OFFICE OF THE UNDER SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-3000

ACQUISITION AND TECHNOLOGY

June 19, 1998

DP(DAR)

In reply refer to
DFARS Case: 98-D011
D. L. 98-015

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT, ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Direct Award of 8(a) Contracts

We have amended Parts 213, 219, 252, and 253 of the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a Memorandum of Understanding (MOU) dated May 6, 1998, between the Small Business Administration (SBA) and DoD. The MOU streamlines the processing procedures for contract awards under the SBA's 8(a) program by authorizing DoD to award contracts directly to 8(a) concerns; by reducing SBA's response times; and by providing a number of other changes to procurement procedures under the 8(a) program.

This interim rule is effective immediately and will be published in a future Defense Acquisition Circular.

Eleanor Spector

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

Direct Award of 8(a) Contracts
DFARS Case 98-D011
Interim Rule

Additions are indicated in **[bold and brackets]**. Deletions are indicated by ~~strikethrough~~.

[SUBPART 213.70—SIMPLIFIED ACQUISITION PROCEDURES UNDER THE 8(a) PROGRAM

213.7001 Policy.
For sole source acquisitions under the 8(a) Program, contracting officers may use the procedures established in the Memorandum of Understanding cited in 219.800.

213.7002 Procedures.
For acquisitions that are otherwise appropriate to be conducted using procedures set forth in this part, and also eligible for the 8(a) Program, contracting officers may use—

(1) (i) For sole source purchase orders not exceeding the simplified acquisition threshold, the procedures in 219.804-2(2); or

(ii) For other types of acquisitions, the procedures in Subpart 219.8, excluding the procedures in 219.804-2(2); or

(2) The procedures for award to the Small Business Administration in FAR Subpart 19.8.

213.7003 Purchase orders.

213.7003-1 Obtaining contractor acceptance and modifying purchase orders.
The contracting officer need not obtain a contractor's written acceptance of a purchase order or modification of a purchase order for an acquisition under the 8(a) Program pursuant to 219.804-2(2).

213.7003-2 Contract clauses.
Use the clauses prescribed in 219.811-3(1) and (3) for purchase orders under the 8(a) Program pursuant to the Memorandum of Understanding cited in 219.800.]

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SUBPART 219.8--CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

[219.800 General.

(a) By Memorandum of Understanding (MOU) dated May 6, 1998, between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the Under Secretary of Defense for Acquisition and Technology its authority under paragraph 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under paragraph 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers within the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia, to the extent that it is consistent with any dollar or other restrictions established in individual warrants. This authority is being delegated and redelegated on a pilot test basis and shall expire on May 5, 2001. Notwithstanding this MOU, contracting officers may elect to award the contract pursuant to the provisions of FAR Subpart 19.8.

(b) Awards under the MOU may be awarded directly to the 8(a) participant on either a sole source or competitive basis.

(c) Contracts awarded under the MOU may be awarded directly to the 8(a) participant. An SBA signature on the contract is not required.]

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219.804 Evaluation, offering, and acceptance.

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[219.804-2 Agency offering.

(1) For requirements processed under the MOU cited in 219.800 (but see paragraph (2) of this subsection for procedures related to purchase orders that do not exceed the simplified acquisition threshold), the notification to the SBA shall clearly indicate that the requirement is being processed under the MOU. All notifications should be submitted in writing, using facsimile or electronic mail, when possible, and shall specify that--

(i) Under the MOU, an SBA acceptance or rejection of the offering is required within 5 working days of receipt of the offering; and

(ii) (A) For sole source requirements, an SBA acceptance shall include a size verification and a determination of the 8(a) firm's program eligibility, and, upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(B) For competitive requirements, upon acceptance, the contracting officer will solicit offers, conduct source selection, and, upon receipt of an eligibility verification, award a contract directly to the selected 8(a) firm.

(2) Under the MOU cited in 219.800, no separate agency offering or SBA acceptance is needed for requirements that are issued under purchase orders that do not exceed the simplified acquisition threshold. After an 8(a) contractor has been identified, the contracting officer shall establish the prices, terms, and conditions with the 8(a) contractor and shall prepare a purchase order consistent with the procedures in Part 213 and FAR Part 13, including the applicable clauses required by this subpart. No later than the day that the purchase order is provided to the 8(a) contractor, the contracting officer shall provide to the cognizant SBA Business Opportunity Specialist, using facsimile or electronic mail—

(i) A copy of the purchase order; and

(ii) A notice stating that the purchase order is being processed under the MOU. The notice also shall indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

219.804-3 SBA acceptance.

For requirements processed under the MOU cited in 219.800, SBA's acceptance is required within 5 working days (but see 219.804-2(2) for purchase orders that do not exceed the simplified acquisition threshold).

219.805 Competitive 8(a).

219.805-2 Procedures.

(c) For requirements processed under the MOU cited in 219.800—

(i) For sealed bid and negotiated acquisitions, the SBA will determine the eligibility of the firms and will advise the contracting officer within 2 working days after its receipt of a request for an eligibility determination; and

(ii) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on as many as three of the most highly rated offerors.

219.806 Pricing the 8(a) contract.
For requirements processed under the MOU cited in 219.800—

(1) The contracting officer shall obtain cost or pricing data from the 8(a) contractor, if required by FAR Subpart 15.4; and

(2) SBA concurrence in the negotiated price is not required. However, except for purchase orders not exceeding the simplified acquisition threshold, the contracting officer shall notify the SBA prior to withdrawing a requirement from the 8(a) Program due to failure to agree on price or other terms and conditions.

219.808 Contract negotiations.

219.808-1 Sole source.
For requirements processed under the MOU cited in 219.800--

(1) The agency may negotiate directly with the 8(a) contractor. The contracting officer is responsible for initiating negotiations;

(2) The 8(a) contractor is responsible for negotiating within the time established by the contracting officer;

(3) If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the contracting officer may, after notifying the SBA, proceed with the acquisition from other sources;

(4) If requested by the 8(a) contractor, the SBA may participate in negotiations; and

(5) SBA approval of the contract is not required.

219.811 Preparing the contracts.

219.811-1 Sole source.

(a) Awards under the MOU cited in 219.800 may be made directly to the 8(a) contractor and, except as provided in paragraph (b) of this subsection and in 219.811-3, award documents shall be prepared in accordance with procedures established for non-8(a) contracts, using any otherwise authorized award forms. The "Issued by" block shall identify the awarding DoD contracting office. The contractor's name and address shall be that of the 8(a) participant.

(b) Use the following alternative procedures for direct awards made under the MOU cited in 219.800:

(i) Cite 10 U.S.C. 2304(c)(5) as the authority for use of other than full and open competition;

(ii) Include the clause at 252.219-7009, which allows for direct award to the 8(a) contractor, and identify the cognizant SBA district office for the 8(a) contractor;

(iii) No SBA contract number is required; and

(iv) Do not require an SBA signature on the award document.

219.811-2 Competitive.
Awards made under the MOU cited in 219.800 shall be prepared in accordance with 219.811-1.

219.811-3 Contract clauses.

(1) Use the clause at 252.219-7009, Section 8(a) Direct Award, instead of the clauses at FAR 52.219-11, Special 8(a) Contract Conditions, FAR 52.219-12, Special 8(a) Subcontract Conditions, and FAR 52.219-17, Section 8(a) Award, in solicitations and contracts processed in accordance with the MOU cited in 219.800.

(2) Use the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with 252.219-7010,

Alternate A, in solicitations and contracts processed in accordance with the MOU cited in 219.800.

(3) Use the clause at 252.219-7011, Notification to Delay Performance, in solicitations and purchase orders issued in accordance with 219.804-2(2).

219.812 Contract administration.

(d) Awards under the MOU cited in 219.800 are subject to Section 407 of Pub. L. 100-656. These contracts include the clause at 252.219-7009, Section 8(a) Direct Award, which requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.]

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PART 252--Solicitation Provisions and Contract Clauses

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252.219-7009 Section 8(a) Direct Award.
As prescribed in 219.811-3(1), use the following clause:

SECTION 8(a) DIRECT AWARD (JUN 1998)

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Memorandum of Understanding dated May 6, 1998, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA is not a party to this contract. SBA does retain responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

_____

_____

_____

_____

[To be completed by the Contracting Officer at the time of award]

(b) The contracting office is responsible for administering the contract and for taking any action on behalf of the Government under the terms and conditions of the contract; provided that the contracting office 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 office also shall coordinate with the SBA prior to processing any novation agreement. The contracting office may assign contract administration functions to a contract administration office.

(c) The Contractor agrees that--

(1) It will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA's 8(a) regulations at 13 CFR 124.308), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Pub. L. 100-656, transfer of ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and

(2) It will not subcontract the performance of any of the requirements of this contract without the prior written approval of the SBA and the Contracting Officer.

(End of clause)

252.219-7010 Alternate A.

ALTERNATE A (JUN 1998)

As prescribed in 219.811-3(2), substitute the following paragraph (c) for paragraph (c) of the clause at FAR 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.

252.219-7011 Notification to Delay Performance.
As prescribed in 219.811-3(3), use the following clause:

NOTIFICATION TO DELAY PERFORMANCE (JUN 1998)

The Contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the Contractor receives notification from the Small Business Administration that it is ineligible for this 8(a) award, or otherwise receives instructions from the Contracting Officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a

determination of ineligibility is issued within the 2-day period, the purchase order shall be considered canceled.

(End of clause)]

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Part 253--Forms

SUBPART 253.2--PRESCRIPTION OF FORMS

253.204-70 DD Form 350, Individual Contracting Action Report.

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(d) Part D of the DD Form 350.

* * * * *

(5) Complete Part D blocks as follows:

* * * * *

(iv) BLOCK D4, PREFERENCE PROGRAM.

* * * * *

(B) BLOCK D4B - TYPE OF SDB SET-ASIDE/SDB PREFERENCE. Enter one of the following codes, even if Block D4A is coded E:

(1) Code A - None. * * *

(2) Code B - Section 8(a). Enter code B if the contract was awarded to**[--**

(i) T]the Small Business Administration (SBA) under Section 8(a) of the Small Business Act (FAR Subpart 19.8)**[; or**

(ii) An 8(a) contractor under the direct award procedures at 219.811].

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253.204-71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.

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(g) Section E, Selected Socioeconomic Statistics.

(1) BLOCK E1, SMALL BUSINESS (SB) SET-ASIDE.

* * * * *

(2) BLOCK E2, SMALL DISADVANTAGED BUSINESS (SDB) ACTIONS.

(i) Enter the total number and dollar value of actions which were small disadvantaged business actions.

(ii) Enter the subtotals for the number and dollar value for—

(A) Block E2a, Through SBA-Section 8(a). Enter actions with the Small Business Administration pursuant to Section 8(a) of the Small Business Act (FAR Subpart 19.8) **[or under the 8(a) direct award procedures at 219.811]**.

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