



**Federal Aviation
Administration**

Memorandum

Date of Issuance: September 21, 2023
To: AAQ, AAP, APM, and AFN
From: Nathan Tash, Deputy Assistant Administrator for Acquisition and Business Services, FAA Acquisition Executive (ACQ-1)
Subject: **FAE Memo – Updating the FAA’s Verification Procedure for Small Socially and Economically Disadvantaged Businesses (SEDB 8(a)s)**

1. **PURPOSE.** This Memorandum modifies the FAA’s verification procedure of Small Socially and Economically Disadvantaged Businesses that are claiming 8(a) certified status.
2. **AUTHORITY.** The updated procedure effected by this Memorandum is made pursuant to 49 U.S.C § 40110(d).¹ As provided under 49 U.S.C. § 106, the FAA Administrator has delegated certain acquisition authorities to the FAA Acquisition Executive (FAE).
3. **APPLICABILITY.** The updated verification procedure for SEDB 8(a) businesses must be applied as described in Section 5 of this Memorandum.
4. **BACKGROUND.** The FAA supports expanding opportunities and promoting economic growth for all U.S. small businesses including those defined as SEDB 8(a)s.² Consistent with these goals, the FAA conducts procurements that are noncompetitive or set-aside exclusively for SEDB 8(a)s that are expressly certified by the Small Business Administration (SBA). While all such FAA procurements are conducted directly with small businesses independent of the SBA, FAA verifies an SEDB 8(a)’s status by verifying it is 8(a) certified by the SBA.³

On August 18, 2023, SBA issued a Memorandum⁴ that makes interim adjustments to its

¹ 49 U.S.C. § 40110(d) directs the FAA Administrator to implement the AMS notwithstanding provisions of Federal acquisition law. Accordingly, The Small Business Act (15 U.S.C. 631 et seq.) “shall not apply” to AMS, “except that all reasonable opportunities to be awarded contracts shall be provided to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.” See 49 U.S.C. § 40110(d)(2)(D).

² See AMS Policy Appendix C.

³ See AMS Guidance T3.6.1A.3.b.

⁴ SBA Memorandum dated Aug. 18, 2023. See <https://www.sba.gov/article/2023/08/18/sba-releases-interim-guidance-8a-program-participants-light-lower-court-ruling>.

certification process of 8(a) Program participants. Under SBA's adjusted process, participants previously certified by SBA as eligible for the 8(a) program will now be required to be re-validated under the adjusted process. Such SEDB 8(a)s upon being re-validated as eligible will receive a new qualification letter from SBA. These businesses will also be included on the new SBA list of certified 8(a) participants. This list is available for government-only review within OMB's MAX.gov platform on the SBA Office of Policy, Planning and Liaison (OPPL) Collaboration page.⁵

- 5. UPDATED PROCEDURE.** Per AMS Policy 3.6.1.3.4 and 3.6.1.3.5, certain procurements are awarded to certified SEDB 8(a)s using set-aside and noncompetitive procedures. Further, current procedure described in AMS Guidance T3.6.1A.3.b.(3) describes the verification process used to validate an SEDB 8(a)'s asserted 8(a) certification. This and any other AMS Policy and Guidance pertaining to the verification of 8(a) status is superseded, as of October 1, 2023, to the extent it is inconsistent with this Memorandum.

COs must now verify SEDB 8(a) status prior to award using the updated procedure. The following bolded language below applies to all SIRs that include a set-aside to an SEDB 8(a) and all SIRs for SEDB 8(a) noncompetitive awards, of which –

- Are released on or after October 1, 2023; or
- Are open and have not received proposals as of October 1, 2023.

For an SEDB 8(a) claiming 8(a) status, prior to contract award, the CO must:

- Verify that the SEDB 8(a) business appears on the 8(a) Social Disadvantage Qualification List located on the SBA OPPL Collaboration on [MAX.gov](https://max.gov); or***
- Request the business submit a copy of its SBA 8(a) certification letter as well as its secondary qualification letter from SBA which indicates the identified 8(a) participant meets updated social disadvantage requirements; and***
- Include the following language in all new or open SIRs, on or after October 1, 2023: “Award will only be made to eligible 8(a) certified offerors that have received a secondary SBA 8(a) qualification letter which states the offeror has been determined to meet updated social disadvantage requirements. Offerors may be required to provide evidence of this letter to the CO prior to award.”***

The CO must include the secondary qualification letter or reference the date of 8(a) Social Disadvantage Qualification List verification in the contract file.

⁵ Note the MAX.gov list includes both individual-owned 8(a) participants and entity owned participants.

6. **ATTACHMENT.** Attached to this Memorandum is a Frequently Asked Questions (FAQ) sheet intended to provide additional information to COs on the contents of this Memorandum.
7. **CONTACT FOR QUESTIONS.** COs with questions not addressed by the FAQ, should contact their management, who will respond or consult with AAQ/AAP management, as needed.

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VERIFICATION PROCEDURE FOR SEDB 8(A) FREQUENTLY ASKED QUESTIONS (FAQ)

1. Does this interim change require FAA to pause or otherwise slow its awarding of set-asides for competitive award or noncompetitive awards to SEDB 8(a)s?

No, FAA can and will continue to award contracts to SEDB 8(a)s.

2. To what does this new certification procedure apply to?

The updated certification procedure applies to all SIRs that include a set-aside to an SEDB 8(a) and all SIRs for SEDB 8(a) noncompetitive awards, of which –

- Are released on or after October 1, 2023; or
- Are open and have not received proposals as of October 1, 2023.

3. What is the impact to existing contracts? Are retroactive re-certifications required?

No, re-certification under the updated procedure is not required for existing contracts. COs may allow for continued performance under the existing contract period, exercise priced options, and execute in-scope modifications without re-certification.

4. What do COs need to do now to verify an SEDB 8(a) is SBA 8(a) certified?

Previously COs could verify SEDB 8(a)s by verifying the firm via its Dynamic Small Business Search (DSBS) profile or by receiving from the SEDB 8(a) its certification letter from SBA. The new verification process is very similar. COs can now verify SEDB 8(a)s by one of two methods:

- (1) Affirming the SEDB 8(a) is included on the SBA OPPL Collaboration page 8(a) Social Disadvantage Qualification List which is located at the following [MAX.gov](#) page; or
- (2) Receiving from the SEDB 8(a) copies of two letters of which the business has received from SBA – the first being a letter being the traditional SBA 8(a) certification letter; and the second being a new qualification letter from SBA which indicates the identified 8(a) participant meets the social disadvantage requirements.

5. Why would I verify an SEDB 8(a) by collecting two letters? Wouldn't it be easier to just always opt to use the above referenced list?

While it does not matter which verification process the CO uses, the list will, in most cases, be the simpler approach. However, because FAA cannot guarantee the list will always be completely up to date, some SEDB 8(a)s may be more readily able to provide their certification letters in lieu of appearing on the list.

6. If a CO is making a noncompetitive award to an SEDB 8(a) must the respective SEDB 8(a) be certified as an 8(a) Program participant?

Yes, for every noncompetitive 8(a) award, the awardee's eligibility must be verified.

7. How do I access the Social Disadvantage Qualification List?

The list is available on MAX.gov at the URL

<https://community.max.gov/display/SBA/SBA+OPPL+Collaboration+Page>. Government employees can sign up at MAX.gov to access the MAX.gov list using their PIV or CAC card. MAX.gov is only accessible by government employees. The list is available through the links above or by searching for “SBA OPPL Collaboration Page.”

8. How do I use the Social Disadvantage Qualification List?

You must download the 8(a) Social Disadvantage Qualification List to your computer and open it as an html webpage. The list includes a search bar that you can use to search the Social Disadvantage Qualification List by UEI or Firm Name. The list also includes U.S. states for approved firms. SBA also provides on MAX.gov a Comma Separated Values (CSV) file that includes the same content. SBA updates the files daily as new firms are added.