



SBA Policy Notice

TO: Office of Business Development (OBD)
Employees and Office of Field Operations (OFO)
District Directors, Deputy District Directors and
8(a) Business Opportunity Specialists (BOSSs)

CONTROL NO.: 6000-835075

SUBJECT: Extension of 8(a) Business
Development Bona Fide Place of Business
(BFPOB) Requirement Moratorium due to COVID-19

EFFECTIVE: June 30, 2022

SBA remains committed to helping small businesses through this ongoing period of economic disruption caused by the COVID-19 pandemic. As America's resilient small business community moves toward a full post-pandemic recovery, SBA is mindful that the lingering effects of COVID-19 continue to disproportionately impact small businesses owned by historically marginalized individuals and entities.

In 2021, SBA implemented a strategy aimed at mitigating the adverse impacts of the COVID-19 pandemic on small disadvantaged businesses participating in the 8(a) Business Development (BD) program. Specifically, SBA temporarily suspended the requirement for a Program Participant to have a physical presence in a specific geographic area with one or more full-time employees located at that site in order to be awarded any construction contract offered to the 8(a) BD program between August 25, 2021, and September 30, 2022. SBA Policy Notice No. 6000-819056. This mandate, known as the bona fide place of business (BFPOB) requirement, is derived from Section 8(a)(11) of the Small Business Act, which requires that "[t]o the maximum extent practicable, [8(a)] construction contracts shall be awarded within the county or State where the work is to be performed." 15 U.S.C. § 637(a)(11). In SBA's best judgment it was not "practicable" to require a physical presence at a particular location because certain locales had imposed restrictions on business in-person activities and thus employees would be expected to telework on a significant basis.

Based on the feedback received from the 8(a) community, this modification to the 8(a) BD program has made it easier for small disadvantaged businesses to be eligible to be awarded 8(a) construction contracts during a period of economic uncertainty. This modification has also been well received by Federal procuring activities seeking to increase construction procurement opportunities to small disadvantaged businesses across the country, but especially in remote areas. In addition, it has come to SBA's attention that pandemic-related economic trends such as rising inflation, supply chain crises, and workforce shortages continue to present challenges to

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sustained physical office operations. For these reasons, SBA is extending the current moratorium on the BFPOB requirement under SBA Policy Notice No. 6000-819056 for one additional year (i.e., through September 30, 2023). During the moratorium, any Program Participant seeking an 8(a) construction contract (either on a sole source or competitive basis) will not be required to have or establish a BFPOB in any specific geographic location. To implement this moratorium, the SBA is requiring 8(a) BD program personnel to include the following language in every letter accepting a competitive construction procurement into the 8(a) BD program:

In response to the continuing adverse effects of the COVID-19 public health crisis, the SBA has temporarily placed a moratorium on the requirement that a Program Participant must have a bona fide place of business in a specific geographic location in order to be eligible to be awarded an 8(a) construction contract. 13 C.F.R. § 124.501(k).

As such, please do not include in the solicitation 1) FAR Clause 52.219-18, *Alternate I*, or 2) any other provision restricting competition based on geographic territory. Additionally, we respectfully request that no offeror be eliminated from competition for failing to meet the requirements of 13 C.F.R. § 124.501(k).

Applicability: This policy applies to all 8(a) construction contracts offered to the 8(a) BD program between August 25, 2021 and September 30, 2023.

If you have any questions regarding this issue, please contact Van Tran, Deputy Associate Administrator for Business Development, at van.tran@sba.gov.

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Government Contracting and Business Development