a) Contracting Actions

8(a) Release Request

Processing the 8(a) Release a Request

The District Office and OMTA (Office of Management & Technical Assistance)

Once the BOS/BDS analyzes the request and makes a recommendation, then the DD or DDD reviews and signs.

1. The BOS/BDS sends the recommendation to the SBA Office of Management and Technical Assistance (OMTA) for a final review.
2. OMTA will have up to 30 days to process the request. Once OMTA makes a final determination, this will be sent back to the District Office.
3. The BOS/BDS will share the final determination with the Procuring Agency.

8(a) New Requirement Determinations

8(a) Contracting Actions

8(a) New Requirement Determinations

13 CFR 124.3 - What Definitions are Important in the 8(a) BD Program?

Determination of a New Requirement

Follow-on Requirement or Contract. The determination of whether a particular requirement or contract is a follow-on includes consideration of **whether the scope has changed significantly**, requiring meaningful different types of work or different capabilities; **whether the magnitude or value of the requirement has changed by at least 25 percent** for equivalent periods of performance; and whether the end user of the requirement has changed.

As a general guide, if the procurement **satisfies at least one of these three conditions, it may be considered a new requirement**. However, meeting any one of these conditions is not dispositive that a requirement is new. In particular, the 25 percent rule cannot be applied rigidly in all cases. Conversely, if the requirement satisfies none of these conditions, it is considered a follow-on procurement.

8(a) Contracting Actions

8(a) New Requirement Determinations

13 CFR 124.504 (c)(1)(ii) - What is a New Requirement

(ii) A **new requirement** is one which has not been previously procured by the relevant procuring activity.

- (A) Where a requirement is new, no small business could have previously performed the requirement and, thus, SBA's acceptance of the requirement for the 8(a) BD program will not adversely impact any small business.
- (B) Procurements for construction services (e.g., the building of a specific structure) are generally deemed to be new requirements. However, recurring indefinite delivery or indefinite quantity task or delivery order construction services are not considered new (e.g., a recurring procurement requiring all construction work at base X).
- (C) The expansion or modification of an existing requirement **may be considered a new requirement** where the **magnitude of change is significant enough to cause a price adjustment of at least 25 percent** (adjusted for inflation) or to require significant additional or different types of capabilities or work.
- (D) SBA need not perform an impact determination where a new requirement is offered to the 8(a) BD program.

8(a) Contracting Actions

8(a) New Requirement Determinations

Processing a New Requirement Determination

- In some cases, an Agency request to release a contract from the 8(a) program is actually a New Requirement Determination.
- When processing 8(a) release requests, the BOS/BDS will review the procurement history of the requirement as well as any proposed changes to the existing contract which may result in a price adjustment of greater than 25% or requires a different type of capability or work.

13 CFR 124.504(c)(1)(ii)(C)

- (C) The expansion or modification of an existing requirement **may be considered a new requirement** where the **magnitude of change is significant enough to cause a price adjustment of at least 25 percent** (adjusted for inflation) or to require significant additional or different types of capabilities or work.
- SBA will consider all relevant factors, including whether the substance of the work to be performed is sufficiently different from the previous contract to engender a legitimate change of NAICS code.
- If the NAICS code on the previous contract and the requirement at hand are the same, SBA may consider the relative magnitude of different types of work required under each. If there is significant variance in relative magnitudes, then SBA may find that the requirement is new.

8(a) Contracting Actions

8(a) New Requirement Determinations

Processing a New Requirement Determination

- In making this determination, SBA should compare the statement of work (SOW) for the previous contract with the SOW for the requirement at hand and consult with the procuring activity regarding its analysis in assigning NAICS codes to both.
- **Determinations for New Requirements** are made at the **SBA District Office level** and do not require final review and approval/denial from the SBA Office of Management and Technical Assistance (OMTA).
- Once a Determination is made, the District BOS/BDS will notify the Agency.
- In general, this process takes 30 days from the receipt of a complete package.

8(a) Joint Venture Considerations

8(a) Contracting Actions

8(a) Joint Venture Approvals

8(a) Joint Venture Approvals

13 CFR 124.513 Under What Circumstances Can a Joint Venture be Awarded an 8(a) Contract?

Prior Approval By SBA

1. When a joint venture between one or more 8(a) Participants seeks a sole source 8(a) award, SBA must approve the joint venture prior to the award of the sole source 8(a) contract. **SBA will not approve joint ventures in connection with competitive 8(a) awards.**
2. Where a joint venture has been established for one 8(a) contract, the joint venture may receive additional 8(a) contracts provided the parties create an addendum to the joint venture agreement setting forth the performance requirements for each additional award (and provided any contract is awarded **within two years** of the first award as set forth in [§ 121.103\(h\)](#)). If an additional 8(a) contract is a sole source award, SBA must also approve the addendum prior to contract award.

8(a) Contracting Actions

Joint Venture Considerations

8(a) Joint Venture Approvals

13 CFR 124.513 - Under What Circumstances Can a Joint Venture be Awarded an 8(a) Contract?

Prior Approval by the SBA District Office:

1. When a joint venture between one or more 8(a) Participants seeks a sole source 8(a) award, **SBA must approve** the joint venture prior to the award of the sole source 8(a) contract. **SBA no longer approves joint ventures in connection with competitive 8(a) awards.**
2. When the Joint Venture is seeking a Sole Source 8(a) Award, the 8(a) Firm must complete the **Sole Source JV Checklist.**
3. When the Joint Venture is seeking any Competitive 8(a) award, the 8(a) Firm must complete the **Competitive JV Checklist.**
4. Where a joint venture has been established for one 8(a) contract, the joint venture may receive additional 8(a) contracts provided the parties **create an addendum to the joint venture agreement** setting forth the performance requirements for each additional award (and provided any contract is awarded **within two years** of the first award as set forth in [§ 121.103\(h\)](#)). If an additional 8(a) contract is a sole source award, **SBA must also approve the addendum** prior to contract award.

8(a) Contracting Actions

Joint Venture Considerations

8(a) Joint Venture Approvals

13 CFR 124.513 - Under What Circumstances Can a Joint Venture be Awarded an 8(a) Contract?

Prior Approval by the SBA District Office:

1. This regulation change has been confusing to Agency contracting offices. The DSBS should not be the only authority that contracting offices use to check whether a JV has been approved by the SBA. Acquisition personnel should also seek to contact the District Office BOS/BDS to confirm if competitive JV is active.

8(a) Contracting Actions

Q & A Session

Any Questions?

Jill Nagy-Reynolds

**Business Opportunity Specialist, 8(a)
U.S. Small Business Administration
Columbus District Office**

Shanda Harris

**Business Opportunity Specialist
U.S. Small Business Administration
Columbus District Office**

Thank You for Participating!!



U.S. Small Business
Administration