

May 29, 1998

**UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT
PROCUREMENT POLICY DIVISION
AGAR ADVISORY NO. 22**

FAR PART 19 DEVIATION - SMALL BUSINESS PROGRAM

INTRODUCTION: This Agriculture Acquisition Regulation (AGAR) Advisory has been prepared to provide information on the class deviation from FAR Part 19 in accordance with Civilian Acquisition Agency Council letter 98-3 (attached). A deviation eliminating the tripartite agreement is necessary to implement the Memorandum of Understanding (MOU) between the United States of Small Business Administration (SBA) and the United States Department of Agriculture (USDA). [AGAR Advisory No. 21](#) outlines the implementing procedures.

SUMMARY: Level I, II and III Contracting Officers shall apply the changes addressed in the deviation to FAR Part 19 to all contracts/purchase orders awarded under the 8(a) program.

APPLICABILITY: The deviation to FAR Part 19 is in effect pending a FAR change. These changes are applicable to all offices within SBA and USDA throughout the United States. Contracting Officers shall apply the revised guidance to all new contract/purchase order awards under the 8(a) program effective May 6, 1998 through the term of the MOU.

If you have questions regarding this advisory, please contact Todd Repass, Chief, PPD via email at Todd.Repass@da.usda.gov or by phone at (202) 690-1060; or send an email to procurement.policy@da.usda.gov.

This AGAR Advisory will appear on the USDA world wide web site at the following URL:
<http://www.usda.gov/da/procure/agaradv.htm>.

EXPIRATION DATE: This advisory will remain in effect until cancelled.

[END]

May 13, 1998

To: W. R. Ashworth
Senior Procurement Executive

From David J. Shea
Chief
Procurement Policy Division

SUBJECT: Request for Class Deviation to Federal Acquisition Regulation Part 19 - Small Business Program

In accordance with Federal Acquisition Regulation (FAR) 1.404 and Agriculture Regulation (AGAR) 401.404, I am requesting your approval to deviate from FAR Part 19 as outlined in Civilian Agency Acquisition Council (CAAC) Letter 98-3. Pending a FAR change, the CAAC Letter will serve as our basis for a class deviation and as evidence of consultation with the CAAC Chairperson.

The deviation is necessary for implementation of the Memorandum of Understanding (MOU) between USDA and Small Business Administration (SBA). Upon approval, it will eliminate the use of tripartite agreements and delegate signatory authority to Senior Contracting Officers under the 8(a) program.

Attachments

APPROVAL

In accordance with Far 1.404 and AGAR 401.404, I authorize a class deviation from FAR Part 19 in accordance with CAAC Letter 98-3.

(Signed)
W. R. Ashworth, Senior Procurement Executive

5/13/98
Date

CIVILIAN AGENCY ACQUISITION COUNCIL LETTER 98-3

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM: EDWARD C. LOEB
CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Direct 8(a) Contracting

After discussions with the Small Business Administration, I am issuing this CAAC Letter to provide model coverage for civilian agencies that are entering into Memoranda of Understanding (MOUs) with the SBA to award contracts awarded pursuant to Section 8(a) of the Small Business Act directly to 8(a) concerns. Currently, the FAR requires procuring activities to issue a prime contract with the SBA, which in turn subcontracts performance of the contract to the 8(a) firm.

The Civilian Agency Acquisition Council (CAAC) has reviewed the attached model coverage. Pending a change to the FAR, civilian agencies may use this language as the basis for their class deviations. The FAR will be amended following promulgation of an SBA final rule. This CAAC Letter serves as evidence of consultation with the Chairman of the CAAC, as required by FAR 1.404(a)(1).

This consultation will apply only to deviations for 8(a) contracts that are executed under a MOU that is consistent with the attached model coverage.

Enclosure

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.

*NOTE: This can be accessed through [USDA Acquisition Toolkit](http://www.usda/da/procure.html) at <http://www.usda/da/procure.html>.

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 they are awarding the contract 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) (May 1, 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 (May 1, 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 controls 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)