

ALERT

More 8(a) Scrutiny Announced

January 27, 2026

The 8(a) Business Development Program has garnered intense scrutiny from the Trump Administration over the past few months. See [here](#), [here](#) and [here](#). This focus continues with three significant developments in 2026: Secretary Pete Hegseth's January 16 announcement on X of a Department of War audit of 8(a) sole-source contracts, the Small Business Administration's (SBA) January 22 guidance restructuring how the 8(a) program is administered, and SBA's issuance of Notices of Suspension to some 8(a) firms that failed to fully respond to SBA's by the January 19 deadline. Together these developments reflect growing skepticism toward the 8(a) program and signal increased scrutiny for contractors that have long treated 8(a) status as a relatively predictable procurement vehicle.

Department of War Audit

On January 16, 2026, Secretary of War Pete Hegseth announced via X (formerly Twitter) that the Department would be "taking a sledgehammer" to the 8(a) program, calling it "a breeding ground for fraud." Hegseth's video statement was particularly critical of what he described as "wasteful DEI contracts that don't help us win wars" as well as perceived subcontracting abuse and pass-through arrangements. In light of these concerns, the Secretary declared an immediate "line-by-line review" of every small business sole-source 8(a) contract exceeding \$20 million (DFARS 219.808-1 sets the 8(a) sole-source threshold at \$100 million).

Although no formal timeline or additional information about this audit has been publicly released, Hegseth's remarks offer insight into the likely scope of the review. His criticisms focused on discrete features of the 8(a) program, namely race-based criteria, reliance on sole-source awards, and concerns about whether contractors are meaningfully performing the work awarded or are simply

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passthroughs to ineligible consultants. As a result, anticipated lines of inquiry include compliance with limitations on subcontracting, whether firms are meeting required workshare thresholds, and the extent to which sole-source 8(a) awards are advancing the Administration's other stated defense-readiness and social priorities.

Even if the audit does not uncover widespread fraud, it is likely to have knock-on effects within the Department that materially affect small business participation. Additional documentation and justification requirements may attach to 8(a) awards, and skepticism at the senior level is likely to influence contracting officers, who may become more cautious about approving 8(a) sole-source awards while the audit is ongoing. This announcement also comes at a moment when acquisition personnel are under increasing pressure to demonstrate that contract recipients, including small business concerns, are contributing directly to operational readiness. In the near-term, small business contractors should expect slower award timelines and a reduced appetite for 8(a) sole-source actions as the audit proceeds.

SBA's New "Disadvantaged" Guidance and Notices of Suspension

Unease surrounding the 8(a) program is not confined to the walls of the Pentagon. One week after the Hegseth announcement, on January 22, 2026, the Small Business Administration issued clarifying guidance on the meaning of "disadvantage" within the 8(a) framework. While the guidance represents a marked departure from how the program has traditionally been understood, it was widely anticipated. The Administration's skepticism regarding the 8(a) program extends beyond the President's "anti-DEI" Executive Orders and reflects a broader reassessment of race-conscious federal programs.

In the wake of the *Ultima Services* decision, which enjoined SBA from presuming the social disadvantage of program applicants based on race, the Department of Justice publicly declined to defend the constitutionality of race-based presumptions embedded in prior SBA regulations. *Ultima Services Corp. v. U.S. Department of Agriculture*, 683 F. Supp. 3d 745 (E.D. Tenn. 2023). From that point forward, it was largely a foregone conclusion that SBA would need to revise its guidance to align the 8(a) program with a legal landscape in which race-based presumptions no longer survived constitutional scrutiny.

As a practical matter, many small businesses are unlikely to experience immediate disruptions. As the guidance itself acknowledges, SBA has not relied on race-based presumptions or the prior narrative framework since the beginning of the Trump Administration. That said, the memo states SBA will now recognize individuals adversely impacted by DEI or affirmative-action policies as a potentially "disadvantaged" category, a novel development in the decades-old program. How SBA defines, evidences, and employs that concept warrants close attention, as it may affect not only new applicants but also existing participants responding to Agency requests and correspondence.

Ultimately, however, the guidance raises more questions than it answers. Beyond identifying this new disadvantage factor, SBA has not articulated the standard that will govern disadvantage determinations going forward, nor clarified the extent to which existing 8(a) firms may be reevaluated under revised criteria. Recent enforcement actions, including mass suspensions of 8(a) firms tied to unanswered data requests and DOT's

Interim Final Rule that required all Disadvantaged Business Enterprises to reapply for certification, suggest a more exacting compliance posture, underscoring the importance of responsiveness and internal controls as the program enters this next phase.

Takeaway

All 8(a) participants should assume closer scrutiny and plan accordingly. Maintaining open lines of communication with SBA points of contact and ensuring internal compliance and contract performance, particularly with respect to subcontracting performance documentation, will be critical to navigating a program environment defined increasingly by strict oversight and skepticism toward some 8(a) entities. Timely and targeted responses to any Government inquiries, especially any audits, subpoenas, or investigative demands, will be paramount to demonstrating the value of any questioned contract. Large businesses that subcontract to 8(a) firms should also maintain close contact with such subcontractors, particularly when relying on those subcontractors for small business subcontracting plan goals.

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