

Chapter 19.1, Summary of Small Business Administration and Department of Energy Partnership Agreement

Reference: FAR 19.8

Overview

Recently, the Secretary and the Administrator of the Small Business Administration (SBA) executed a Partnership Agreement to expedite the award of requirements pursuant to section 8(a) of the Small Business Act. It will remain in effect through September 30, 2012. A copy is attached. This section discusses the effects of that Partnership Agreement on the way Department of Energy (DOE) contracting officers process awards under the 8(a) Program.

Background

Section 8(a) of the Small Business Act provides for the award of contracts to the SBA and the award of a subcontract to a small disadvantaged businesses accepted into the SBA's 8(a) Business Development Program. Depending on the values and other factors, awards made under this authority may be sole source or the result of competition limited to such firms.

The Federal Acquisition Regulation (FAR) at Subpart 19.8 regulates the award of contracts/subcontracts under the 8(a) program. Generally, that regulation requires the agency which is to receive performance to offer the procurement to the SBA. Depending upon the circumstances, the agency may identify an 8(a) firm which is to perform the work. Upon SBA's acceptance, the agency awards the prime contract to the SBA. The award document is to contain prescribed clauses for 8(a) awards and allow for its use as both the prime contract with the SBA and the subcontract with the selected 8(a) firm. The agency contracting officer then executes the contract/subcontract on behalf of the requiring agency and forwards it to the SBA where an SBA contracting officer executes the prime contract/subcontract and acquires the authorized execution by an official of the selected 8(a) firm. However, absent termination or other special issues, the contract/subcontract is administered by the requiring agency.

The process of acquiring the signature of the SBA contracting officer takes time and delays award. The Partnership Agreement has been designed to speed that process by the SBA's delegating its contracting officer authority, involved in the execution of the contract/subcontract, to the requiring agency.

Guidance

The Partnership Agreement and the delegation of contracting officer authority for the execution

of 8(a) contracts/subcontracts is effective for contracts and purchase orders and for competitive and noncompetitive awards. The effect of the Partnership Agreement is to delegate only contracting officer authority in the execution of the contract/subcontract. The Partnership Agreement does not affect the parties or their roles, i.e., SBA is the prime contractor and the 8(a) firm is a subcontractor to the SBA.

DOE must still supply SBA with offering letters for contracts/subcontracts in excess of the simplified acquisition threshold. The SBA may still reject a proposed 8(a) firm..

For sole source 8(a) awards in excess of the simplified acquisition threshold, SBA is allowed 5 working days after receipt of an offering letter to accept or reject the proposed award or 8(a) firm. However, under the terms of the Partnership Agreement, DOE may assume acceptance on the sixth working day.

For competitive 8(a) awards in excess of the simplified acquisition threshold, SBA is allowed 5 working days from receipt of an offering letter to accept or reject the procurement. DOE may assume acceptance on the sixth working day. Once the 8(a) firm is selected or a competitive range is established, where no discussion are to be conducted, SBA has 2 working days to issue an eligibility determination for the selected firm or those firms in the competitive range.

In case of procurements subject to simplified acquisition threshold procedures, DOE is not required to provide an offering letter. Instead, DOE is to provide SBA with a signed purchase order. SBA then has two working days after receipt to make a negative eligibility determination. If no such determination is made within those two working days, the 8(a) firm is authorized to begin performance.

The awarding office is required, within 15 calendar days of the date of award, to supply the SBA a copy of each 8(a) contract/subcontract where the award has been made exercising the delegation of SBA's contracting officer authority. Quarterly, SBA is to inform DOE's Office of Small Disadvantaged Business Utilization of any 8(a) requirements that the SBA accepted but for which SBA has not been furnished a copy of the award document.

Awarding offices are responsible for issuing procurement instrument identification numbers. The SBA will not issue subcontract numbers.

Awarding offices are obligated to ensure that all proposed joint ventures involving 8(a) firms are approved by SBA before a contract is awarded to the joint ventures. Each of the other special situations requiring notification or special contract language discussed in the Partnership Agreement (i.e., SBA's approval of novation agreements, advance notice of any final termination of the contract, and identification of SBA as the prime contractor) are satisfied by the special 8(a) contract clauses at FAR 52.219-11 and -12.