



SOCIAL SECURITY

MEMORANDUM

Date: September 21, 2023 **Refer To:** S1QC

To: Office of Acquisition and Grants (OAG) Staff

From: Erica Day
Procurement Analyst, Division of Policy and Purchase Card Administration,
Office of Acquisition Support

Subject: **Flash Notice (FN) 19_23-01 –Notification of Changes to Contractor Eligibility for Contract Award Under the Small Business Administration’s 8(a) Program – INFORMATION**

Purpose

This FN notifies the contracting staff of new interim guidance issued by the Small Business Administration (SBA) regarding 8(a) Program acceptance due to a recent court decision, *Ultima Services Corporation v. US Department of Agriculture*, whereby the “rebuttable presumption of social disadvantage” cannot be used by SBA in administering the 8(a) Business Development Program (8(a)) Program).

Policy and Procedure

Effective immediately, contracting staff must follow the guidance in Attachment A, *8(a) Program Guidance to Agencies* when using the SBA’s 8(a) program to make a contract award.

While contracting staff may still make awards using the 8(a) program, SBA will now be required to verify that the contractor has established personal social disadvantage without the presumption as part of their eligibility determination. If you have received an eligibility determination from SBA, but have not yet made a contract award, you will need to obtain a revised determination from SBA to confirm the contractor’s social disadvantage status (i.e., 8(a) Program eligibility). Contracting staff may also check the 8(a) social disadvantage qualification list, maintained and updated by SBA, at <https://community.max.gov/pages/viewpage.action?spaceKey=SBA&title=SBA+OPPL+Collaboration+Page>. If your vendor appears on the qualification list, you do not need to obtain a revised determination. If you are working with a contractor that may need to submit a social

disadvantage narrative, please provide them with the guidance in Attachment B, *Guide for Writing a Social Disadvantage Narrative*.

The guidance in this FN applies in the following circumstances (reference Attachment C, *Ultima Guidance, FAQs*)¹:

1. all sole source 8(a) awards (see Q&A #5);
2. open market competitive 8(a) awards (see Q&A #4) (paragraph 3);
3. competitive 8(a) awards (set-asides) under non-8(a) ordering vehicles (e.g., 8(a) set aside under Schedule 70) (see Q&A# 4, paragraph 3);
4. option exercise and in-scope mods against contracts placed into the 8(a) program after 19 July 23 (see Q&A #7).

The guidance *does not* apply to:

1. Competitive 8(a) orders issued under an existing 8(a) GWAC or multiple award contract (e.g., 8(a) STARS)(see Q&A# 4, paragraph 1);
2. awards to 8(a) firms that result from full and open competition (see Q&A #4, paragraph 3);
3. any contract placed into the 8(a) program prior to 19 July 23 (see Q&A #6).

When making an award, confer with Attachment C in its entirety to ensure proper procedures are followed.

Further Information

Direct questions regarding this FN to Erica Day, Procurement Analyst, Small and Disadvantaged Business Utilization Specialist, Division of Policy and Purchase Card Administration, at (410) 965-9512 or erica.day@ssa.gov.

Attachment A – 8(a) Program Guidance to Agencies



8(a) Program
Guidance to Agencies

Attachment B – Guide for Writing a Social Disadvantage Narrative



Guide for Writing a
Social Disadvantage N

¹ Staff should also pay special attention to FAQ #18 which allows you to sign up for MAX.gov using the PIV Card where you can view the 8(a) Social Disadvantage Qualification List as well as the FAQ document with any updates.

Attachment C – Ultima Guidance FAQs 2023-09-19



FAQs for Agencies
additional 2023-09-19

Attachment D – CAAC Letter Authorizing Deviation



CAAC Letter 2023-04
- SBA 8(a) Program.pdf

Attachment E – Agency Deviation Approval Memorandum