

DEMYSTIFYING 8(A) SOLE SOURCE CONTRACTING

Carissa Siebeneck Anderson
Birch, Horton, Bittner, & Cherot



Birch Horton Bittner & Cherot

a professional corporation

PRESENTER

CARISSA SIEBENECK ANDERSON

Of Counsel

Birch Horton Bittner & Cherot

canderson@bhb.com

202.659.5800





8(A) SOLE SOURCE CONTRACTING

RULES & PROCESSES

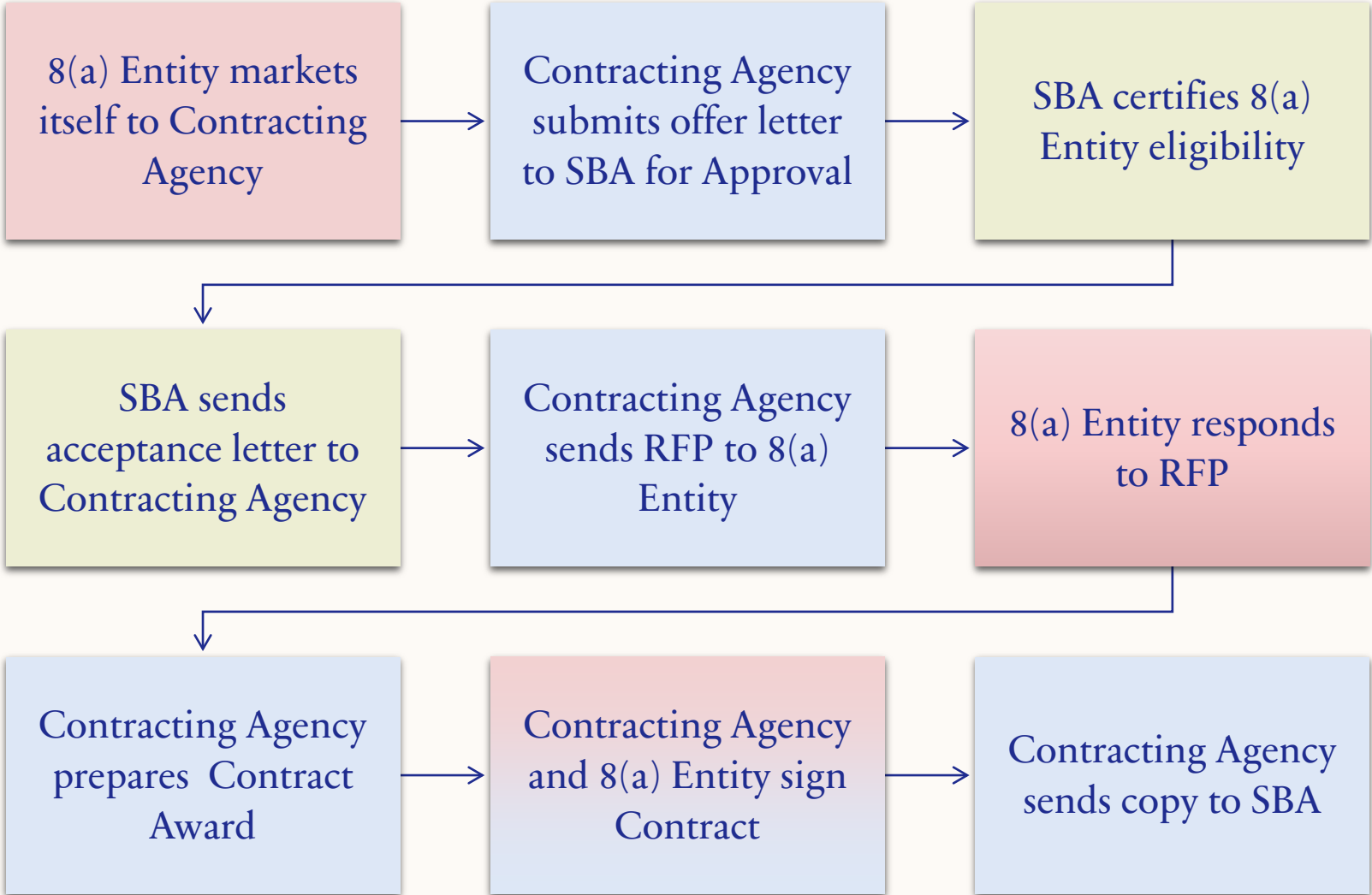
SOLE SOURCE CONTRACTING

The Basics

- **What is an 8(a) sole source contract?**
 - Generally, federal rules require that federal contracts be awarded on the basis of full and open competition, but there are exceptions to these rules, including an exception for 8(a) sole source contracting that meets federal regulatory requirements.
- **What contract values are eligible for sole source contracts?**
 - **General Rule.** 8(a) firms may receive sole source contracts valued up to **\$7m for manufacturing contracts** and up to **\$4.5m** for non-manufacturing/services contracts.
 - Exception. There is a (very difficult to procure) exception for sole source contracts above the threshold when only one firm can provide the desired service/product at a fair price but AA/BD approval is required. See 124.506(d).
 - **ANC & Tribes.** 8(a) firms owned by ANCs and tribes may receive contracts up to **\$25m** for civilian agencies and **\$100m** for Dept. of Defense contracts. Contracts over those thresholds are possible, but they require the additional step of J&A under FAR 6.303.
- **Sole Source Eligibility Criteria**
 - **BAT Compliance:** Current 8(a) firms that are in good standing (no BATs compliance issues).
 - Exception: Note that there is a waiver process to request approval for sole source contracts for 8(a) firms on BAT remediation plans.
 - No exceptions for entity-owned.
 - **The Rule of Two:** Is applicable to 8(a) sole source awards, except to those awarded to ANC- and tribally-owned 8(a) firms.
 - Take-away: Individually-owned firms (and NHOs for non-DOD contracts) should target sole source marketing where the company provides unique services in the 8(a) FedGovCon marketplace.

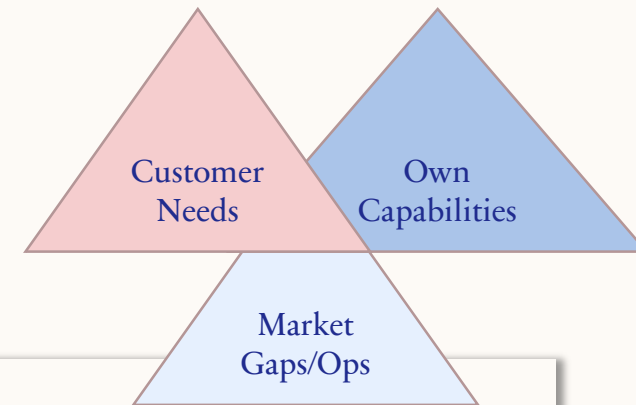


8(A) SOLE SOURCE AWARD PROCESS



SOLE SOURCE CONTRACTING

Practical Tips for Success

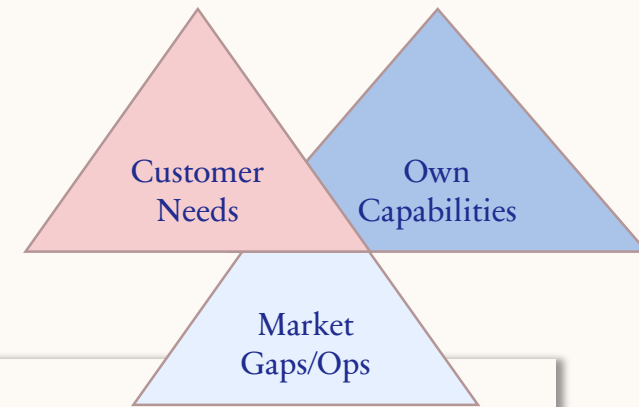


SOLE SOURCE OBJECTIVE: Identify (or develop) a niche capability that only your company can offer at a fair and reasonable price to an agency customer.

- **Identify your unique capabilities (current & potential)!**
- **Get to know the Market – Identify Your Customer, Competitors, Possible Teaming Partners**
 - Is the government buying what you are selling? From who? Which agency? How much?
- **Identify the Customer's Needs.** Get to Know your Customer to identify Customer's procurement needs.
 - Research the needs of the agency.
 - Attend outreach events.
 - Review (& respond) to Sources Sought and RFPs.
 - Review contract dollars spent. What is the agency buying from 8(a) firms? Is there something they would like to buy from 8(a) firms that they currently feel they cannot?
- **Make Contacts - Find out who the PTAC Rep (aka APEX Accelerators) is for your target Agency/Office**
 - **Ask your BOS** for help identifying the right person, getting contract info, and any communication tips for that person.
 - Identify capabilities of interest to the PTAC's area of responsibility.

SOLE SOURCE CONTRACTING

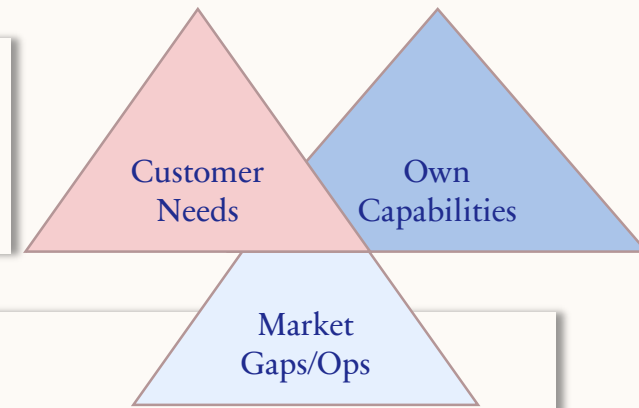
Practical Tips for Success (con't)



- **Put What You've Learned Into Practice - Develop a Targeted Capabilities Statement & Pitch for each Agency Customer**
 - Refine your capabilities statement and services/product offerings to address any unmet agency needs.
 - Look for soon-to-graduate 8(a) firms to identify potential teaming or future contract opportunities.
- **Get a Meeting with Your PTAC Rep. to Pitch & Learn**
 - This may take some time, but keep reaching out with phone calls and emails until you get a meeting.
 - If having difficulty, ask your BOS for help in communicating to the PTAC Rep about your capabilities and desire for a meeting.
 - Note: PTACs are typically carrying a heavy caseload, but competition for workers has made their jobs even broader. So, expect some difficulties in communication that is not personal.
- **Keep in Touch!**
 - Reach out to your PTAC rep regularly to ask if they have any contracts coming up in certain areas that could be set aside for your company.

COMPLIANCE PITFALLS IN SOLE SOURCE

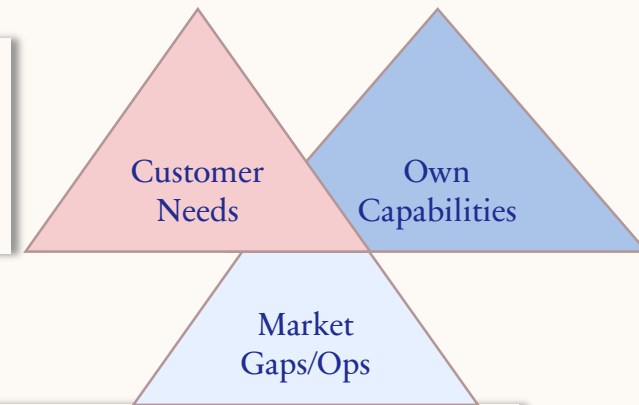
What NOT to do...



- **Don't let yourself be used as a “pass-through” contractor!**
 - It's illegal (subcontracting limitations).
 - The penalties are serious, for you...
 - It's not worth it. The subcontractor needs you, an eligible prime, so craft a deal that follows the rules (minimum), imparts skills/experience to you, and offers allowable % of work. (It's better than no work, which is what they would get on their own.)
- **Don't let your teaming partners do the talking with the Customer alone!**
 - If they do all the talking, they will have all the contacts and relationships (not you). This makes you dependent on the subcontractor/teaming partner for business development.

COMPLIANCE PITFALLS IN SOLE SOURCE

What NOT to do... (con't)



- **Don't let your teaming partner control the contract, money, or relationship with Customer!**
 - Keep/develop control of the relationship - You should be at every meeting with customer to negotiate a potential contract. Utilize teaming partners for introductions. Set up regular check-in meetings with your customer.
 - Keep control of money, that means bank accounts, accounting, and authorized “spenders” on contract.
 - Keep control of the contract – the PM should always be your employee, not your subs/teaming partner’s employee. In construction contracts, the senior-most onsite project manager MUST be a prime employee under the regs. We suggest ALWAYS following this rule for all contracts.
- **Don't expect your first federal contract to be an 8(a) sole source contract.** Most COs want an experienced contractor for sole source awards.
- **Don't forget to monitor BATs.** Develop a strategy early-on for non-8(a) revenue.
- **Don't become Overly Reliance on Consultants.** Don't hire someone else to do the BD marketing, unless they will be “teaching you to fish” and fostering your relationship with those agency contacts.

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QUESTIONS?

BENEFITS TO AGENCY OF USING 8(A) SOLE SOURCE CONTRACTING (ALL 8(A) FIRMS)

- **Save time & effort.** This is the most efficient procurement choice to Save time and effort by using the streamlined sole source procurement process compared to competitive process, so use it when its available.
- **Meet Federal Small Business Contracting Goals.** Meet federal procurement targets for small disadvantaged businesses (5%) and small business generally (23%).

- **Avoid Protests.** 8(a) Sole Source Awards cannot be protested, except in instances of “bad faith,” so it is incredibly rare.
- **Support Small Disadvantaged Businesses & Their Owners.**

Current Small Business Contracting Goals

There are five government-wide statutory small business contracting goals set by Congress:

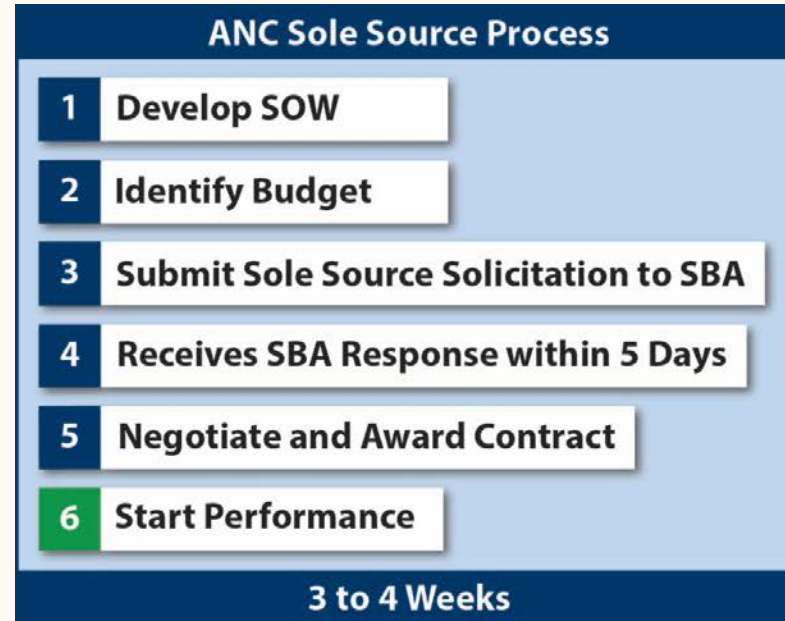
Table I. Statutory Contracting Goals

Type of Firm	Goal	Measure of Contract Awards
Small Businesses	23%	Dollar value of prime contract awards
Small Disadvantaged Businesses (criteria for social and economic disadvantage apply)	5%	Dollar value of prime and subcontract awards
Women-Owned Small Businesses	5%	Dollar value of prime and subcontract awards
Service-Disabled Veteran-Owned Small Businesses	3%	Dollar value of prime and subcontract awards
HUB (Historically Underutilized Business) Zone Small Businesses	3%	Dollar value of prime and subcontract awards

Source: 15 U.S.C. §644(g)(1)(A).

LEVERAGE BENEFITS OF SOLE SOURCE CONTRACTING PROCESS

Example Marketing Materials



SUMMARY OF ADDITIONAL COMPETITIVE ADVANTAGES OF TRIBAL/ANC-OWNED 8(A) FIRMS

Individually-owned 8(a) firms should consider teaming with tribal/ANC 8(a) firms to increase capabilities, especially on larger contracts/orders.

Inside 8(a) Program – Sole Source Contracting

- **No 8(a) SS Caps!** Eligible to receive sole source contracts above the general 8(a) thresholds of \$4.5m (\$7m for manufacturing).
 - DoD Contracts: No J&A Required for DoD Contracts under \$100m. **Sweet spot: \$4.5m – \$100m.**
 - Other Federal Agencies: No J&A required for contracts under \$25m. **Sweet spot: \$4.5 - \$25m.**
- **Competition Exception = Agency Discretion.** Agencies can award a sole source contract to tribally-owned 8(a) firms even if there are two or more small businesses capable of providing the service, allowing the agency to decide whether to compete or go SS.
- **No J&A Under \$25m/\$100m.** Sole Source Contract below \$25m do not require J&A. (Below \$100m at DoD.)



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