



U.S. Department of Housing and Urban Development
Washington, D.C. 20410

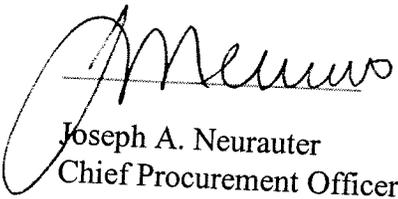
OFFICE OF THE CHIEF PROCUREMENT OFFICER

**Class Deviation to Federal Acquisition Regulation
Subpart 19.8 and Part 52, Section 8(a) Awards**

The Department of Housing and Urban Development (HUD) and the U.S. Small Business Administration (SBA) have entered into a Partnership Agreement (Memorandum of Understanding (MOU)), effective January 30, 2007. Pursuant to Civilian Agency Acquisition Council (CAAC) Letter 98-3, "Direct 8(a) Contracting," dated May 1, 1998, the CAAC recommends that civilian agencies authorize a class deviation to implement the changes to FAR Subpart 19.8 and Part 52 necessary for those agencies which have entered into an agreement with SBA for the direct award of 8(a) contracts by the requiring agency. The CAAC letter serves as evidence of the consultation with the Chairman of the CAAC required by FAR 1.404(a)(1). Furthermore, SBA's General Counsel has determined that there is statutory authority to enter into the Partnership Agreement and to delegate contract execution to HUD.

The purpose of the Partnership Agreement is to streamline the award of 8(a) contracts. The Partnership Agreement permits HUD to make awards directly to eligible 8(a) concerns. SBA's signature on such contracts is not required.

Therefore, in accordance with FAR 1.404 and HUDAR 2401.404, I hereby authorize the attached deviation, on a class basis, to 48 CFR Subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), and 38 CFR Part 52, Solicitation Provisions and Contract Clauses, which shall be effective from the date of this deviation through September 30, 2009, the expiration date of the Partnership Agreement, unless rescinded sooner. This deviation replaces the deviation issued April 12, 2007.


Joseph A. Neurauter
Chief Procurement Officer

Sept 5, 2007

Date

**Deviation to Implement the HUD-SBA Partnership Agreement
Section 8(a) Awards**

Part 2419 - Small Business Programs

Subpart 2419.8 - Contracting with the Small Business Administration (The 8(a) Program).

2419.800 General.

FAR 19.800 paragraph (f) is replaced with the following:

(f) By Partnership Agreement dated January 30, 2007, between the Small Business Administration (SBA) and the Department of Housing and Urban Development (HUD), the SBA delegated to HUD's Senior Procurement Executive 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 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. Under the Partnership Agreement, 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 the delegation issued as a result of the Partnership Agreement; however, any such withdrawal shall have no effect on contracts already awarded under the Partnership Agreement.

2419.803 Selecting acquisitions for the 8(a) Program.

2419.803-70 Simplified procedures for 8(a) acquisitions under Partnership Agreements.

HUD contracting activities may use the simplified acquisition procedures of Part 13 and HUDAR Part 2413 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 contracting officer will use the Central Contractor Registration (CCR) database on the Internet (<http://www.ccr.gov>) to establish that the selected 8(a) firm is a current program participant.
- (c) Once an 8(a) contractor has been identified, the 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 and HUDAR Part 2413. The applicable clauses prescribed in 2419.811-3 shall be included in the award document. The contracting officer will issue the purchase order directly to the 8(a) firm.
- (d) The contracting officer will forward the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within 5 days after the order is issued.

2419.804 Evaluation, offering and acceptance.

2419.804-2 Agency offering.

(d) When applicable, the notification must identify that the offering is in accordance with the Partnership Agreement identified in 2419.800.

2419.804-3 SBA acceptance.

2419.804-370 SBA acceptance under Partnership Agreements for acquisitions exceeding \$100,000.

(a) The following procedures apply to the acceptance of requirements covered by the Partnership Agreement for acquisitions that exceed \$100,000.

(1) The SBA's decision whether to accept the requirement will be transmitted to HUD in writing within 5 working days of receipt of the offer.

(2) The SBA may request, and HUD may grant, an extension beyond the five-day limit.

(3) SBA's acceptance letters should be faxed or e-mailed to HUD.

(4) If HUD has not received an acceptance or rejection of the offering from SBA within 5 days of SBA's receipt of the offering letter, the contracting officer may assume that the requirement has been accepted and proceed with the acquisition.

(b) The contents of SBA's acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

2419.805 Competitive 8(a).

2419.805-2 Procedures.

(b)(3) For requirements exceeding \$100,000 processed under the Partnership Agreement cited in 2419.800, the contracting officer shall submit the name, address, and telephone number of the low bidder (sealed bid requirements) or the apparent successful offeror (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 two (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.

2419.806 Pricing the 8(a) contract.

FAR 19.806 paragraph (a) is replaced with the following:

(a) For contracts awarded under the Partnership Agreement cite in 2419.800, when required by FAR 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor.

2419.808 Contract negotiation.

2419.808-1 Sole source.

FAR 19.808-1 paragraphs (a) and (b) are replaced with the following:

(a) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, the 8(a) contractor is responsible for negotiating with HUD within the time established by the contracting officer. If the 8(a) contractor does not negotiate within the established time, and HUD cannot allow additional time, HUD, after notification and approval by SBA, may proceed with the acquisition from other sources.

(b) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, HUD 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.

2419.811 Preparing the contracts.

2419.811-1 Sole source.

(e) If the award is to be made under the Partnership Agreement cited in 2419.800, the contracting officer shall prepare the contract to be awarded to the 8(a) firm in accordance with the normal HUD procedures for non-8(a) contracts, except for the following:

(1) The award form shall cite 41 U.S.C. 253 (c)(5) and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) The contracting officer shall include appropriate contract clauses, as necessary, to reflect that the acquisition is an 8(a) contract awarded under the authority of the Partnership Agreement cited in 2419.800.

(3) The contracting officer 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 HUD and the 8(a) contractor. As such, a single signature by the HUD contracting officer shall suffice. 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.

2419.811-2 Competitive.

FAR 19.811-2 paragraphs (a) and (b) are replaced with the following:

(a) If the award is to be made under the Partnership Agreement cited in 2419.800, competitive contracts for 8(a) firms shall be prepared in accordance with the same standards as 8(a) sole source contracts as set forth in 2419.811-1.

(b) If the acquisition is conducted under the Partnership Agreement cited in 2419.800, the process for obtaining signatures shall be as specified in 2419.811-1(e).

2419.811-3 Contract Clauses.

(d)(3) The contracting officer shall use the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with the clause at 2452.219-71, Notification of Competition Limited to Eligible 8(a) Concerns - Alternate III to FAR 52.219-18 (Deviation), for competitive 8(a) acquisitions processed under the Partnership Agreement cited in 2419.800.

(f) In contracts and purchase orders process under the Partnership Agreement cited at 2419.800, the contracting officer shall substitute the clause at 2452.219-72, Section 8(a) Direct Award (Deviation), for the clauses at FAR 52.219-11, Special 8(a) Contract Conditions, 52.219-12, Special 8(a) Subcontract Conditions, and 52.219-17, Section 8(a) Award

2419.812, Contract administration.

(e) Awards under the Partnership Agreement cited in 2419.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at 2452.219-71, Section 8(a) Direct Award (Deviation), which requires the 8(a) contractor to notify the SBA and the HUD contracting officer when ownership of the firm is being transferred.

Part 52 - Solicitation Provisions and Contract Clauses

2452.219-71 Notification of Competition Limited to Eligible 8(a) Concerns - Alternate III to FAR 52.219-18 (Deviation).

As prescribed in 19.811-3(d)(3), insert the following clause:

Notification of Competition Limited to Eligible 8(a) Concerns - Alternate III to FAR 5219-18 (Deviation) (APR 2007)

The following paragraph (c) replaces paragraph (c) of the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns:

(c) Any award resulting from this solicitation will be made directly by the HUD contracting officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

2452.219-72 Section 8(a) Direct Awards (Deviation).

As prescribed in 2419.811-3(f), insert the following clause:

Section 8(a) Direct Award (Deviation) (AUG 2007)

(a) This contract is issued as a direct award between the Department of Housing and Urban Development (HUD) and the 8(a) contractor pursuant to a Partnership Agreement (Agreement) between the Small Business Administration (SBA) and HUD. SBA retains 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) SBA is the prime contractor and _____ *[insert name of 8(a) contractor]* is the subcontractor under this contract. Under the terms of the Agreement, HUD 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 HUD contracting officer shall give advance notice to the SBA before issuing a final notice terminating performance, either in whole or in part, under the contract. The HUD contracting officer shall also coordinate with SBA prior to processing any novation agreement. HUD may assign contract administration functions to a contract administration office.

(c) _____ *[insert name of 8(a) contractor]* agrees:

(1) To notify the HUD contracting officer, simultaneously 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 control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership or control.

(2) To adhere to the requirements of FAR 52.219-14, Limitations on Subcontracting.

(End of Clause)