

Information Paper on the 8(a) Sole Source Program

1. Purpose

To inform on the current status of the 8(a) sole source program in light of recent Executive Orders (EOs) and court rulings.

2. Background

The federal government utilizes various legal and executive instruments to guide acquisition processes. Laws passed by Congress are codified in the U.S. Code. Executive Orders direct executive agencies on how to implement laws, but they cannot conflict with or nullify existing law. Court rulings interpret laws and compel the government to execute them appropriately. Recent EOs and a court ruling have prompted reviews of socioeconomic considerations in federal contracting, specifically concerning the Small Business Administration's (SBA) 8(a) Business Development Program.

3. Key Points/Discussion

- **Executive Order Reviews:** EOs 14148 and 14151 revoked previous orders related to Diversity, Equity, Inclusion, and Accessibility (DEIA) policies. EO 14173 revoked an order promoting socioeconomic engagement. These EOs directed reviews of government-wide processes, including small business set-asides.
- **Programmatic Stability:** The reviews prompted by the recent EOs resulted in no changes to small business programs with socioeconomic considerations. These programs, including the 8(a) program, are prescribed by the Code of Federal Regulations (CFR), with the Federal Acquisition Regulation (FAR) detailing the processes for enforcement.
- **Court Ruling Impact:** The *Ultima Servs. Corp. V. Dep't of Ag.* court ruling invalidated the SBA's use of a "rebuttable presumption of social disadvantage" for certain groups to gain 8(a) eligibility.
- **New Eligibility Requirement:** In response to the court ruling, the SBA now requires firms to submit a "social disadvantage narrative" to establish eligibility for the 8(a) program. This procedural change does not eliminate the 8(a) program itself.
- **Contracting Thresholds:** A deviation in the FAR, effective October 2025, increases the threshold for 8(a) sole source awards from \$4.5 million to \$5.5 million (\$8.5 million for manufacturing). The micro-purchase threshold for socioeconomic programs was also increased from \$10,000 to \$15,000.

- **Alaskan Native Companies:** Alaskan Native 8(a) companies can be awarded sole source contracts up to \$120 million.
- **Strategic Impact:** The 8(a) sole source program remains an active and authorized contracting method. Recent executive and judicial actions have altered eligibility procedures but have not eliminated the program or federal agencies' ability to utilize it for contract awards.