

**MEET THE EXPERTS:**

**8(A) SOLE SOURCE  
CONTRACTING**

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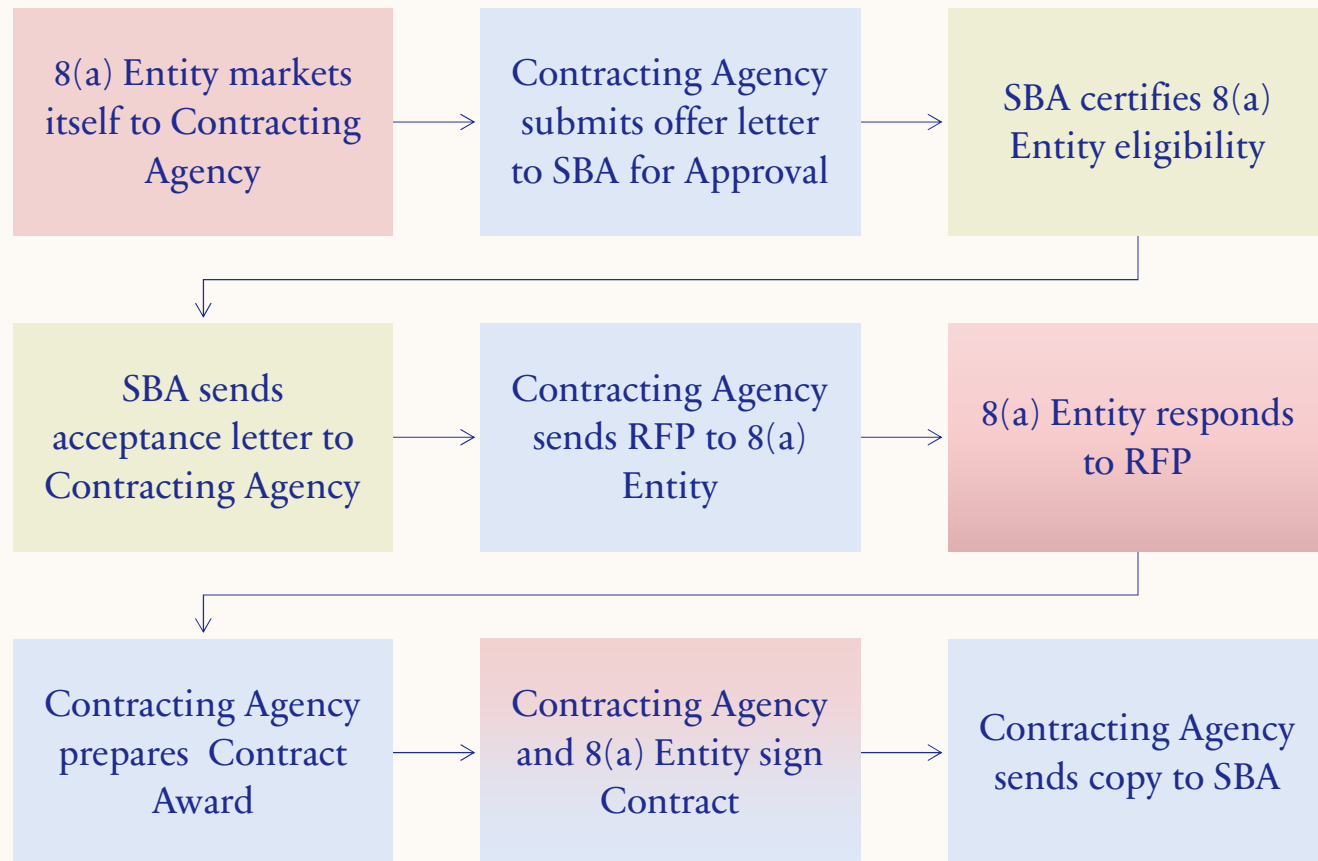




# **8(A) SOLE SOURCE CONTRACTING**

## **RULES & PROCESSES**

# 8(A) SOLE SOURCE AWARD PROCESS





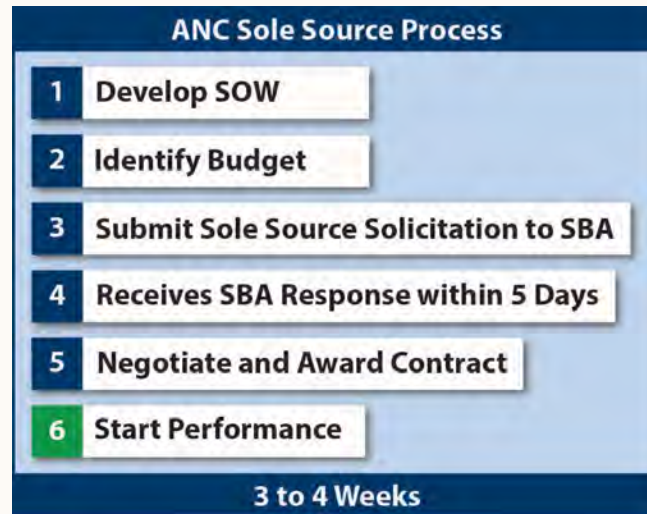
# SOLE SOURCE CONTRACTING

## Practical Tips for Success

- **Find out who the PTAC Rep 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.
- **Get to Know your Customer.**
  - Research the needs of the agency and identify capabilities of interest to the PTAC's area of responsibility.
  - Attend outreach events
  - Review (& respond) to Sources Sought and RFPs.
- **Develop a Targeted Capabilities Statement & Pitch**
- **Get a Meeting with Your PTAC Rep.**
  - 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.

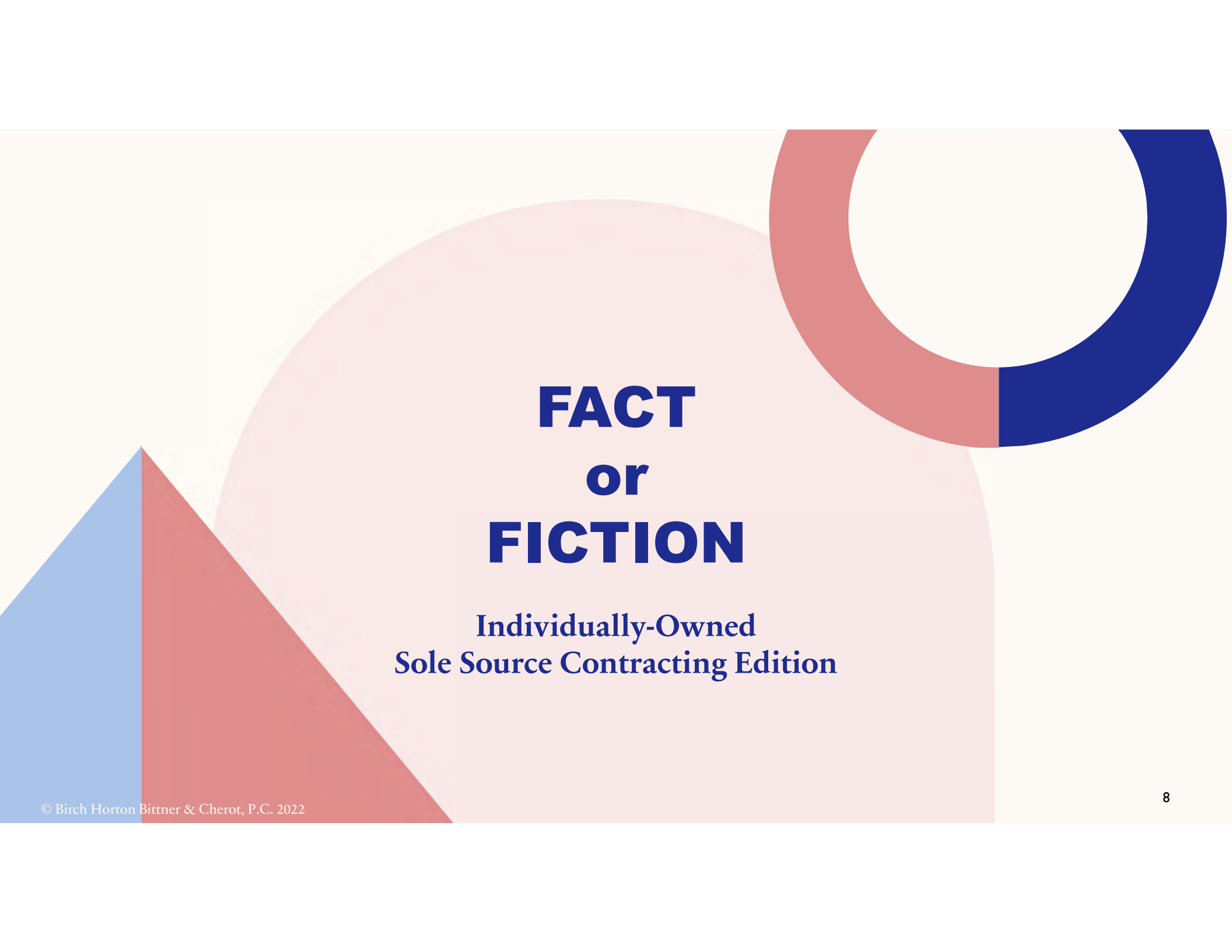
# SOLE SOURCE CONTRACTING

## Example Marketing Materials



A large, light beige fleur-de-lis logo is centered on the page. The word "QUESTIONS?" is written in a bold, dark blue, sans-serif font across the middle of the logo.

**QUESTIONS?**



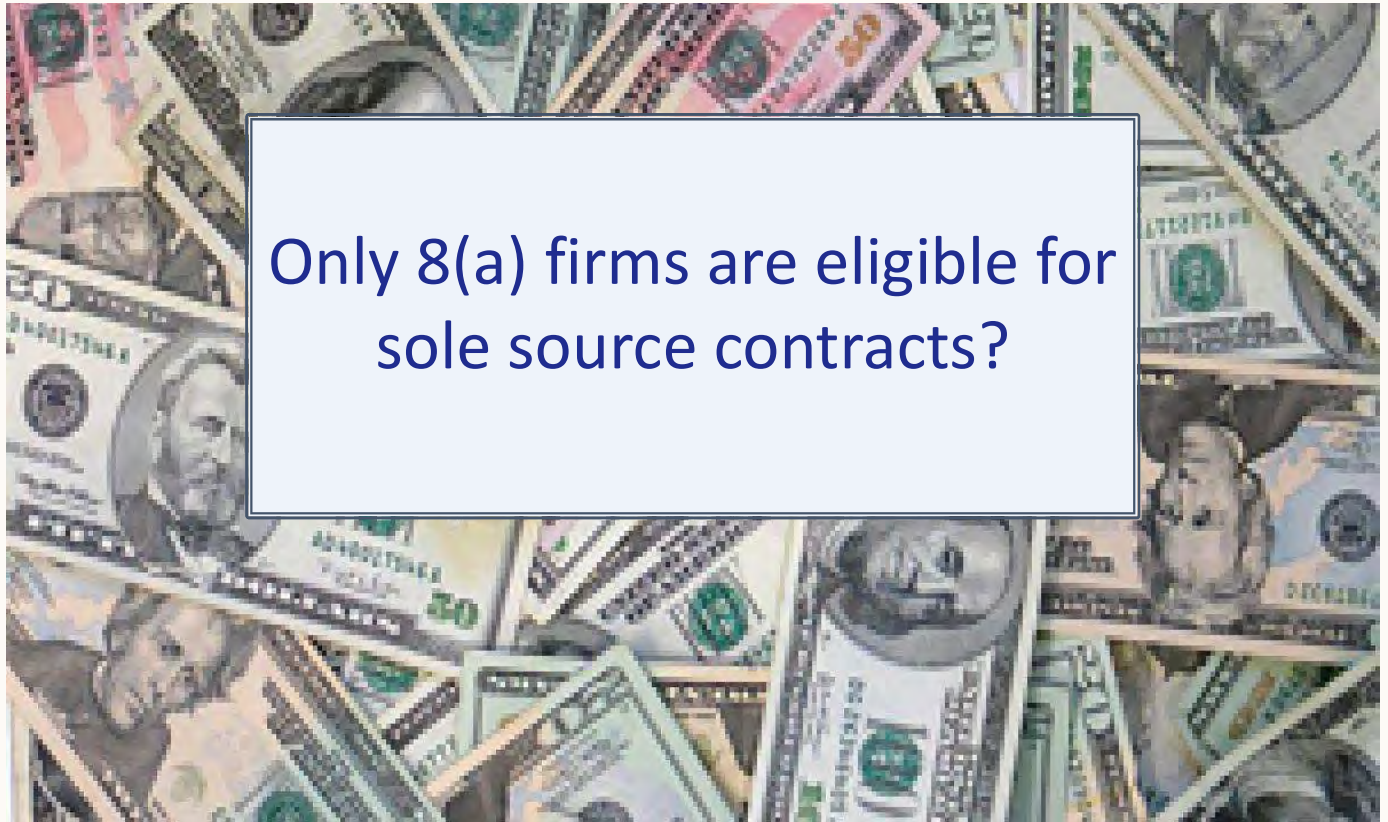
# **FACT or FICTION**

**Individually-Owned  
Sole Source Contracting Edition**



## Fact or Fiction #1 Sole Source Eligibility

Only 8(a) firms are eligible for  
sole source contracts?



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## Fact or Fiction #1: FALSE

### HUBZone & WOSB firms are also eligible for sole source contracts

- **Thresholds.** For both programs, the sole source thresholds are:
  - \$7M – Manufacturing
  - \$4.5M – All other procurement types.
- **EDWOSB/WOSBs.** For a sole source awards, the following criteria must be met:
  - Contract NAICS Code: Contract Requirement in industry designated by SBA as “substantially underrepresented” per 13 CFR 127.501.\*\* Unique to WOSB/EDWOSB.
  - WOSB is responsible contractor
  - CO does not have a reasonable expectation that 2 or more WOSBs will submit offers
  - Award price will not exceed \$4.5M (or \$7M for manufacturing).
- **Rule.** 13 CFR 127.503(d).


## Fact or Fiction #1: FALSE

### HUBZone & WOSB firms are also eligible for sole source contracts

- **HUBZones.** Similar without contract NAICS code requirements.
- **The Rule § 126.612.** When may a CO award sole source contracts to HUBZone small business concerns? A CO may award a sole source contract to a HUBZone small business concern only when the CO determines that:
  - (a) Availability - The requirement does not “belong” to another top priority procurement program, including 8(a) (needs permission to withdraw), Federal Prison Industries, or certain non-profits for blind and severely disabled. (None of the provisions of §§ 126.605 or 126.607 apply);
  - (b) Contract Value - The anticipated award price of the contract, including options, will not exceed:
    - (1) \$7,000,000 for a contract assigned a manufacturing NAICS code, or
    - (2) \$4,500,000 for all other contracts.
  - (c) Rule of Two is not met - Two or more HUBZone small business concerns are not likely to submit offers;
  - (d) Responsibility - A HUBZone small business concern is a responsible contractor able to perform the contract; and
  - (e) Reasonable Price - In the estimation of the CO, contract award can be made at a fair and reasonable price.

## Fact or Fiction #2

### 8(a) Sole Source & Protests



8(a) Sole Source Awards  
Cannot be Protested

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## Fact or Fiction #2: Mostly True

### 8(a) Sole Source Awards Cannot be Protested Absent Bad Faith

#### **The Rule**

**13 CFR § 124.517 - Can the eligibility or size of a Participant for award of an 8(a) contract be questioned?**

*(a) The eligibility of a Participant for a sole source or competitive 8(a) requirement may not be challenged by another Participant or any other party, either to SBA or any administrative forum as part of a bid or other contract protest.*

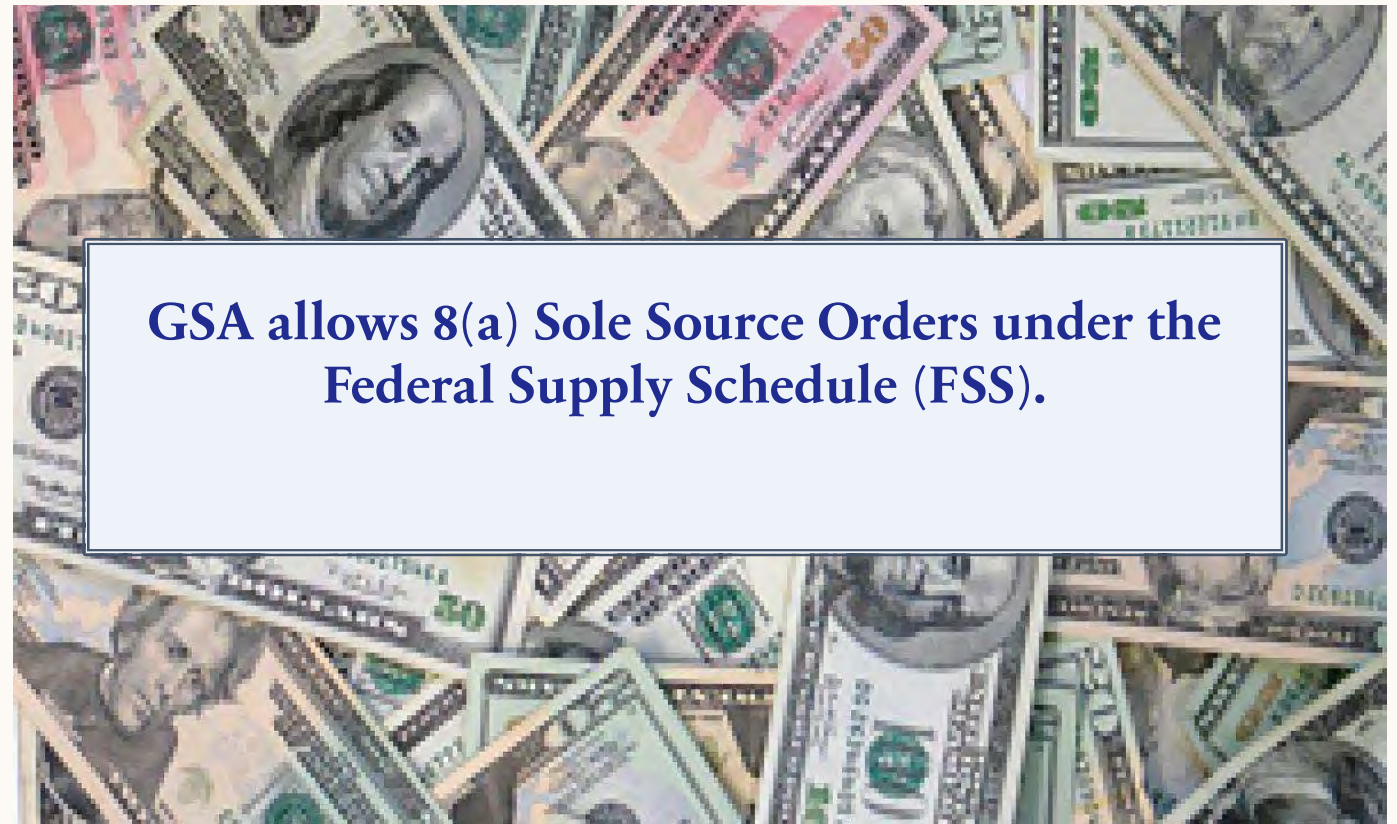
*(b) The size status of the apparent successful offeror for a competitive 8(a) procurement may be protested pursuant to § 121.1001(a)(2) of this chapter. The size status of a nominated Participant for a sole source 8(a) procurement may not be protested by another Participant or any other party.*

#### **Takeaways**

- **No 8(a) Status Protests.** 8(a) Awards (competitive or SS) cannot be protested by competitors challenging the 8(a) status of the firm.
- **No Size Protests re 8(a) Sole Source Awards.** from Competitors on Sole Source Protests. Size Protests are possible on competitive 8(a) Procurements.
- **Bid Protests Possible In Theory, But Rare.** Note that GAO will consider a bid protest against an 8(a) set-aside decision ONLY where there is evidence of “bad faith” or violations of law. Extremely rare and difficult to prevail in sole source situation (“interested party”). Bid protests on other grounds, such as those involving challenges to the procurement process, are possible under 8(a) competitive procurements.



## Fact or Fiction #3



**GSA allows 8(a) Sole Source Orders under the Federal Supply Schedule (FSS).**

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**UPDATE 2/2023 8a  
Sole Source May be  
Coming to the GSA's  
FSS:**

SBA announced that it is in negotiations with GSA to create an 8(a) pool on the FSS that would allow sole source ORDERS under the MAS. Look for updates in the next few months!

## **FACT OR FICTION #3: FALSE (NOT YET...)**

### **GSA DOES NOT ALLOW 8(A) SOLE SOURCE ORDERS UNDER FSS**

#### **GSA's FSS FAQs:**

- ***Can you sole source to small business concerns under this authority?*** *No, Section 1331 of the Small Business Jobs Act and FAR 8.405-5(a) (1) only authorizes set-asides of orders under multiple award contracts, not sole source.*
- **Other GSA Guidance on Small Business Set-Asides.**
  - Set-asides are allowed, but they are not mandatory. GSA states: *Since FAR Part 19 procedures do not apply to Schedule orders, the "rule of two" is not applicable in the Schedule environment.*
  - FAR agencies must determine that there are at least three eligible small businesses to set aside the order. Two is not enough.



**QUESTIONS?**



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