

[START OF TRANSCRIPT]

**Carla:** Ladies and gentlemen, welcome and thank you for joining today's live SBA web conference. Please note that all participant lines will be muted for the duration of this event. You are welcome to submit written questions during the presentation and these will be addressed during Q and A. To submit a great question, please use the chat panel on the right-hand side of your screen. Choose 'All panelists' from the 'Send to' drop down menu. If you require technical assistance, please send a private note to the event producer. I would now like to formally begin today's conference and introduce Chris Eischen. Chris, please go ahead.

**Chris:** Thank you, Carla. Hello, everyone and welcome to the seventh session of SBA's first Wednesday webinar series for fiscal year 2019. We appreciate everyone being flexible with our change of time for today's session.

On to slide two. For today's session will be focusing on contracting actions within the 8(a) program and by the end of today's program, you should have a better understanding of this topic, as well as the resources available to you.

If you are new to our event, this is a webinar series that focuses on getting subject matter experts on specific small business programs, such as the 8(a) program and having them provide you with valuable information you can use in the performance of your job. We appreciate you taking the time to participate in the FY19 program. We hope that you benefit from today's session. Now, for a little background on the first Wednesday program. The program was initially created for contracting staff, which is why the training was called 1102 first Wednesday.

The 1102 designated government series for contracting personnel was later dropped to be more inclusive of other GS series as federal agencies increased the requirements for non-1102's to obtain DAWIA and FAC-C certifications. Additionally, other federal buying activities, SBA staff, PTAC and SBDC personnel, who after hearing about this training requested access and were added to the list of participants. That is why SBA's first Wednesday program is aimed at federal government employees and our resources partners like PTACs and SBDCs. Thank you to those of you who are repeat attendees and welcome to those of you who are new to our program.

As Carla mentioned, I am Chris Eischen. I work as a procurement center representative or PCR in Kansas City, Missouri. Additionally, Miss Glen Davis, who is the PCR in Minneapolis, Minnesota, will be reading your questions submitted during the program for our speakers to address at the end of today's session. We both work in government contracting area four and slide three includes our information.

On slide four, please note that all lines are unmute. However, you may submit questions or technical issues in the chat box on your screen. Your questions may be submitted anytime during today's session by entering them into the chat box. These questions will be addressed at the end of our speakers' presentation. To make sure

your question doesn't get overlooked, please ensure it is addressed to all panelists in the drop down and not just one individual.

As most of you know, we have transitioned to WebEx and have informed some users that they may experience issues such as a blocked website or other error messages when attempting to access the conference login from their computer. If you're affected by this issue, please make sure you dial in and follow along with the slides provided in this email. We will ensure the page numbers are clearly stated so you can follow along. We are hopeful this issue will be resolved, and we apologize for any inconvenience.

Now, if you are having any other technical issues, please call the AT&T support desk at the following number 1-888-796-6118. This telephone number is also included in the email invitation for today's program and on slide four of the PowerPoint presentation. Otherwise, just keep listening and follow along with the PowerPoint presentation. For more SBA Small Business Program training and additional resources, please visit the SBA learning center at [www.sba.gov](http://www.sba.gov).

Slide five. Did you know that the Association of Procurement Technical Assistance Centers or APTAC hosts a website where they post the first Wednesday programs? Since these sessions are being recorded, you can re-listen to this program as well as previous sessions by visiting their website which is provided here on slide five.

Additionally, Procurement Technical Assistance Centers or PTAC are a great resource and partnering with your local PTAC for an industry day, sharing RFI notices or social announcement or referring small business concerns to a PTAC are just a few reasons why they are such a useful resource for Acquisition personnel. Please contact your local PTAC for additional information.

Slide six is the program schedule for fiscal year 2019. Today's session on the 8(a) program is the seventh topic in the series. You will see that we have added a couple new topics to our program list and improved on other topics that have been presented in the past.

Please note that since the DOD Small Business conference conflicts with our first Wednesday in May; our next session will actually take place on May 8, which is the second Wednesday of the month. We plan to hold this session at the regularly scheduled time of 2pm Eastern time. The email invitation for this upcoming session will be sent out in a few weeks, so please keep a lookout for that information.

Slide seven. I'm sure that many of you will want to receive credit for today's training. You'll be glad to know that today's session is worth one CLP.

On the following slide, which is slide eight, you will find the training certificate. I will go over those instructions at that time. Several of you may have received this information for the training from a friend or colleague, but if you want to receive an email directly from us notifying you of upcoming first Wednesday webinar events, please send us an email at [sbalearning@sba.gov](mailto:sbalearning@sba.gov). In the subject line, please enter the

words 'Add to list' and we'll ensure you're added to the distribution list. Slide eight is the certificate. First, you will need to access the PowerPoint presentation that was part of the SBA email invitation you received for today's session.

Then go to slide number eight, where you will manually fill in your name where it states, "Insert your name here". Next within the print settings, you will select 'Print current slide' which will allow for only the certificate to be printed. Once this is done, you can coordinate the CLP achievement through your training program. Please note that SBA does not track your CLPs or communicate with your training program coordinator regarding your CLP achievements.

Slide nine. Today's training has been assembled to address contracting actions within the 8(a) program, as well as provide you with additional resources available for your use.

Our speakers have graciously accepted our invitation and they will be directing me to continue on to the next slide. As mentioned earlier, if you're unable to access WebEx, please follow along with the PowerPoint presentation that was included an email for today's training. We will identify the page number so you can follow along. Also, please note that some viewers may experience a delay as the changes on your screen.

Now, I am pleased to introduce today's speakers to you. Miss K. A. Perkins, who is the Business Management Specialist for SBA Office of Management and technical assistance, as well as Mark Hagedorn, who is an attorney advisor for SBA Office of General Counsel. We appreciate that you both could meet with us today and I'll turn the program over to you now.

**Perkins:**

Good morning everyone. This is K. A. Perkins. I am here with Mark Hagedorn. I thought first, we would just go ahead and introduce ourselves and tell you a little bit about what it is we do as it relates to the 8(a) program. Just real briefly, again, I am a business management specialist in Office of Management and technical assistance or OMTA. Some of my career path is that though I worked as an 1102 at GSA in Kansas City, primarily with construction and construction related requirements. I then went to SBA and worked at the San Antonio district office, where I was a business opportunity specialist.

Some of the things that I worked on the contracting side of the house basically had to do with offer letters, of course, helping agencies with market research, with open requirements, so forth and so on, even helping with some issues between an agency and the contractors.

Currently, what I do at SBA headquarters is a little bit different. I'm sure most of you are aware of offer letters and what they are. We'll talk about that briefly, but I think that's a good baseline to start. Some of the things that I deal with in my position are things that I consider escalated contract actions. We'll talk a little bit more later

about what those are. Some of you may know, such as releases or a sole source of other competitive threshold and the like.

There are certain actions that they basically have to go through the district. We have to be requested by the agency and then go through the district office. The district office then writes a recommendation and then it comes to my office for review and signature.

Again, we'll talk about this more in detail. But that's kind of the breadth of what it is I've done throughout my career. Just a little bit about why we're having this training for contracting professional before Mark introduced himself and tells you a little bit about what he does as a business opportunity specialist at the district office and now as a business management specialist, SBA headquarters.

There's a number of things that I've seen from agencies and a really good opportunity, I guess, arises with regard to just kind of teaching agencies what some of the best practices are. Some of the things I see are, of course, the small things like not knowing to which district office to submit an offer letter, not completing an offer letter completely.

For example, an office may leave the acquisition history blank, or for the dollar value, they might write something like a not to exceed amount. The more clear your offer letter, the better the story you're telling. If something happens to that requirement later, it just makes things easier for you, easier for the district office and easier for my office as well.

Some of the other things that I see are not giving enough information when you're wanting to release the requirement. One of the things that we look at for most of our actions is market research, specifically the official market research results. We're wanting to know how you came to your conclusion on a certain request, so that the district office can make its recommendation. So that we here at OMTA can actually review the entire package and make a decision and get that decision back to you so you can get back to what it is you do every day.

All in all, the purpose of this training is basically to discuss, not just offer letters, and that's pretty easy, but basically the entire life cycle of 8(a) requirement. I'm sure most of you have heard about things or heard about the adage, once 8(a) always 8(a). There's truth to that, but there are certain things that can happen to a requirement and that's where my office kind of steps in. Those are the things that I see. For everything that I see, there are certain things that I don't see and that I'm concerned about. That's the reason why we're having this training.

There are some rules like for example, the 25% rule where there's a modification or an expansion of a requirement. Those are things that actually needs to be submitted to SBA. Instead of just the contracting officer, for example, just kind of making a determination and just pulling something out of the program. Again, for everything that I see that I'm concerned about, there are some things that I think don't even hit

this office that are not really proven acts as it relates to the 8(a) program. That's the reason why we're having this training today.

With that, I'll let Mark introduce himself and talk a little bit more about what it is he does and how he helps us.

**Mark:** Everyone, my name is Mark Hagedorn. I'm an attorney advisor with SBA's office of General Counsel. I believe I may have joined you all last year for a discussion about the HUBZone program. I'm glad to join you here to talk about the 8(a) program. I've since shifted over and now I'm one of the attorneys supporting the program here at headquarters.

As an attorney in the office of General Counsel, what we do is we advise the program office on all matters related to program administration. That runs the gamut from matters of initial and continuing 8(a) eligibility to all of the 8(a) contracting actions that K. A. just discussed in brief and the actions that we'll discuss in more detail in today's training.

We work very closely with the Program Office folks here at headquarters, but we also work closely with the field offices that are implementing the 8(a) program out in our district offices.

**Perkins:** Okay, would you mind Chris, getting ahead two slides to the agenda slide. Awesome. Thank you.

**Chris:** The agenda slide is slide 11.

**Perkins:** Starting at the very top of the slide and kind of making our way around, especially for those of you who are on the phone, you can take setting aside 8(a) requirements and OMTA contract actions. That basically kind of gives you the breadth of the 8(a) life cycle. We'll talk about how 8(a) requirements get into the program, navigating some of the different roles and in the far and 8(a) requirements.

I'll also talk to you about some of the behind the scenes stuff that SBA does. We'll talk about what we can call Bat waivers or sole source prohibition. Then, we'll talk about how a requirement actually may lead the program and things that SBA requires, and just kind of where SBA stances with regard to process and regulation. Again, setting aside 8(a) requirements in OMTA contract action, kind of tell you about that life cycle as it relates to 8(a) regulations and 8(a) process.

At the very bottom of the slide, we will talk about consolidation and bundling of requirements, specifically as it relates to releasing a requirement from the 8(a) program, of course, category management and strategic sourcing and consolidation and bundling. Those are all very big, very on trend topics that everyone's discussing. That could be training in and of itself. We're kind of talking about a bit of a sliver of that today. When we go into that, Mark will also share with you some case law as it relates to consolidation and bundling and also some other case law that would just be good to know. I believe one is about joint ventures and what's...?

**Mark:** The other one is about an offering letter on a sole source basis that was rescinded and re-offered to another participant.

**Perkins:** Okay, awesome. That's the third topic. Then, the last topic going clockwise is basically temporary releases, which we'll get into that close to the end, of course, but temporary releases, don't try to Google it or look it up in our reg. It's not a thing, technically, but it is a term of art because we like to be creative and help you get the job done. It is a term of art that we use to figure out what happens when contract performance is over and the follow on is not really on time. The follow one is going to be six months out or 10 months out or perhaps even longer. There are ways that you can work with SBA to make sure that you can continue that need even when in 8(a) graduate. We'll talk more in detail towards the end about that. With that next slide please.

**Chris:** Slide 12.

**Perkins:** Okay, so as promised, we're going to start with how a requirement gets into the 8(a) program. I'm sure most of you are expecting me to talk about offer letters, but we're going to expand a little bit beyond that to talk about different scenarios that could happen and things that SBA does to help you get that requirement into the program. Should SBA determine that that requirement is a good fit for the program? Next slide, please.

Okay, I tried to make things as simple as possible. Make them... I guess, not only visually appealing but most of us are visual learners basically. I wanted to make sure that I gave you kind of a bird's eye view into what getting into the 8(a) program actually looks like.

There's basically three things on here. One, you totally know about, which is offer letters to SBA. In this scenario, you've got a need, you have money for that need, and you've done your market research. You are now offering that into the 8(a) program either as a sole source or as an 8(a) competitive.

Just kind of as a refresher, when you're talking about construction, the district office... you send the offering letter to is the district office where the work is being performed. For most everything else is going to go your local district office. At the bottom, I have some very rare instances.

One is what we call National by's where it's just that. It's a requirement that I've seen it in construction. I've seen it in perhaps some other areas, but it's basically a requirement with... It's really not narrowed down to one particular geographical area. Then it comes to headquarters specifically to OMTA for review and possible acceptance.

Then work overseas. Again, just like it sounds. It's basically when there is work overseas, and your 8(a) is going overseas to perform on a specific contract. That's kind of a good baseline, offering a requirement into SBA.

The other two are... I won't say one off, but they don't happen, of course, quite as often as offering letters. I'll give Mark a chance to cover what it is as I talk about the second one.

The second one is competition prior to offering acceptance. If you're looking at the slides, you'll see the 13 CFR references for all of these for your viewing pleasure whenever this presentation is done. Basically, this is a situation where, let's say you had a requirement, you offered it into the program, you had awarded it, contract performance was awesome, feel that need is still there, and you want to do it again. Well, you've already offered it so, you don't really need to offer it again, right? Well, not really. We'll talk about which requirements need to be resubmitted into the program in just a little bit. But, this is kind of when an agency makes in it. Let me start with what the regs actually say, and then we'll take it from there.

What the regs actually say is, when an agency accidentally intends to award a contract, and has not yet offered that requirement into the program, and it's not been accepted, then SBA is okay with accepting that requirement as long as the agency starts over. That's a little impractical for most contracting offices. If you've gone through everything from actually preparing for a solicitation to go out, receiving proposals back, evaluating them, and now you're to the point where you're sending to a district office that eligibility determination. SBA tells you to start over; you're probably not going to be that happy about that. It's probably not going to be in the best interest of the government.

We've kind of created a bit of a nuance in anticipation of this regulation, possibly changing in the future. What we've done is we essentially call it an exception to competition prior to offering acceptance. The standard there is the agency showing SBA, that from project planning, up to solicitation, up to receive the proposals and beyond that that contracting office intended to award this as an 8(a) competitive the whole time. Just like the first word says, in the middle column, this is for 8(a) competitive. Hopefully that makes sense.

Again, just kind of briefly reading these little buttons below. SBA may accept a competitive after the fact in limited circumstances. That standard that I just mentioned, SBA being able to see that the agency fully intended to award the competitive to an 8(a) the entire time. That's essentially the standard for limited circumstances, quote on quote. This is something that comes to my office.

We talked about offering letters just a moment ago. Those normally go to your district offices. Most of you know that there's a few one-off exceptions that I won't delve into those too often or right now, but for competition prior to offering acceptance, that actually goes to your district office and then your district office sends to my office where we review it.

We may ask you for additional information like your market research. Then, we drafted decision for AABD signature. I put that as an acronym, but all it means is

Associated Administrator of Business Development. That's basically the head of our office.

The last column, the waiver of sole source prohibition. Now, some of you might have offered a requirement into the 8(a) program and the district office might have said to you, "Wait." Right now, I think this fire might be on sole source restrictions. This one's going to take a little bit of time. Let me explain what sole source prohibition is. You may hear a district office say something like a bat labor; it's essentially the same thing. 8(a) is essentially a business development program.

The length of the program for any 8(a) firm is nine years. For that last five years for each year, that 8(a) must earn 15, 25, 35, 45 and then in its last year 55 percent of its revenue as non-8(a) revenue. The whole purpose of that without going too far into it is so that SBA can make sure that that firm sustains itself after it gets out of the program.

If you have nine years in the program and all you're doing as an 8(a) firm is getting 8(a) sole source after 8(a) sole source and you don't compete, you don't do private sector work. You don't go after small business certified. Essentially, what happens after your program tenure is up, is your business could basically fail. Waiver of sole source prohibition or bat waivers, that's what we put in place to basically keep that from happening.

At the bottom of that column, there's two things and this is kind of behind the scenes stuff. The one is the 8(a) must show economic hardship or extenuating circumstances. Economic hardship is you know, what this requirement is a follow on, for example, and we earn more money from this than any other contract that we have. Stimulating circumstance is perhaps the government delay or there was some funding issue or perhaps even problems with clearances.

It is incumbent upon that 8(a), if the 8(a) wants to ask for a waiver, that that 8(a) demonstrate either economic hardship or extenuating circumstances. This is a request and a discussion that happens between the 8(a) and the district office. The last point under that is that an agency may request the labor, this almost never happens.

There is significant interest or when there is significant interest rather in the government. In both instances, what that looks like is the 8(a) makes the request. It goes to the district office. The district office writes the recommendation and they come to OMTA for review, and then AABD signature or again Associate Administrator of Business Development.

Hopefully that is as clear as mud. You got three ways of getting into the program. You have offer letters, competition prior to offering acceptance and waiver of sole source prohibition. With that next slide, please.

**Chris:** Slide 14.



**Perkins:** Okay, setting aside 8(a) requirement. What must you offer? I put this slide in here because I think there's kind of a misconception of what gets offered. If you want to avoid the slide beforehand, where we talk about exceptions prior offering acceptance, then this is a really good slide to keep in mind when trying to figure out what is it that needs to go or needs to be re-offered into the program. That first paragraph, preparing activity, let's submit a new offering letter to SBA that it intends to award a follow on a repetitive contract as an 8(a) award. That is pretty straightforward. You had a need. You awarded a contract. It was awesome. You want to do it again; you need to resubmit that offer to SBA.

The second paragraph. The reason why I think this paragraph is so important is because there's a lot of, again, behind the scenes work that happens when you submit that offer letters. It's not to be seen as a rubber stamp. That deal as that district office is really trying to make sure that that requirement is a good fit for the program. Again, what my office tends to see is what happens when certain requirements go wrong. With that being said, one thing that we don't want to happen is we don't want our firms to fail.

If there's some weird things going on with the requirements, the next code in quite a fit, perhaps the BLS might have asked for a statement of work and a statement of work seems a little off. The BLS has the right to ask questions about, I have a question about this because you supply me some market research or just ask whatever questions are necessary, so that he or she can make a good determination as to whether that requirement as a good fit for the program. Then one other thing that I would like to bring up on this slide is actually the middle, the highlighted section of the right-hand column.

For those of you on the phone, I'll just go ahead and read it. 'Procurements for construction services are generally deemed to be new requirement.' I think most people know that but the section that is highlighted I think a lot of people do not know which is 'However, recurring indefinite delivery or indefinite quantity task orders or delivery order construction services are not considered new.' If you have a construction requirement and it is an indefinite delivery or indefinite quantity task order delivery construction services contract, then that also needs to be resubmitted to the program so that you avoid basically asking us permission to give you a waiver at the very end like on the previous slide. Mark, did you have something?

**Mark:** Yeah. I just want to add and highlight the importance of the distinction between what we would classify as a new contract for 8(a) program purposes and a follow on contract for 8(a) program purposes. It's important in several different contexts in the program. First, if it's a new requirement then SBA would not apply it to adverse impact rules, when deciding whether to accept it into the 8(a) program or not. Second, if it is a new requirement, then that requirement would not be subject to the 8(a) release rules as K. A. mentioned earlier and we might discuss later. By contrast, if it is a follow on requirement, then the requirement would have to be

offered back into the 8(a) program unless the waiver release was sort of granted by the Associated Administrative for Business Development.

Finally, the restriction is important for a regulatory restriction on sole source follow on to Sister Subsidiaries owned by the same entity which would include Alaska Native Corporation, Hawaiian made organization or tribal entity. That distinction between what is a new contract requirement and a follow on requirement is very important. We have a memo that I'm not sure if we could share with you or not, but it'll certainly be coming up in our next regulatory update to provide guidance to the contracting community on what constitutes a follow on requirement? What are the factors that we look at? Just to go over them briefly, we'll generally look at the scope of work contemplated by the new acquisition or the follow on acquisition, the magnitude, the price of the acquisition, as well as who is the end user of the product or the service being acquired.

Those are the three factors we look at. The factors that OMTA would look at in assessing an issue related to an 8(a) release or the district office would look at in a decision on whether there's an adverse impact on another group of small businesses, or whether we would be able to accept a sole source follow on requirement for a Sister subsidiary of an entity owned company.

**Perkins:**

Awesome. Thank you for that. One or two other things to point out on this slide before moving to the next one, at the very bottom of the left-hand column. The procuring activity should notify SBA if it does not plan to re-offer the requirement. I think that's important because SBA would like to know why. Is it being consolidated? Is there no longer as a need? Are you needing to release it? Just having that discussion, your BLS should be able to tell you what's next, if anything is next. Then it might just be good for you to have that for your contract file.

I'm not sure about your specific offices, but when I was in contracting, we were audited all the time. Of course, you know documentation is super important. If you have sent an email or have a conversation and follow it up with an email, just so that you can bring the 8(a) portion of your requirements to a quote. I personally think that's a very prudent thing to do.

I just wanted to mention that before going to the next slide. Okay, we have talked about getting your requirements into the program. From here, I'd like to talk about... I'm going to call them two-step action. What I mean by that is actions that not only go to your district office, but that your district office will then send to my office for review and final decision.

Next slide, please. Okay. Again, wanted to give you some of our 8(a) contract action at a glance. Some of these you might have heard of, some of these you might not have heard of, but regardless, they affect your potential timeline and your requirement in different ways. I'll show you how that is. Starting from the left, there's two columns. There's a sole source above the threshold, and then there's competitive below the threshold. The threshold without sounding super vague is 4

million. The far in 13 CFR essentially say, when submitting a requirement to the 8(a) program and that requirement is below the threshold, the rules say to sole source. When it's above 4 million, and you're submitting it to the program, the rule is to compete that requirement.

There are instances where an agency may believe that one of those isn't necessarily a good fit. What would happen is that agency would write up an actual request that will go to a district office. There are certain things that you need to prove with each one. I'll talk to you about that so that there's not so much back and forth. You can write it up, get supporting documentation, send it to your district office. That's kind of a one and done. Starting with sole source above the threshold. Basically, this is how it might look, I guess, during your procurement. You are offering a requirement into the 8(a) program, you send in the offer letter. But wait a minute, the BLS is noticing that you're wanting to sole source, but the contract value is 15 million. Your BLS should probably ask you a question about that. Once you guys have a conversation, you basically verify that everything is accurate. Your BLS is going to ask you to submit a request to sole source above that competitive threshold.

What you're wanting to when submitting a request for that is, one, that you're exceeding the threshold, the offer letter completely does that. But of course, you are somehow demonstrating that this is the only firm that can do the work. I mean, if your market research is showing a little over two then this might not be a good fit for a sole source above the threshold request. Again, this requires AABD or Associate Administrator of Business Development signature. Again, this goes from the district office to OMTA and then signed by the person in that role.

**Mark:** I would just like to add that the sole source threshold does not apply to sole source 8(a) contracts awarded to entity owned firms. Those would be, again, firms that are owned by Alaska Native Corporation, Native Hawaiian organization and American-Indian tribes. You can as an agency awards sole source 8(a) contract that exceeds the competitive threshold without going through that approval process. However, there is a \$22 million threshold above which will require a J\$A. SBA will not look at the SBA and that's it, but we will collect it and we need that as part of our contract file for us to accept it at the end of the **[0:40:35 inaudible]**.

**Perkins:** You totally stole my bullet point, Mark. I'm joking. Moving from sole source above the threshold to competitive below the threshold. There's two instances where an agency may request this. One is when technical evaluations are required or if they exist. I've actually never seen an agency say this, but it is in our regulation. Apparently, it is a thing.

The other instance is when a large number of potential awardees exist. I know you're sitting there thinking what's a large number? Well, that is kind of up to the AABD to determine whether a large enough number exists. That is a position that I do not hold, but I will share my two cents for those of you who have that as a burning question.

I've had requests come across my desk, where I've seen a number like eight firms or 12 firms or 16 firms and unless it is strongly supported and documented, I normally do not consider that appropriate as a competitive below the threshold. That is my two cents.

However, someone in AABD role may see that differently. I want to read the last bullet point below before I move on to the other two columns, which is the AABD may deny a requirement that was previously an 8(a) direct award and unable to agree on price.

Just kind of a comment really quick about competitive below the threshold. When you look at SBA regulations and perhaps mark as a 13 CFR expert might prove me wrong, but our regulations kind of talk around something that I think is important to mention, which is the beauty of the 8(a) program is that it is a business development program. One, and then to the majority of award that should be made within any contracting officer portfolio should be sole sourced.

Our regulations, they talk around it a lot, but they don't boldly come out and say it. I thought I would do the talking for our regs. Why am I mentioning this? Because there's sometimes agencies who come directly to my office and they say something like, "You know, got this contract vehicle. We want to go ahead and just kind of do a blanket waiver and anything that is below the threshold, we just want to compete everything. Is that cool?" I know there have been instances in the past where we've done that. I mean, every situation is different. We do take them on a case by case basis, but when your market research or our research through the Small Business specialist, when we're looking at your 8(a) sole source, and yes, we do take that into consideration.

There should be some type of diversification within your 8(a) portfolio, if you will. If you're meeting your goals, but on the other hand, you've not sole sourced anything 8(a) since like '98, that's really not in the spirit of our program. I just wanted to mention that, because I do get the agency side of things and wanting to make sure that you get the best price and the speaker act and well if one contractor doesn't work out, we have options. I understand that.

However, as a business development program, most contracts that are awarded under the 8(a) program should be sole sourced. Moving right along through the slide, we have two other instances which are bona fide offices and geographical boundaries. Just real quick, I'll talk about bona fide.

A lot of times agencies don't necessarily see this, but it might affect an eligibility determination because let's say you have a construction project. The work is at Tinker Air Force Base in Oklahoma, and you have a firm out of San Antonio. According to our regs, that firm must have a bona fide office and that reference 13 CFR, 124.3 actually defines what it means to have a bona fide office. Whether it has to be approved by the hosting, I guess, the new district office, if you will, before that 8(a) actually submit his or her proposal.

The reason why he might care about this one is because if you've gone through all the trouble of a competitive and the person that you think is the apparent awardee is in that eligibility determination to a district office and the district office is like, "Who? We don't know who that is, and they don't have a bona fide in this area." It's possible that that district office may determine if that firm is an eligible. That's the reason why you might care about that. But, if you're doing construction 8(a) requirements, work with your district office, and you going to find out a little bit more about how that works. Then there's geographical boundaries, I just want to in...

The last two columns to the right, bona fides and geographical boundaries. By the way, those are both construction related. For geographical boundaries, that requires a request that goes through the district office to OMTA and is reviewed and/or decided within AABD signature. Briefly, geographical boundaries is when an agency, for whatever reason, wants to eliminate competition. Usually, it's because they have such a large number of potential awardees that I think we'll still be good with competition if we went, for example, to the state of Texas. Moving a little bit quicker through the next slide.

**Chris:** Slide 17.

**Perkins:** Okay. This goes into a little bit more detail about what you must show when doing a sole source above the competitive threshold, or below the competitive threshold. Remember, if you're wanting to do a sole source above the threshold, you have to show that's the only firm that can do the work. If there's a competitive below the threshold, you either have to show that technical competition exists so that there is a large number of potential awardees, which again, is a business objective. Then under that, you submit the offering letter, you submit market research, you also show that there's a written commitment to continue to sole source, as well as the last two fiscal years of sole source money and current year forecast, and dynamic small business search results.

Next slide, please. We talked about getting into the program, navigating some of the regulations, now we're going into how our requirements may actually lead the program. Let me gloss over the three columns going from the right. These are things that don't happen quite as often. I won't go into great detail about them. One is a termination right waiver. There's a lot of different terms for this. Some say Deeper sea waivers; some call them Novation. What happens in this situation is when an 8(a) is purchased by another business.

It could be another 8(a), it could be a small business, it could be a large business, but they have completely purchased, usually a 100% stock in that 8(a) firm. The skinny of it is 13 CFR 124.515 basically says when that happens, there is no longer 51% control and procuring agencies must see procedural contract unless a waiver is thought by the firm and that waiver is sent to and signed by in this case, the SBA administrator. There's a lot that goes into that. A lot of it doesn't really involve the agency.

But that T4C procedure certainly does. Definitely work with your district office and my office and if you have any questions should that arise. It's not that often. I've maybe dealt with five of them over the last two and a half years. The other two T4C's and T4D's, just really quickly. A T4C could be anything. When I wrote this, what I'm really talking about is when there's some type of performance issue. A T4D is basically when the T4C isn't resolved. These two instances is when you really lean on your district office. One so that your BLS and get an understanding as to what's happening. Listen to both sides and hopefully by ways to create some type of action plan to mitigate what whatever time is lost, whatever money is lost and whatever other issues might have arisen. A T4D is basically when that hasn't worked out.

There's a few things that I'll read from this, and a T4D is addressed in our rights in 13 CFR 124.515 as well. That bottom bullet I will read which is, 'An 8(a) is liable for any termination costs, or re-procurement costs. Here's one comment I'll make about this before going into what is the lion's share of our work here at OMTA, which is when you are coming to OMTA or anyone in SBA about a T4D, make sure that you abide by your regulations as well. If there's no documentation, there's no show cause, there's nothing saying, we've really tried to work with this firm but... It's really difficult for us to do anything when there's no documentation supporting this. Otherwise SBA works with you to take next steps, usually in the form of some substitution. Again, these are rare instances, they don't happen very often. But these are times when you can lean on us at OMTA or your district office.

The lion's share of the work that we do every day in OMTA are releases of requirements. This is essentially when an agency believes an 8(a) is no longer a good fit for the program. The regulation for this is 124.504D. This is when... Let me read this part. SBA allows for releases of requirement in limited circumstances. One of the things we look at, and I'll actually talk about this a little bit more in other slides as well. But official market research results are key. Offsets are also required. If you are wanting to remove a \$3.4 million requirement, then we need to know what new requirement you have in store so that we can actually restore that loss to our portfolio. This also requires a formal request that goes through the district office to OMTA and is signed off on by the AABD. Next slide, please.

**Chris:** Okay. We're on slide 19. We have about five minutes remaining.

**Perkins:** Let skip ahead to consolidation. I think that's a super important topic. I'll just be really briefly about that. A lot of stuff here. Again, this is when there is a request to release a requirement and the rationale for the release is consolidation. The point that I'm really making in these slides is that the same regulations that are requiring you as agencies to do more with fewer contracting vehicles, those same regulations require that balance, which is, for the agency to make a determination that a consolidation of that 8(a) requirement is both justified and necessary. The reference is 13 CFR 125.2.

The Small Business Act. I'll talk quite a bit about it in detail. I want to mention the stakeholders. There's an agency's responsibility. There's also a PCR's responsibility.

The PCR needs to sign off on the justification that's being made. That paperwork should be given to the PCR within 30 days prior to issuing a solicitation. By the way, before going to the next slide, you see a red where it says senior procurement executive or chief acquisition officer, those are the people and I think even the Small Business actors ACA, there basically needs to be some type of procurement executive who signs off on this. If it's just the contracting officer over the requirement that's not really what's required by 125.2 or by the Small Business Act. Next slide, please?

**Chris:** Slide 22.

**Perkins:** The Small Business specialists also has a role in that. No later than 30 days before the issuance of a solicitation, the small business specialist basically works with the PCR and make sure that consolidation of that requirement, again, is justified and unnecessary. I just wanted to show that there's more than just one stakeholder. Next slide, please. This is government. I had to show one slide with a lot of words on it. The takeaway really, is that, again, there's a lot of people who are involved in this process. All of this has to be done before you actually submit a request to release the requirements within the program. That is the point that I'm trying to make. It's a lot of work, a lot of time spent. It's a lot of analysis. We have three minutes left; I think it is worth it to let Mark talk really fast about consolidation and some other changes.

**Mark:** I actually just quickly wanted to bring to your attention, if you haven't already seen it, that OMV on March 20th, 2019 issued a guidance memo on the use of category management. I know there have been a lot of questions in the contracting community, small business community about how this environment of category management is going to affect small business participation in federal procurement. If you haven't seen this, I highly recommend looking at this memo. It provides invaluable guidance on the use of small business contracts in the wake of category management. If you have read it, I also encourage you to take a closer look at page 28, footnote 31, at the lawyer right now. But in that footnote, it explains that specifically with SBA program, agency should not be migrating work that would cause a violation of small business program requirements. It specifically says or includes as an example taking work away from an 8(a) contractor that would otherwise be subject to the 8(a) release rules. Please keep in mind that as your agency ushers in the category management that the 8(a) program requirements, including the 8(a) release rules still applies to 8(a) contract. With my last minute or two, I just wanted to bring up some fun case studies that have come out in the last couple months.

The first was a GAO decision in the matter of latent pennant JV. This was an 8(a) sole source requirement that was offered on behalf of a 8(a) firm. The procuring activity notified SBA after SBAs acceptance, and it had incorrectly identified the proper 8(a) firm that they wanted to perform the work. Subsequently, the procuring activity

offered a new 8(a) offer letter on behalf of a different firm, and SBA accepted that offer into the program on behalf of that other firm.

GAO found that there was nothing wrong with this arrangement, that there was nothing that required SBA to nominate another firm if SBA finds that the selected contractor would not be an appropriate match. There was nothing that would prohibit them from nominating another firm once it had already submitted offer on behalf of one firm. The case number in case you want to read that is GAO case number B-416848. The second case I wanted to talk about came from SBA's office of hearings and appeal in connection with a size appeal. You might be familiar with the size determination process that SBA.

Either the agency or another interested party can protest the size of an apparent successful all for under a small business contract. SBA, through its area office, will make a size determination. That size determination can be appealed to our quasi administrative, quasi-judicial body here at SBA, known as the office of hearings and appeals. In this particular size appeal, the protester was arguing that once SBA accepted a requirement into the program and made a positive eligibility determination on an apparent successful offer role that happened to be an 8(a) joint venture, that there was no need for the area office to re-examine the joint venture agreement in connection with the size determination to determine whether the firm should be treated as an eligible small business concern.

In this case, our office of hearings and appeals, upheld the SBA process through which we would review and approve an 8(a) joint venture agreement at the district office level in connection with the eligibility of determination, and that eligibility determination would carry on through the size determination. That's an interesting case, if you're interested in reading more, that was the size appeal of North Wind Sites Services, and the citation would be XIV-5988.

**Perkins:** Okay, thank you for that. I know we are one minute over, Chris, let me know how you want to proceed forward.

**Chris:** Well, if you're okay, I know we've got several questions. If you don't mind answering a couple, I know you've got to go here pretty soon. But if you don't mind knocking a couple of those out?

**Perkins:** Sure. Go ahead.

**Chris:** Glen, if you're ready, if you got a couple for her.

**Glen:** Okay. The first question is coming from Treasury. Their Procurement Office will not allow them to award new IT contracts to 8(a)s unless they rule out the best in class vehicles, GSA and Soot, for example, is there anything that the SBA can do with Treasury to try to change that restriction? This person says, it's all been eliminated their ability to work with 8(a)s except on renewals that already in the program.



**Mark:** I would encourage you to take a look at that memo that I just referenced that was just released about two weeks ago, which offers some more guidance on how to deal with category management, including best in class vehicles, and small business participation in those vehicles. I would recommend taking that memo, taking a look, using your agency resources to try to figure out a plan forward. But certainly, we can talk offline about that, if that's something that you can't resolve with your contracting activity.

**Glen:** Mark, we also had a question about that document, where can they access that?

**Mark:** That, I will have to get back to you on. The memorandum number is M-19-13. It was issued on March 20th, 2019, to the heads of all agencies. They should be probably with the head of the procuring activity.

**Glen:** Okay, next question is if you have the requirements that requires release from the 8(a) program and it covers multiple states, would each state has to forward the release to headquarters, or is there a person in headquarters that that could be submitted to directly?

**Perkins:** Okay. I had someone ask me a question like that yesterday. I almost feel like I need a little more detail. Because the questions are written I guess I'll just kind of make some assumptions. If they're requesting release, and let's say it's a multiple award contract, and there's different district offices that are basically servicing different awardees, then yes it would have to go through each district office before it comes to OMTA and it's reviewed and then a final decision is made. That's an example where yes, you would have to.

**Glen:** Next question is should GSA star in other multiple award contracts and our DIT is involving multiple states considered nationalized be presented to SBA or OMTA?

**Mark:** SBA headquarters will typically get involved with the large GWAC. I'm not sure if that's a policy that we've implemented informally. But on those large scale GWAC, usually acceptance will be provided by the Associate Administrator for Business Development. That would be submitted to headquarters.

**Glen:** On slide 13, if an 8(a) company does not comply with its business activity targets, is a sole source waiver widely used or does the agency has to strongly justify the use of that particular 8(a) firm?

**Perkins:** Yes, widely used, and the agency doesn't necessarily have to justify anything. There's, I guess, two paths. One path, which is very common, like 99% of time, which is this is a conversation that happens between the BLS and the 8(a). The 8(a) is making a justification that goes to the district office, the district office then writes a recommendation that comes to my office, we review it, and we give those priority, by the way, because of the timeline. It's essentially permission to do an offering, if that makes sense. Because of that, yes, we have a... I lost my chain of thought there. When an 8(a) has an opportunity to do a bat waiver or waiver sole source

prohibition, then that is something that they do usually alone. There's a few times where agencies have gotten involved, it's usually not necessary.

**Mark:** The reason that the latter option, the request made by the agency is not used as much as because the administrator marked on a non-debatable basis, grant that request. But getting to the standard, the standard is whether sole source contract would fulfill a significant government interest.

**Perkins:** Right.

**Mark:** For the most part, we will generally defer to the head of the procuring activity on a matter of like that.

**Glen:** Someone just chimed in that memo that was mentioned is on [whitehouse.gov](http://whitehouse.gov).

**Mark:** Great, thank you.

**Glen:** Next question is if the place of performance of a construction IDIQ changes, does that make it a new IDIQ instead of a recurring IDIQ?

**Perkins:** Yes, it's funny you ask that. I actually got a very similar question about that yesterday. In that phone conversation, I think it was something that was moving from the west coast to the south somewhere. I would say that the fair assessment.

**Glen:** Okay. On slide 14, it states, as you mentioned, recurring indefinite delivery or indefinite quantity task or delivery order construction services are not considered new. Does this mean any subsequent construction TLs or just specific to a project requirement issued on a TL requires an offer letter as well?

**Perkins:** No, that she was referring to the base. I believe in 13 CFR, it's still basically says, if you offered it to SBA at the base, which most likely you have, you don't have to ask SBA every time you issue a task order.

**Glen:** Okay, and can you reiterate what AA and BD stand for on slide 16?

**Perkins:** Sure thing. That's an acronym that we use, that means Associate Administrator of Business Development. My office is OMTA or Office of Management and Technical Assistance, I am under a different office, that's called office of business development. That person is the head of that office who signs off on our contract actions.

**Chris:** Glen, we'll take one more question.

**Glen:** Okay. On slide 16, is geographic boundary a CFR requirement or an SBA FLP?

**Perkins:** Yes, and yes. I mean, typically, those two don't deviate too much. The FLP basically gives a process of what is required in 13 CFR.

**Chris:** Okay, great. I know there's still a few more questions out there. If you had a question, and it didn't get answered, I believe K. A. and Mark both would be

available after their information is on slide 29, as well as slide 30. If you have any questions, or follow up, please reach out to one of them with the questions you may have, and I'm sure they'd be glad to assist you with that.

We want to thank you for participating today. K. A., Mark, thank you so much for the great and valuable information. Sounds like we could have talked for quite a bit more time on this too. Like I said, if you do have any additional questions, please reach out to them. Thank you all for attending today's session.

**Perkins:** Thank you.

**Carla:** Thank you for joining this conference. The session has now concluded, and you may disconnect.

**[END OF TRANSCRIPT]**