



ASSISTANCE FOR SMALL BUSINESS

Help with Understanding the 8(a) Business Development Program Sole Source Award Process

The information provided in this document is provided as information only and does not reflect the official position of the Department of the Navy. The reader should refer to the specific regulations governing acquisitions for detailed information.

This paper discusses the Sole Source Award Process under the Small Business Administration (SBA), 8(a) Business Development (BD) Program. The purpose of the 8(a) BD Program is to assist eligible 8(a) firms to more effectively compete in the American economy. The "8(a)" designation of this program, by the way, derives from Code of Federal Regulations (CFR) Title 13 – "Business Credit and Assistance," Chapter 1 - "Small Business Administration," Part 124, Subpart A, Section 8(a). See <http://ecfr.gpoaccess.gov/>. This paper does not discuss the separate Competitive 8(a) Set Aside Process.

This paper explains how to possibly obtain an 8(a) sole source award under the 8(a) BD program. The processes described pertain only to large-dollar-value solicitations, and usually only to services contracts. Procurements for supply items and some types of services under the Simplified Acquisition Procedures (SAP) threshold of \$150,000 or less are also eligible for sole source awards to 8(a) firms, but these are handled much differently and are not discussed herein.

You should keep in mind that there may be many other capable 8(a) firms vying for the same sole source procurement award that you are seeking. You want to do everything you can to be first in line for consideration because the first SBA candidate firm that is determined to be capable by the SBA will usually get the sole source award if subsequently determined to be capable by the contracting agency. (Capable of performing the specific tasking/effort.)

THRESHOLDS FOR 8(a) SOLE SOURCE AWARDS

As of this writing, the dollar threshold for possible sole source award under the 8(a) BD Program is \$6.5 million or less for procurements assigned manufacturing NAICS codes, and \$4 million or less for procurements assigned all other NAICS codes. For example, all other

NAICS codes would include Engineering Services, the most commonly used NAICS code at the Naval Surface Warfare Center, Port Hueneme Division and Corona Division commands. If applicable, a solicitation's estimated dollar value will include the total estimated value of the base period of performance **plus** all of the option periods added together, if any.

PATHS TO AN 8(a) SOLE SOURCE AWARD

There are three ways to initiate an action that might lead to a sole source award under the 8(a) BD Program. Two of them involve the use of "Search Letters," one of which is called a "Requirements Search Letter" or, simply, a "Requirements Letter." Some individuals refer to this letter as an "SBA-directed Search Letter." The third method involves the use of an "Offering Letter."

1. SBA SEARCH LETTER

This pathway begins with the SBA District Office to which your company is assigned sending out a "Search Letter" on your behalf. This type of action can be initiated by either your company requesting it, or because your assigned SBA **Business Development Specialist** elected to do this on your behalf as part of SBA's 8(a) business support processes. In this type of Search Letter, the SBA advises the agency contracting office of your firm's capabilities and NAICS code(s), and asks the agency to identify current or planned acquisitions that your company could qualify to perform. The agency responds by providing the requested information, and it can either end there, or the agency might be interested in doing something further with SBA, or the SBA may decide to take further action.

2. SBA REQUIREMENTS SEARCH LETTER

The action above may lead to this next type of action on the part of the SBA, but it can be initiated in another way that is equally if not more effective. Your company conducts research and finds an emerging procurement whose estimated dollar value is near or under the 8(a) sole source threshold, and has been assigned one of your NAICS codes (or is likely to be assigned one of your NAICS codes). It is recommended that your company contact the SBA by telephone to re-establish your personal business relationship with your **SBA Business Development Specialist**, and then send the SBA a letter of request for consideration. Another reason to telephone first is because some SBA District Offices have their own form that they would prefer you use instead of a letter. You fill out the form and submit it to the **SBA Business Development Specialist** to which you are assigned. If mutual agreement is reached about your qualifications to perform the procurement, your company can then request that the SBA consider doing a "Requirements Search Letter" on behalf of your company. The object of this type of search letter is a possible Sole Source Award to your company. This letter "directs" the contracting agency to consider your company for this type of award.

If more than one 8(a) firm initiates marketing for the same eligible procurement, the date on the Requirements Search Letter determines the order of consideration by the contracting agency. If the first company in line is determined to be "not capable" of performing the requirement(s), then the second company in line will be evaluated. **(You should contact the SBA as early as possible, because it is "first come first served.")**

In your letter of request to the SBA, you should describe the procurement and your capabilities to perform the requirements of the procurement. SBA then sends a "Requirements Search Letter" with that information to the contracting agency. You must provide all the information needed by SBA to draft this search letter. As mentioned, some SBA offices call this type of letter simply a "Search Letter," but this letter is different than a "standard" or "regular" or "generic" search letter (discussed in 1. above), because it is not merely an inquiry, it directs the contracting agency to consider the SBA request. The "Requirements Search Letter" requires the contracting agency to consider your company's capabilities to perform and then to reply to the SBA with a determination. The contracting agency must conduct due diligence in following the 8(a) BD Program process and your company must be considered by the contracting agency before the normal procurement process can proceed.

When the agency and the SBA work together on this process it is usually referred to as a "bilateral action." It may or may not end with a sole source award under the 8(a) BD Program.

If your firm is found "not capable" of performing the requirements of the procurement in question, then prior to the agency's procurement process resuming again, the contracting agency's Small Business Office and the SBA District Office both must agree with the resultant determination by the agency's Procurement Contracting Officer (PCO) not to place the procurement in the 8(a) BD Program.

Or in an alternative fashion, your local SBA district office may become aware on its own of an eligible procurement and contact your company to discuss your possible interest in the procurement and your capability to perform the requirements. If mutual agreement is reached, your company can then request that the SBA consider doing a "Requirements Search Letter" to initiate the process that may lead to a Sole Source Award to your firm.

You should contact your local SBA office and send your request to the SBA as soon as possible. Ten months before the procurement is planned for solicitation is not too early to contact the SBA and ask them to reserve the procurement for consideration as a sole source award to your company.

The "Requirements Search Letter" has the added benefit of putting the procurement temporarily in the 8(a) BD Program and stopping the procurement process until the SBA releases the procurement. The "regular" Search Letter or "generic" Search Letter only requires the contracting agency to let the SBA know if they have any procurements in process, or coming up in the near future, that your company might be eligible for. It does not stop the procurement process until your firm's capabilities have been evaluated. It takes a "Requirements Search Letter" to do that.

3. AGENCY UNILATERAL PROCESS

The third pathway is when the agency decides to initiate the 8(a) sole source award process by sending an "**Offering Letter**" to the SBA, asking the SBA to place the procurement in the 8(a) BD Program and to approve awarding it to your firm as a sole source action. This is usually referred to as a "unilateral action." Receipt of the "Offering Letter" would most often be the first time the SBA became aware of an opportunity at the particular agency that's making application.

The agency may become aware of your firm's capabilities as a result of your firm's marketing efforts, the government technical customer's market research, or the government contracting office's market research. Also, the agency may choose to begin the process by requesting recommended 8(a) sources from the SBA, and then evaluate the capabilities of the most promising of these recommended sources.

Also, at any time your company can contact an agency's contracting office directly about a specific, eligible procurement. If you believe your company is capable of performing the particular requirements of the procurement, and your company qualifies as a small business under the NAICS code that the procurement is likely to be awarded under, and you estimate the dollar value of the procurement to be under the dollar threshold for the probable or assigned NAICS code, you can contact the agency's contracting office to inquire about the possibility of doing a sole source award to your company. The agency may be very receptive to this idea, and then again, it may not.

If your firm's market research involves direct contact with an agency, and leads to a discussion of a potential procurement with an agency, it is recommended that you ask the agency's contracting office to please consider your firm and to please send an **Offering Letter** to your local SBA District Office, addressing it to the ***SBA Business Development Specialist*** to which you are assigned.

CAPABILITY DETERMINATION PROCESS

The SBA will make a determination of your firm's capability to perform before it sends out a search letter/requirements letter to an agency. The contracting agency's technical customer may accept the SBA's assurance that an 8(a) company is qualified to perform the requirements of a procurement, or it may conduct its own capabilities assessment review. The latter is the more usual process, as the technical customer is much more knowledgeable of the detailed requirements of the procurement, and therefore the best one to make a capabilities assessment review and then a recommendation to the PCO regarding a firm's capability. If the agency in question is a Navy command, please be mindful of this second phase of the capabilities determination process in which the Navy command's technical customer will most likely conduct its own review of an 8(a) candidate offered by the SBA, and make its own determination of whether the firm is technically capable of performing the requirements, especially if it involves a SOW/PWS. This capability assessment will be conducted by the government technical and subject matter experts. Most of the time, your capability presentation and supporting information will be presented by your firm directly to what would become your future customer, should you end up getting a sole source award.

If the contracting agency finds an 8(a) company not capable, the contracting officer must provide to the SBA a written explanation and justification for the negative determination. The contracting agency's local Small Business Office and then the SBA district office must agree that this justification is acceptable before the agency can move forward by evaluating the next candidate in line, or, barring finding a capable candidate, can then continue the procurement process on a competitive or other basis.

However, if found capable, the 8(a) company will be awarded a negotiated sole source award, unless of course the negotiations fail to arrive at an agreement as to cost, terms, and conditions.

For large services contracts at NSWC PHD and NSWC Corona Division, the **Capability Assessment** will be based primarily upon evaluation of your firm's –

- a. **Demonstrated** *technical capability* to perform the requirements of the Statement of Work/Performance Work Statement (SOW/PWS), and **demonstrated** ability to perform 50% or more of the tasking *with your own employees*, and
- b. **Demonstrated** *ability to manage the type and magnitude of these requirements (the tasking)* while serving as the prime contractor, and
- c. **Demonstrated** *capacity* to conduct the execution of the requirements of the SOW/PWS (adequate size of the staff and amount of equipment and facilities needed, etc.) and
- d. any special requirements, qualifications, certifications, etc., that are listed in the solicitation as mandatory.

This can be a short process or become an exhaustive process with repeat visits and extensive information gathering until the Navy technical code (the contracting office's "customer") is satisfied and ready to make a capability determination.

In the case where there is only one candidate being offered by SBA, and if the capability determination made by the government is negative, and if the SBA agrees with the "not capable" determination, the SBA will withdraw its offer.

The Federal Acquisition Regulation (FAR) citations below list the information that the SBA would send to an agency to start the capability review process by the contracting agency.

APPLICABLE FEDERAL ACQUISITION REGULATION (FAR) CITATIONS

Here are the FAR Part 19.8 citations that apply to this discussion, excerpted from FAR in January 2011. (Always check the FAR for the most current acquisition regulations).

FAR 19.803 -- Selecting Acquisitions for the 8(a) Program.

Through their cooperative efforts, the SBA and an agency match the agency's requirements with the capabilities of 8(a) concerns to establish a basis for the agency to contract with the SBA under the program. Selection is initiated in one of three ways --

(a) The SBA advises an agency contracting activity through a search letter of an 8(a) firm's capabilities and asks the agency to identify acquisitions to support the firm's business plans. In these instances, the SBA will provide at least the following information in order to enable the agency to match an acquisition to the firm's capabilities

(1) Identification of the concern and its owners.

(2) Background information on the concern, including any and all information pertaining to the concern's technical ability and capacity to perform.

(3) The firm's present production capacity and related facilities.

(4) The extent to which contracting assistance is needed in the present and the future, described in terms that will enable the agency to relate the concern's plans to present and future agency requirements.

(5) If construction is involved, the request shall also include the following:

(i) The concern's capabilities in and qualifications for accomplishing various categories of maintenance, repair, alteration, and construction work in specific categories such as mechanical, electrical, heating and air conditioning, demolition, building, painting, paving, earth work, waterfront work, and general construction work.

(ii) The concern's capacity in each construction category in terms of estimated dollar value (*e.g.*, electrical, up to \$100,000).

(b) The SBA identifies a specific requirement for a particular 8(a) firm or firms and asks the agency contracting activity to offer the acquisition to the 8(a) Program for the firm(s). In these instances, in addition to the information in paragraph (a) of this section, the SBA will provide –

(1) A clear identification of the acquisition sought; *e.g.*, project name or number;

(2) A statement as to how any additional needed equipment and real property will be provided in order to ensure that the firm will be fully capable of satisfying the agency's requirements;

(3) If construction, information as to the bonding capability of the firm(s); and

(4) Either --

(i) If sole source request --

(A) The reasons why the firm is considered suitable for this particular acquisition; *e.g.*, previous contracts for the same or similar supply or service; and

(B) A statement that the firm is eligible in terms of NAICS code, business support levels, and business activity targets; or

(c) Agencies may also review other proposed acquisitions for the purpose of identifying requirements which may be offered to the SBA. Where agencies independently, or through the self marketing efforts of an 8(a) firm, identify a requirement for the 8(a) Program, they may offer on behalf of a specific 8(a) firm, for the 8(a) Program in general, or for 8(a) competition (but see [19.800\(e\)](#)).

The information provided in this document is provided as information only and does not reflect the official position of the Department of the Navy. The reader should refer to the specific regulations governing acquisitions for detailed information.

Questions? Contact Tom Winans, Deputy for Small Business, Naval Surface Warfare Center, Combined Port Hueneme Division/Corona Division Small Business Office at (805) 228-0372

Approved for Public Release; Distribution is unlimited. (RELEASE: 8-17-11 REV 10/18/11)