

Quick Reference Guide

Updated Guidance for Sole Source Contracts with 8(a) Businesses

As part of the FY 2020 National Defense Authorization Act (NDAA) passed by Congress in December 2019, the Department of Defense (DoD) is now able to issue sole-source contracts up to \$100 million without a justification and approval (J&A) to qualifying tribally-owned 8(a) businesses, including certain Alaska Native Corporations (S 1790 Sec. 842, H.R. 2500 Sec. 830). Previous law required a J&A for contracts greater than \$22 million.

What Does this Mean for the DoD?

This new law has a significant impact on future acquisition strategies for groups and departments within the DoD. Contracting officers have an immediate opportunity to streamline the DoD's ability to award certain sole-source contracts.

Existing Sole Source Contracts

If a contract exists with an 8(a) business that is under the \$22 million threshold, contracting officers have the authority to modify sole-source contracts up to \$100 million. Additionally, if the contract is not a full five-year contract, they have the authority to add extensions to allow for up to five years of performance.

Length of contract - FAR 17.204(e)

It is a well-established principle that a contract can grow or be extended within scope and within the five year limit. A contract can be issued for a period of 1 or 2 years and be extended up to the five-year limit in FAR 17.204(e).

Contracts Up for Re compete in FY 2020

If a contract is up for re compete in FY 2020, contracting officers have the ability to increase the value of the sole-source contract up to \$100 million without a justification and approval (J&A). This provides the DoD with the opportunity to continue working with high performing 8(a) businesses even when their sole-source contracts approach their maximum awarded value.

New Contracts

New sole-source contracts in FY 2020 can be issued up to \$100 million without a J&A. For contracts above this value, a J&A is still required. However, memos from each of the service chiefs (Secretaries of Army, Navy, and Air Force) issued in January 2017 direct that the J&A process for 8(a) awards should not be a barrier to executing contracts that are in the best interests of the government.

Impact to Federal Agencies Outside of the DoD

The ability to award sole-source contracts up to \$100 million without a J&A is only applicable to the Department of Defense.

Other Important Notes

The partnership agreement between the Small Business Administration and the DoD requires that the DoD submit to the SBA copies of contract awards, modifications, options and purchase orders within 15 working days of award. Any J&As should also be submitted to the SBA along with the modification extending the contract. This is a notification to the SBA, not a request for approval.

For more information on the J&A threshold increase for DoD sole-source awards up to \$100 million, visit <https://www.acq.osd.mil/dpap/policy/policyvault/USA000495-20-DPC.pdf> or www.congress.gov/bill/116th-congress/senate-bill/1790/actions.