PARTNERSHIP AGREEMENT
Between
The U.S. Small Business Administration
And
The U.S. Department of Education

Sections 7(j) and 8(a) of the Small Business Act (the Act) (15 U.S.C. §§ 636 (j) and 637(a)) authorize the U. S. Small Business Administration (SBA) to establish a business development program, which is known as the 8(a) Business Development (BD) Program. The 8(a) BD Program promotes the development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete in the mainstream of the American economy. (15 U.S.C. § 631(f)(2)). Small business development is accomplished by providing various forms of management, technical, financial and procurement assistance. Additionally, pursuant to section 8(a) of the Act, SBA is authorized to enter into all types of contracts with other Federal agencies and to subcontract the performance of these contracts to qualified Participants in the 8(a) BD Program.

I. PURPOSE

The purpose of this Partnership Agreement (PA) between SBA and the **U.S. Department of Education** is to delegate SBA's contract execution functions to the U.S. Department of Education per the requirements of 13 Code of Federal Regulations C.F.R. § 124.501. The PA sets forth the delegation of authority and establishes the basic procedures for expediting the award of 8(a) contract requirements. This PA replaces all terms and conditions of any previously executed Memorandum of Understanding (MOU) or PA with the **U.S. Department of Education** or subordinate agencies on the issue of expediting the award of requirements pursuant to Section 8(a) of the Act.

Failure to sign this PA will require the **U.S. Department of Education** to utilize the prescribed processes to contract with the SBA as stated in the Federal Acquisition Regulation (FAR) Subpart 19.8.

II. OBJECTIVES

A. To delineate the responsibilities as they relate to the oversight, monitoring and compliance with procurement laws and regulations governing 8(a) contracts between SBA and the **U.S. Department of Education**;
B. To establish the procedures for offer and acceptance between SBA and the **U.S. Department of Education**;
C. To establish that SBA will respond to an offering letter within five (5) working days if the contract is valued at more than the simplified acquisition threshold and within two days of receipt if the contract is valued at or below the simplified acquisition thresholds. See 13 C.F.R. § 124.503(a)(3);

D. To emphasize that although SBA delegates the authority to sign contracts on its behalf, it remains the prime contractor on all 8(a) contract awards, modifications, options and purchase orders, and must receive copies of all contracts and subsequent modifications;
E. To establish uniform policies and procedures regarding application of contracts and purchase orders to the 8(a) contracting process.
F. To monitor the U.S. Department of Education's fulfillment all requirements outlined in the PA quarterly;
G. To suspend or rescind the delegation of this PA if the **U.S. Department of Education** has violated any terms and condition of the PA.

III. SCOPE

The PA provides for the award of contracts, modifications, options and purchase orders under the provisions of Section 8(a) of the Act as implemented by the FAR Subpart 19.8 and SBA's 8(a) BD program regulations found at 13 C.F.R. §124, (Subpart A).

The PA encompasses all competitive and non-competitive acquisitions of requirements offered by the **U.S. Department of Education** contracting offices and accepted by SBA for the 8(a) BD Program.

The PA applies to all SBA offices and all the **U.S. Department of Education** contracting offices, as defined in FAR § 2.101 and deemed appropriate by the head of the agency, as defined in FAR § 2.101, for the U.S. Department of Education.

IV. RESPONSIBILITIES

A. SBA's Responsibilities.

SBA

1. delegates to the **U.S. Department of Education** for re-delegation to all warranted **U.S. Department of Education**'s contracting officers, its authority under section 8(a)(1)(A) of the Act to enter into 8(a) prime contracts, and its authority under section 8(a)(1)(B) of the Act to arrange for the performance of such procurement contracts by eligible 8(a) Participants. In accordance with 13 C.F.R. §124.501(a), SBA delegates its 8(a) contract execution function. SBA remains the prime contractor on all 8(a) contracts and the 8(a) Participant remains the SBA's subcontractor;

2. will implement its responsibilities under this PA through uniform procedures for use by all SBA offices;

3. will provide training for the **U.S. Department of Education** contracting officers and small business specialists, on the SBA's 8(a) BD Program and various aspects of the PA;

4. shall review the **U.S. Department of Education's** offering letters, issue acceptance or rejection letters, and make eligibility determinations for award.

   (a) Sole Source Procurements.

      i. SBA will issue either an acceptance letter or rejection letter within five (5) working days of receipt of an offering letter, unless the District Office requests and the procuring activity agree to an extension of time.

      ii. Absent a notification of rejection within five (5) working days of receipt of the offer, acceptance may be assumed on the sixth (6th) working day unless an extension has been requested and accepted, **except** for provision of FAR § 19.808-1 for 8(a) sole-source procurements that exceed $20 million.

      iii. For procurement over $20 million, if the **U.S. Department of Education** has not received an acceptance or rejection letter from the District Office on the 6th working day, the **U.S. Department of Education** must seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD).

      iv. Acceptance shall include a size verification and determination with respect to all elements of eligibility (i.e., determination of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility). See citations 13 C.F.R. § 124.503(b), 124.504(c) and 124.112.

   (b) Competitive Acquisitions.

      i. SBA will issue an acceptance letter or rejection letter within five (5) working days of receipt of an offering letter, unless the District Office requests and the procuring activity agree to an extension of time.

      ii. Absent notification of rejection within five (5) working days of receipt of the offer, the procuring activity may seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD). If the procuring activity does not receive a reply from the AA/BD within five (5) working days of the AA/BD's receipt of the offer, the

procuring activity may assume acceptance on the sixth (6th) working day. See citation 13 C.F.R. §124.503(5).

iii. Acceptance shall include a size verification and determination with respect to all elements of eligibility (i.e., determination of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility). See citations 13 C.F.R. §124.503(b), 124.504(c) and 124.112.

iv. Within five (5) working days after a request from the contracting officer, SBA shall issue an eligibility determination for the apparent successful offer of the competition as prescribed by SBA's regulations at 13 C.F.R. §124.507(b).

(c) Acquisitions Valued at or Below the Simplified Acquisition Procedures Threshold. (SAP).

i. No offering or acceptance letter is required for requirements valued at or below the simplified acquisition threshold in accordance with the delegation authority.

ii. SBA will review the program eligibility of the 8(a) Participant within two (2) working days after a request from the contracting officer.

iii. Absent a notification that the selected 8(a) Participant is ineligible for the award within two (2) working days, the procuring agency may assume the 8(a) Participant is eligible and proceed with award, as prescribed by SBA's regulations at 13 C.F.R. 124.503(a)(4)(i).

5. shall review and approve all proposed joint venture agreements involving 8(a) Participants before 8(a) contract award;

6. may provide 8(a) Participants with contract negotiation assistance or direct them to appropriate resources where they can obtain technical assistance in contract negotiations when requested by either the 8(a) Participant or the U.S. Department of Education contracting officer;

7. shall retain its appeal authority in accordance with FAR § 19.810;

8. shall retain the right to perform on-site agency reviews to ensure contract compliance;

9. may identify a requirement for an 8(a) Participant for a possible award. SBA will submit capability statements to the appropriate procuring activities for the purpose of matching requirements consistent with the 8(a) Participant's capability;

10. shall retain the responsibility for ensuring that 8(a) Participants comply with all applicable provisions relating to continuing eligibility for 8(a) BD Program participation per 13 C.F.R. § 124.112.

11. shall select an appropriate 8(a) Participant when the U.S. Department of Education submits an open offering letter for a sole source requirement.

B. Responsibilities of The U.S. Department of Education

The **U.S. Department of Education**

1. shall receive and retain SBA's delegation of contract execution and review functions by reporting all 8(a) contract awards, modifications, options and purchase orders to SBA until such time as the agreement is amended or terminated;

2. shall adhere to all provisions of contractual assistance identified in 13 C.F.R.§ 124.501 through 124.520; as well as the applicable provisions of FAR Subpart 19.8;

3. shall determine which requirements are suitable for offering to the 8(a) BD program in accordance with FAR, Subpart 19.8, and, where appropriate, identify in conjunction with the appropriate SBA servicing office, 8(a) Participants capable of performing these requirements;

4. shall retain responsibility for compliance with the limitations on subcontracting requirement and all applicable provisions of FAR § 52.219-14 and any of the **U.S. Department of Education** regulations;

5. shall include provisions in all contract awards, modifications, options and purchase orders awarded or issued under the 8(a) BD Program that require Program Participants to comply with the Subcontracting Limitations, and shall conduct and document an assessment at the time of contract award of the Participant's ability to comply with the Subcontracting Limitations;

6. shall provide a copy of any signed contract, as defined in FAR § 2.101, including modifications, options and purchase orders executed to an 8(a) firm under the provisions of this PA to the SBA servicing district office within 15 working days of the date of award; See citation 13 C.F.R § 124.512(b);

7. shall inform contracting officers and other warranted officials and their equivalents who are awarding 8(a) contracts of their responsibilities concerning this agreement;

8. shall ensure that contracting officers and other warranted officials and their equivalents obtain training on their obligations under this PA and the subcontracting limitations of FAR § 52.219-14 and 13 C.F.R. § 124.510 and 125.6;

9. shall include monitoring and oversight provisions for all contract awards, modifications, options and purchase orders to ensure that all contracts comply with the performance requirements (Limitations on Subcontracting) of FAR § 52.219-14 and 13 C.F.R. §124.510 and § 125.6;

10. shall request an eligibility determination from SBA's district office responsible for servicing the selected 8(a) Participant when an 8(a) Participant has been identified on all acquisitions valued at or below the simplified acquisition threshold prior to issuance of the purchase order;

11. shall submit the offering letter for sole source requirements exceeding the simplified acquisition threshold to SBA's district office responsible for servicing the selected 8(a) Participant, when an 8(a) Participant has been identified. See FAR 19.804-2;

12. shall report all 8(a) awards in the Federal Procurement Data System - Next Generation (FPDS-NG);

13. shall ensure that for a procurement over $20 million, if the **U.S. Department of Education** has not received an acceptance or rejection letter from the District Office on the 6th working day, the **U.S. Department of Education** must seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD).

14. shall ensure that the **U.S. Department of Education's** contracting officers execute a Justification and Approval (J&A) when awarding a sole-source contract for over $20 million and approved by the appropriate agency official. All J&A's and related information must be made public after award. See FAR § 6.303 and 19.808;

15. Each justification for a sole-source 8(a) contract over $20 million shall include the following information:

    (a) A description of the needs of the agency concerned for the matters covered by the contract.

(b) A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract (see FAR § 19.805-1).

(c) A determination that the use of a sole-source contract is in the best interest of the agency concerned.

(d) A determination that the anticipated cost of the contract will be fair and reasonable.

(e) Such other matters as the head of the agency concerned shall specify for purposes of this section.

16. shall submit an open offering letter for sole source requirements to the SBA district office that services the geographical area where the **U.S. Department of Education's** contracting activity is located, when the U.S. Department of Education has not identified a specific 8(a) Participant for a requirement. See FAR 19.804-2;

17. shall submit the offering letter for competitive 8(a) requirements to the SBA district office that services the geographical area where the **U.S. Department of Education's** contracting activity is located. Exceptions: the offering letters for construction work will be sent to the SBA district office located in the geographical area where the work will be performed, or, in the case of construction contracts to be performed overseas, the offering letter shall be submitted to SBA's Headquarters. See FAR 19.804-2;

18. shall request an eligibility determination prior to final award in all 8(a) competitive acquisitions;

19. shall ensure that all contracts awarded pursuant to this PA contain provisions that require:

    (a) SBA's approval of novation agreements submitted by the 8(a) Participant; and

    (b) advance notice to SBA (as the prime contractor) prior to issuance of a final notice terminating the contract in whole or in part;

20. shall ensure that all NAICS codes for all 8(a) contracts are applied in accordance with FAR § 19.102;

21. shall adhere to all limitation on sub-contracting provisions of FAR § 19.811-3;

22. shall add language to every contract stating that, even though SBA may not be identified in section A of the contract, it is still the prime contractor on the contract;

23. shall provide all proposed 8(a) joint ventures to SBA for approval before 8(a) contract(s) award;

24. awarded contracts to 8(a) firms outside the 8(a) authority will continue to be counted toward SDB negotiated goals;

25. a Contracting Officer shall notify SBA in writing of their request to release a requirement from the 8(a) BD Program. The written notification should be sent to the cognizant SBA district office serving the geographical area in which the procuring agency is located. The Contracting Officer shall include the reason(s) for the request, the procurement history of the requirement, the incumbent name, the assigned NAICS Code and the Statement of Work. The final decision rests with the AA/BD; and

26. shall provide SBA with access to all non-classified information in contract files so that SBA can perform on-site agency reviews to ensure that procuring agencies are complying with the terms and conditions of this agreement.

V. CONTRACT EXECUTION

The **U.S. Department of Education's** contracting officer may make direct award of a contract to the 8(a) Participant, but only after the requirement has been offered to and accepted by SBA. Acquisitions valued at or below the simplified acquisition threshold, as defined in FAR § 2.101, and per 13 C.F.R. §124.503(a)(4)(ii), require no offer or acceptance letter; however;

(a) a program eligibility determination of the selected 8(a) Participant from SBA is required; and

(b) the procuring activity must notify SBA of all 8(a) awards made under this authority, per 13 C.F.R. §124.503(a)(4)(ii). Contract execution shall be on the appropriate form as specified in FAR or by the **U.S. Department of Education** regulation. The "Issued by" block shall identify the awarding **U.S. Department of Education's** office. The SBA district office for the 8(a) Participant shall be identified in the award document. The 8(a) Participant's name and address shall be listed as the contractor. The **U.S. Department of Education's** contracting activities are responsible for issuing procurement instrument identification numbers. SBA will not issue subcontract numbers.

VI. TERM/ TERMINATION

This PA is effective on the date of SBA's signature. This PA does not have an expiration date; however, it can be suspended based on violation of the PA terms and conditions. Either SBA or the **U.S. Department of Education** may terminate this PA upon 30 calendar days advance written notice to the other party.

VII. AMENDMENT

This PA may be amended, in writing, at any time by mutual agreement of the parties.

VIII. CONDITIONS

A. Contracts awarded to 8(a) firms outside the 8(a) authority will continue to be counted toward SDB negotiated goals.

B. SBA reserves the right to suspend or rescind the authority of this PA with the U.S. Department of Education for failure to submit copies to SBA of contract awards, modifications, options and purchase orders within 15 working days of award, failure to adequately monitor 8(a) contract compliance requirements, or if the **U.S. Department of Education** otherwise fails to follow the terms of this PA.

C. SBA reserves the right to suspend or rescind the authority of this PA with the **U.S. Department of Education** for failure to update the Federal Procurement Data System - Next Generation (FPDS-NG) so that SBA can adequately measure and gauge the 8(a) contracts being awarded using the guidelines outlined in the PA, which will be conducted by the SBA quarterly.

D. SBA has the right to conduct periodic compliance on-site agency reviews of the files of all contracts awarded pursuant to Section 8(a) authority and this Agreement. The delegated authority may be rescinded when on-site agency review findings indicate a pattern of failure to comply with 8(a) program regulations that govern award and administration of such contracts.

E. Where a procurement is awarded as an 8(a) contract, its follow-on or renewable acquisition must remain in the 8(a) BD program unless SBA agrees to release it. If the **U.S. Department of Education** would like to fulfill a follow-on or renewable acquisition outside of the 8(a) BD program, it must make a written request to and receive the concurrence of the AA/BD to do so. SBA's release for non-8(a) competition will be in accordance with 13 C.F.R § 124.504. SBA will process the written request within 10 business days of receipt by the AA/BD.

IX. ADDITIONS/CHANGES

1. This PA will take effect on the date of SBA's signature. This PA does not have an expiration date.

2. SBA shall provide monitoring and oversight of all 8(a) contracts awarded to ensure that the servicing district office is receiving a copy of each contract, modifications, options and purchase orders executed under this PA. This process will be conducted quarterly by data utilization of the Federal Procurement Data System - Next Generation (FPDS-NG).

3. The contracting officer shall justify the use of a sole-source contract for $20 million or more in writing in accordance with FAR § 6.303 and 19.808;

4. For procurement over $20 million, if no acceptance or rejection letter has been provided by the District Office on the 6th working day the **U.S. Department of Education** will contact the Associate Administrator for Business Development.

5. **U.S. Department of Education** shall adhere to all limitations on sub-contracting provisions of FAR § 19.811-3.

X. ADMINISTRATION

For the U.S. Department of Education:

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For SBA:

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XI. ACCEPTANCE

Authorized by and on behalf of their respective agencies, the undersigned parties hereby accept the terms and conditions of this agreement.

For:

The U.S. Department of Education

11/29/12
Date

Jim Ropelewski
Acting Deputy Chief Financial Officer
and Senior Procurement Executive

For:

SBA

11/28/12
Date

A. John Shoraka
Associate Administrator for
Government Contracting and
Business Development

11-29-12
Date

Mina A. Wales
Director
Office of Strategic Alliances