

**SMALL BUSINESS**  
**ADMINISTRATION PROGRAMS**  
**FOR INDIAN TRIBES**

2013

## **DISCLAIMER**

**The information provided is for informational purposes only, does not constitute legal advice or create an attorney-client relationship, and may not apply to all circumstances. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.**

# **PART 1: OVERVIEW OF THE 8(a) BUSINESS DEVELOPMENT PROGRAM**

## **What is Mission and Who Provides Assistance?**

**Small Business Administration (SBA)**, a federal agency, provides participating businesses owned and controlled by Indian Tribes or socially and economically disadvantaged individuals with managerial, technical, and procurement assistance.

Promotes business development over nine-year period. Facilitates award of sole-source and limited-competition contracts. Provides specialized training; counseling; and high-level executive support.

# **Under What Authority Does 8(a) BD Program Operate?**

§§ 7(j), 8(a) and 8(d) of Small Business Act of 1953, as amended. Regulatory authority is in Title 13, Code of Federal Regulations (C.F.R.), Parts 105, 121, and 124.

The SB Act created a "Minority Small Business and Capital Ownership Development" program, commonly known as the Section 8(a) Business Development or 8(a) BD Program, in order "to assist eligible small disadvantaged business concerns compete in the American economy through business development."

Under 8(a) BD Program, SBA has power to contract with federal procurement agencies, departments, and officers to provide goods and services and to "arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns." 15 U.S.C. § 637(a)(1)(A)-(B) (2000); *see also* 13 C.F.R. § 124.501(a).

# Native Contracting Section 8(a) Statistics – 2005

- Tribal and ANC procurement - **0.5% of all procurement**. Total procurement – \$378 billion. Native - \$1.9 billion – 2005 **1.3%** of sole source contracts. Total - \$145 billion. Native - \$ 1.865 billion.
- **2.9%** of small business contracting. Total \$65 billion. Native - \$ 1.9 billion.
- 17% of all Section 8(a) contracting. Total \$11 billion. Native - \$1.9 billion.

# Native Contracting Section 8(a) Statistics – 2005

- Tribal 8(a) firms grew from \$2.1 billion in fiscal year 2005 to \$5.5 billion in 2010, a greater percentage increase than non-tribal 8(a) obligations (160 percent versus 45 percent). Obligations to firms owned by ANCs represented the majority of tribal obligations every year during the period, rising to \$4.7 billion in 2010.

# Executive and Congressional Goals

- Small Business Reauthorization Act of 1997 directed President to establish a goal of not less than 23 percent of the federal government's prime contracting dollars to be awarded to small businesses each fiscal year.
- As part of this goal, Congress has directed that 5 percent of prime contract dollars be directed to small, disadvantaged businesses.

## Five Percent Set-Asides

SB Act requires President to establish annual set-aside goals for contracts awarded by all federal agencies to various classifications of small businesses, including small businesses under 8(a) BD Program. Each federal agency's goals may not drop below an annual minimum of five percent of the total value of contracts and subcontracts issued by that agency.

# Department of Defense (“DoD”) Indian Incentive Program (“IIP”)

- Department of Defense (DoD) Indian Incentive Program (IIP) motivates prime contractors to utilize Indian organizations and Indian-owned economic enterprises, by providing a 5% rebate to prime contractors on subcontracted work performed by an Indian organization or on subcontracted commercial products manufactured in whole or in part by an Indian organization.

# Department of Defense (“DoD”) Indian Incentive Program (“IIP”)

- For Native American businesses, there are two primary requirements that must be met in order to participate in the Indian Incentive Program:
  - **1. 51% Native American**
    - Indian ownership of the subcontractor or supplier cannot constitute less than 51% of the enterprise.
  - **2. Federally Recognized Tribal Enrollment**
    - The subcontractor or supplier must be owned by a federally recognized tribe or a member of a federally recognized tribe.

# Department of Defense (“DoD”) Indian Incentive Program (“IIP”)

- **For Questions or Assistance please contact:**
- <http://www.acq.osd.mil/osbp/sb/programs/iip/>  
Ruby Crenshaw-Lawrence  
4800 Mark Center Drive  
Suite 15G13 East Tower  
Alexandria, VA 22350  
(571) 372-6332
- [OSBP-IIP@osd.mil](mailto:OSBP-IIP@osd.mil)

# **What are the basic requirements a concern must meet for the 8(a) BD program?**

- Generally, a concern meets basic requirements for admission to the 8(a) BD program if
  - it is a small business
  - unconditionally owned and controlled
  - by Indian Tribe, and
  - demonstrates potential for success.

# What is the SBA's definition of a small business?

- SBA defines small business as one that is independently owned and operated and is not dominant in its field. Depending on industry, size standard eligibility is based on average number of employees for preceding 12-months or on sales volume averaged over a three-year period.

# Examples of SBA Size Standards

- Manufacturing: Maximum number of employees may range from 500 to 1500, depending on the type of product manufactured.
- Wholesaling: Maximum number of employees may not exceed 100.
- Services: Annual receipts may not exceed \$2.5 to \$21.5 million, depending on the particular service being provided.
- Retailing: Annual receipts may not exceed \$5.0 to \$21.5 million, depending on the particular product being provided.
- General & Heavy Construction: General construction annual receipts may not exceed \$13.5 to \$17 million, depending on the type of construction.
- Special Trade Construction: Annual receipts may not exceed \$7 million.
- Agriculture: Annual receipts may not exceed \$0.5 to \$5.0 million, depending on the agricultural product.

# How does SBA define “business concern or concern”?

- Business entity organized for profit.
- Place of business located in United States.
- Operates primarily within United States or makes significant contribution to U.S. economy through payment of taxes or use of American products, materials or labor.
- May be in legal form of individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where form is joint venture there can be no more than 49 percent participation by foreign business entities in joint venture.
- Firm will not be treated as separate business concern if substantial portion of its assets and/or liabilities are same as those of predecessor entity. In such case, the annual receipts and employees of the predecessor will be taken into account in determining size.
- Important for Joint Ventures.

# SBA and Other Resources for Native American Businesses

- Office of Native American Affairs  
Small Business Administration  
409 Third Street SW, Suite 6700
- Washington, DC 20416  
(202) 205-7364  
<http://www.sba.gov/about-offices-content/1/2960>
- Native American Finance Officers Association <http://nafoa.org>
- UIDA Business Services - A Native American Procurement and Technical Assistance Center <http://www.uida.org/nalinks.html>
- The National Center for American Indian Enterprise Development  
<http://www.ncaied.org>

# SUBNet

- Prime contractors use SUB-Net to post subcontracting opportunities. Visit <http://web.sba.gov/subnet>

# HUBZone Program

- The Historically Underutilized Business Zone Program stimulates economic development and creates jobs in urban and rural communities by providing federal contracting assistance to small businesses. It establishes preferences for award of federal contracts to small businesses located in historically underutilized business zones. In general, small businesses may obtain HUBZone certification by employing staff who live in a HUBZone and maintaining a 'principal office' in one of these specially designated areas.

# HUBZone Program

- SBA is responsible for:
- Determining whether or not individual concerns are qualified;
- Maintaining a list of qualified HUBZone small business concerns for use by acquisition agencies in awarding contracts under the Program; and
- Adjudicating eligibility protests and appeals.

# HUBZone Program

- To qualify for the program, a business must meet the following criteria:
- It must qualify as a small business under SBA requirements;
- Its principal office must be located in a HUBZone, which includes lands on federally recognized Indian reservations and covered by phrase “Indian Country”;
- It must be owned at least 51% by one or more U.S. citizens, Community Development Corporation, an agricultural cooperative or an Indian tribe; and
- At least 35% of its employees must reside in a HUBZone.

# HUBZone Program

- Existing businesses that choose to move to a HUBZone are eligible. Employees must live in a primary residence within the HUBZone for at least 180 days or be a currently registered voter in the area.
- For additional information, visit [www.sba.gov.hubzone](http://www.sba.gov.hubzone)

# Responsibilities of Office of Business Development

- National management of 8(a) BD Program.
- The Office of Business Development consists of:
  - Office of SDB Certification and Eligibility;
  - Office of Management and Technical Assistance;
  - Office of Outreach and Marketing; and
  - Office of Program Review.

## **Responsibilities of Office of SDB Certification and Eligibility**

- Determinations of initial and continuing program eligibility.

## **Responsibilities of Office of Program Review**

- Reviewing currently certified 8(a) BD firms.

# **Responsibilities of Office of Management and Technical Assistance**

- Sole-source and multiple-award contracting services, mentor-protégé program services, subcontracting assistance, and 7(j) technical and management training assistance.

# **District Office Responsibilities for 8(a) BD Program**

- Implementation of 8(a) BD Program activities within geographical area serviced by office.
- Identify contract opportunities and accept requirements into program.
- Evaluate appropriateness of requirements to be performed by current 8(a) BD participants.

- Match sole source awards with eligible participants.
- Execute and administer 8(a) BD contracts not awarded directly by procuring agencies.
- Recommend action on changes of ownership and mentor-protégé agreements.
- Review management and teaming agreements, render final determinations for joint ventures, and conduct field visits.

## **Offering Federal Contract**

Three ways for government procurement agency's contracting officer to offer an 8(a) contract: (1) through competition among all 8(a) businesses that submit an offer; (2) as an open requirement, which means on a sole-source basis, but without nomination of specific business; or (3) on a sole-source basis, offered on behalf of a specific business nominated to receive the award.

In first case, SBA accepts procurement contract on behalf of entire 8(a) BD Program, and procuring agency conducts competition and evaluates offers received in accordance with procedures set out in Federal Acquisition Regulations, which govern usual competitive government contracts.

In second case, SBA selects an 8(a) business to receive sole-source award.

In third case, SBA determines whether nominated participant is appropriate match for sole-source award and may either negotiate contract terms on behalf of 8(a) business or authorize direct negotiations between procuring agency and 8(a) business. **In practice, when an 8(a) business becomes informed of procuring agency's interest in offering a particular contract, it may "pitch" or market itself to agency to be nominated for award.**

# What Is Certificate of Competency Program?

- Under Certificate of Competency (COC) Program written instrument may be issued by SBA to a government contracting officer certifying that one or more named small business concerns appealing a contracting officer's determination does possess responsibility to perform specific government procurement (or sale) contract.

# Number of Native SBA Contracts

- Government contracts to native-owned companies rose steadily between 1999 and 2003 and spiked sharply in 2003, with the vast majority of the value of the contracts being sole-sourced. By 2003, native corporations received \$1.3 billion in such sole-sourced contracts, accounting for almost fifteen percent of the Section 8(a) BD program.

# Advantages for Indian Tribes

- **Social disadvantage.** Indian Tribes and Alaska Native Corporations (ANCs), as defined in 13 C.F.R. § 124.3, are considered socially disadvantaged and concerns at least 51 percent owned by them do not have to submit documentation on social disadvantage.

- **Economic disadvantage.** ANCs, as defined at 13 C.F.R. § 124.3, are considered economically disadvantaged and concerns owned by them do not have to submit documentation on economic disadvantage.
- **Indian Tribes must submit documentation of economic disadvantage as detailed in 13 C.F.R. § 124.109(b)(2).**
- Once an Indian Tribe establishes its economic disadvantaged status it does not need to do so for other businesses that it owns. 13 C.F.R. § 124.109(b).
- Concerns owned by economically disadvantaged Indian Tribes are considered economically disadvantaged, but must have a “sue and be sued” clause in Articles of Incorporation, Articles of Organization, or Partnership Agreement as detailed in 13 C.F.R. § 124.109(c).

# Tribal Ownership Benefits

- Businesses owned by Indian Tribes are all exempt from the limitation on ownership of multiple 8(a) businesses.
- For most 8(a) businesses, participants may not own more than a ten to twenty percent ownership interest in another 8(a) business.
- Indian Tribes, however, are prohibited only from owning more than fifty-one percent of another 8(a) business in the **same primary line** of business.
- Additionally, they may own an unlimited number of other 8(a) businesses that are in a different primary line of business, even if those other businesses have a secondary line of business identical to the primary business of the original 8(a) company. 13 C.F.R. § 124.109(c)(3(ii)).

# Tribal Size Determination Benefits

- Business concerns owned by Indian Tribes benefit from a special exemption from the affiliate rule in size determinations. For businesses owned and controlled by Indian Tribes, the size of the business is "determined independently without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise **owned** by the tribe," unless one of these businesses might obtain "a substantial unfair competitive advantage . . . ." 13 C.F.R. § 124.109(c)(2)(iii).

# Indian Tribe Sole Source Contracts

- Contracts may be awarded to Indian Tribes on a sole-source basis. 13 C.F.R. § 124.506(a)(iii); 13 C.F.R. § 124.506(b).

# **No Dollar Limit on Contracts for Indian Tribes**

- Indian Tribes are not limited in the dollar amount of competitive and sole source 8(a) contracts they may receive.

13 C.F.R. § 124.506(b); 13 C.F.R. § 124.519(a).

# Indian Tribe Management Benefits

- Indian Tribes are exempt from the requirement that persons conducting the 8(a) business' management and daily operations be disadvantaged persons as defined under the regulations. So, while the regulations require that a tribally-owned business be controlled by the Tribe through a disadvantaged individual, non-tribal members may also manage the business if the SBA determines that this is required to assist its development. 13 C.F.R. § 124.109(c)(4(i)(B)).

# Tribal Holding Company

- For efficiency and economies of scale, it is recommended that tribes form 100% tribally owned holding companies for the various 8(a) companies they intend to establish. The holding company can perform the general and administrative functions of the various tribally owned 8(a) companies.

# Indian Preference Upheld by Courts

- In June 2003, in *Am. Fed'n of Gov't Employees v. United States*, 330 F.3d 513 (D.C. Cir. 2003) (“*AFGE II*”), the D. C. Circuit upheld provision of 2000 Department of Defense Appropriations Act that granted an outsourcing preference for firms with 51 percent or more Native American ownership. Air Force’s award to Alaskan Native Corporation business, for maintenance work at Kirtland Air Force Base, was challenged by union on violation of equal protection and due process grounds. The court held in line with legal precedent that classification of Native Americans is political, not racial. Thus, provision is not discriminatory.

**What Documentation Must Concerns Owned by Indian Tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), or Community Development Corporations (CDCs) Submit as Part of Their Application for Participation in 8(a) BD Program?**

**Social disadvantage.** Indian Tribes, ANCs, NHOs and CDCs, as defined in 13 C.F.R. § 124.3, are considered socially disadvantaged and concerns at least 51 percent owned by them **do not have to submit documentation** on social disadvantage.

# Additional Documentation

- Indian Tribes must submit documentation of economic disadvantage as detailed in 13 C.F.R. § 124.109(b)(2).
- Tribal existence.
- Need North American Industry Classification System code (“NAICS”). Visit NAICS website – <http://www.census.gov/eos/www/naics/>
- Ownership of any enterprise in same primary North American Industry Classification System (NAICS) code.

# **Sources of Federal Small Business**

## **Contract Information**

- **Congress**
  - House Small Business Committee Chairman Manzullo (R-IL), Tom Udall (NM)
- **Agency websites (SBA, BIA, DOD, etc.)**
- **SBA Office of Native American Affairs**
- **Agency Annual Procurement forecasts**
- **Office of Small Disadvantaged Business Utilization - each federal agency has one.**
- **Each state has Federal Procurement Agency List for Small Business**
- **Business Utilization Development Specialists (BUDS) – SBA**
- **FedBizOpps.gov**

- **PART 2A: PREPARING AND SUBMITTING APPLICATIONS**
- **Who Is Responsible for Preparation of an 8(a) BD Application?**
  - Applicant. Business Development Specialist (BDS) in Central Office Duty Station (CODS) assigned an application is responsible for answering applicant's questions and providing information, if needed.

- **Who Screens and Processes Application?**
  - Business Development Specialist (BDS) in Central Office Duty Station (CODS) serving territory where applicant's principal place of business is located (except ANCs).

# **What Documentation is Required to Establish Eligibility for 8(a) BD Program?**

- Concerns owned by **Indian Tribes, ANCs,** Native Hawaiian Organizations (NHOs) and Community Development Corporations (CDCs)  
- SBA Form 1010B – **See handout.**

# **Chapter 2B: APPLICATION SCREENING**

- **Purpose**
  - Identify any deficiencies.
- **Who Is Responsible for Screening Applications?**
  - For all applicants except for concerns owned by Alaska Native Corporations (ANCs): Business Development Specialist (BDS) in Office of Certification and Eligibility (OCE)/ Central Office Duty Station (CODS) serving territory where applicant's principal place of business is located.

# How Long Does CORDS Have to Screen an Application?

- 15 calendar days
- If application incomplete, CORDS must send deficiency notice to applicant. Applicant must respond within 15 calendar days of receipt. If no response, BDS must return entire application package. If applicant responds to deficiency notice, CORDS has 10 calendar days to review response.
- Applicant can withdraw its application.

# What Happens If CODS Accepts Application for Processing?

- Applicant is notified by first class mail, e-mail, or fax transmission. Once application accepted, 90-day processing clock begins to run.

# **PART 2C: APPLICATION REVIEW** **PROCESS**

**Who Is Responsible for Initial**  
**Processing of Applications for 8(a)**  
**Business Development (8(a) BD)**  
**Program Eligibility?**

For all applicants except for those concerns owned by Alaska Native Corporations (ANCs), Business Development Specialist (BDS) in Office of Certification and Eligibility (OCE)/ Central Office Duty Station (CODS), serving territory where applicant's principal place of business is located.

**Who Is Responsible for Making Final Determination as to Whether an Applicant is Eligible for Participation in 8(a) BD Program?**

- Associate Administrator for Business Development (AA/BD)

# How Does BDS Determine If a Tribal Applicant Concern Satisfies Ownership Criteria?

- In order to be eligible for participation in 8(a) BD Program, at least 51 percent of an applicant concern must be directly and unconditionally owned by a Tribe or an ANC. *See* 13 C.F.R. § 124.105.
- Direct ownership means that applicant cannot be subsidiary of another business owned by a Tribe or an ANC.

# How Does BDS Establish That Applicant Is a Small Business?

- Identify applicant's primary North American Industry Classification System (NAICS) code and satisfy size regulations (13 C.F.R. §§ 121.101 *et. seq.*). Examine applicant's annual receipts or number of employees.

# **How Does BDS Determine If Applicant Concern and Its Principals Are of Good Character?**

- Circumstances automatically resulting in lack of good character:
- Debarment and suspension from General Services Administration bidding program.
- Incarceration, parole, or probation.
- Unpaid federal financial obligations.
- False statements.
- Falsification of personal and business tax returns.

- Circumstances requiring a character analysis:
  - » Criminal convictions or guilty pleas.
  - » Failure to disclose criminal arrests or convictions on SBA Form 912.
  - » Civil judgments.
  - » Indictments.
  - » Investigations.
- Violations of SBA regulations.

# How Does BDS Determine If an Applicant Satisfies Potential for Success?

- Two year rule. Conducting business in primary industry for at least two full years required. May be waived based on certain criteria.
- Financial Capacity. Sufficient access to capital and credit to maintain its business operations.
- Managerial and technical expertise.

- **Are Brokers Eligible for Participation in 8(a) BD Program?**
  - No. Broker is firm that acts as an intermediary between procuring agency and supplier.
- **Are Wholesalers Eligible for Participation in 8(a) BD Program?**
  - Yes. Wholesaler is firm that purchases goods from manufacturer and sells to customer.

**In Determining Whether Applicant is Eligible for Participation in 8(a) BD Program, Does SBA Consider Changes to Firm's Status That Occur During Review Process?**

- Status is determined, generally, as of date application submitted.

**PART 2E: RECONSIDERATION**  
**AND APPEAL OF PROGRAM**  
**ELIGIBILITY DECISIONS**

- **What Is Reconsideration?**

- Every applicant denied admission to 8(a) Business Development (8(a) BD) Program has right to request that Associate Administrator for Business Development (AA/BD) reconsider decision. Written request for reconsideration must be submitted within 45 calendar days of receiving decline letter.

- **Who Is Responsible for Processing Requests for Reconsideration?**

- The BDS in Office of Certification and Eligibility (OCE)/ Central Office Duty Station (CODS) serving territory where applicant's principal place of business is located (except for ANCs).

- **How Long Does SBA Have to Review (Process) a Request for Reconsideration?**
  - 45 calendar days.
- **Who Is Responsible for Making Final Determination as to Whether an Applicant Submitting Reconsideration Request Is Eligible for Participation in 8(a) BD Program?**
  - Associate Administrator for Business Development (AA/BD).

- **How Long Does an Applicant Have to Appeal a Decline Decision?**
  - If applicant chooses to appeal decline decision of AA/8(a) BD, it must submit its appeal within 45 calendar days after date it receives initial or reconsideration decline letter.
- **Can an Applicant Who Has Been Denied Admission to 8(a) BD Program Resubmit Its Application?**
  - Yes, but declined firm must wait at least 12 months from date of final agency decision before reapplying.

# PART 3: SERVICING THE PARTICIPANT

- **What Happens After Firm is Approved for Participation in 8(a) BD Program?**
  - Office of Certification and Eligibility (OCE) will assign case number, forward file to District Office (DO) and Business Development Specialist (BDS) assigned to firm.

# What Assistance Does SBA Provide to Participants?

- **Help in:**
- Developing and maintaining business plans.  
Seeking loans. Financial counseling.  
Accounting and bookkeeping. Marketing.  
Management practices. Equity and debt financing. Obtaining surety bonds.

- **What are Requirements for Business Plan Submission and Approval?**
  - Must submit, and obtain SBA's approval before eligible to receive 8(a) contracts. Due within 30 days of firm's orientation session. Modifications to plan to its BDS within 30 days after close of each program year.
  - **What if a Firm Does Not Submit its Business Plan On a Timely Basis?**  
BDS may initiate termination proceedings.

- **What Information Must Firm's Business Plan Include?**
- Products currently being produced and services currently being performed as well as future plans to enter into new markets;
- Primary NAICS code and all related NAICS codes;
- Business targets and objectives;
- Analysis of market potential, competitive environment, and prospects for profitable operations;
- Analysis of strengths and weaknesses, with remedial action;
- Estimates of both 8(a) and non-8(a) contract awards that will be needed to meet its targets, objectives and goals; and
- Such other information as SBA may require.

# How Does BDS Counsel 8(a) Firms?

- Possible topics for counseling session include:
  - Information on how to sell items/services to Government.
  - Advice and information on arranging meetings with small business specialists, contracting officials, technical personnel, Procurement Center Representatives (PCRs), Commercial Market Representatives (CMRs), and or BDSs.
  - Assistance in acquisition matters such as delays in contract payment, protest procedures, electronic data interchange, contract changes, cases of contract bundling, terminations, cure and show cause notices, inspection and quality control, becoming an “approved” source, and restrictive specifications or clauses.

- Information concerning DoD's Central Contractor Registration (CCR), such as how to register through Internet, using network as a marketing tool and as a link to procurement opportunities, and registering firms that do not have access to Internet.
- Information on subcontracting opportunities, including providing a list of contacts.
- Counseling on all government contracting assistance, including Certificate of Competency (COC) program, size determinations, and Property Sales Assistance.
- Information on or available SBA assistance; i.e., counseling sources - Small Business Development Centers (SBDCs) and SCORE; financial assistance; Small Business Innovative Research (SBIR) program; international trade opportunities; Women-Owned Business initiatives; and Veterans and Advocacy programs.
- Advice on how to report cases of contract bundling on 8(a) BD Internet home page. Contract bundling – combining a number of smaller contracts into one large contract which impairs small businesses opportunity to bid on same.

- **Does District Office Perform a Site Visit of a Participant?** Once per fiscal year.

**PART 4A: CONTRACTS--GENERAL,**  
**PROCESSING REQUIREMENTS**

# **Why are Contract Opportunities Important to 8(a) Business Development (8(a) BD) Program?**

- Sole source and competitive 8(a) requirements support business development and growth during nine year program. No guarantee of contract awards.

- **What Is an Offering Letter?**

- Intent to award requirement under 8(a) BD Program by agency submitting offering letter to SBA.

- **To Which SBA Office Does a Procuring Activity (Federal Agency) Submit an Offering Letter?**

- Sole source requirements offered on behalf of a specific participant to District Office servicing that concern.
- Competitive requirements and open sole source requirements, except for construction, to District Office serving geographical area in which procuring activity located.

- **What Is an Acceptance Letter?**
- SBA's notification that it accepts a requirement into 8(a) BD Program. *See* 13 C.F.R. § 124.503 and Federal Acquisition Regulations (FAR) § 19.804-3.

# When Must an 8(a) Contract Be Awarded on a Competitive Basis?

- Reasonable expectation that at least two eligible participants will submit offers at fair market price; and
- Except for Indian Tribes and ANCs, anticipated award price of contract, including options (*i.e.*, government estimate of total value of contract, including options) will exceed \$6,500,000 for contracts assigned manufacturing NAICS codes and \$4,000,000 for all other contracts. See 13 C.F.R. § 124.506.

# Are Any Firms Exempt from Competitive Thresholds?

- Participants owned and controlled by an Indian Tribe or Alaska Native Corporation (ANC) are exempt from competitive thresholds. SBA may accept a sole source requirement in excess of competitive threshold for tribally owned concerns and ANCs as long as it has not previously accepted requirement into program as a competitive procurement. *See* 13 C.F.R. § 124.506(b).

# Can 8(a) Eligibility of a Participant Be Questioned With Respect to Award of an 8(a) Contract?

- The 8(a) eligibility of a participant for a sole source or competitive requirement may not be challenged by another participant or any other party.

# **Can a Participant Appeal SBA's Decision Not to Award It a Specific Contract?**

- No. However, it may request a formal size determination if SBA found it ineligible for a contract based on size. *See* 13 C.F.R. § 124.517(c).

# What Types of Contracts Can Be Awarded Under 8(a) BD Program?

- An 8(a) BD contract may be any of type authorized in Federal Acquisition Regulations Part 16 (*e.g.*, fixed price, cost reimbursement, incentive, indefinite-delivery, time and materials, etc.).

- **What Is Letter Contract?**

- A written preliminary contractual instrument that authorizes immediate commencement of contract performance.

- **What Is Procurement Package?**

- Complete information relating to technical requirements of proposed procurement including specifications, drawings, delivery or performance schedules, detailed cost estimates, applicable wage determinations, and/or pertinent data.

# Does SBA Approve Subcontracts?

- Yes. SBA will not approve proposed subcontracting arrangement if:
  - Proposed subcontractor is suspended, debarred, or determined to be ineligible by any federal agency;
  - Proposed subcontractor would control performance of work;
  - Proposed subcontracting relationship not an arm's-length agreement; or
  - Proposed subcontracting arrangement is attempt to circumvent SBA's size regulations.

# How Are Contract Terminations Processed?

- Contracts may be terminated for default or for convenience:
  - Termination for Default (T4D)
  - Termination for Convenience (T4C)

# **PART 4D: CONTRACTS--** **CONSTRUCTION**

- **Are There Any Special Procedures for Construction Requirements?**
  - To maximum extent practicable, 8(a) construction requirements should be awarded within county or state where work is to be performed.
- **How Will SBA Accept a Requirement Where Procuring Activity Nominates Specific Participant?**
  - If nominated participant is eligible and match exists, SBA will accept requirement on behalf of participant who is not required to have place of business within geographical boundary where work will be performed.

**PART 4E: CONTRACTS--TRANSFERS,**  
**SUBSTITUTIONS, AND WAIVERS**  
**Can 8(a) Contracts Be “Sold” or**  
**“Transferred”?**

Contracts cannot be sold; may be transferred under certain conditions.

# **PART 4F: CONTRACTS--SOLE SOURCE**

- **What Participants Are Subject to Dollar Limits?**
- All participants that entered program after December 31, 1997, except for tribally owned concerns and concerns owned by Alaska Native Corporations. *See* 13 C.F.R. § 124.519(c).

# **PART 6: BUSINESS ACTIVITY TARGETS**

- **What Are 8(a) Business Activity Targets (BATs)?**
  - During transitional stage of participation, SBA requires that participant achieve certain targets of non-8(a) contract revenue called business activity targets (BAT).

- **What Happens If a Participant Fails to Meet Its BAT?**

- It is ineligible to be awarded sole source 8(a) contracts in current program year unless a waiver is granted.

# **PART 7: CHANGE OF OWNERSHIP**

- **What Is Change of Ownership?**

Change of ownership is transfer of any ownership interest in 8(a) participant, including transfers resulting from mergers and acquisitions. Must be approved by SBA. *See* 13 C.F.R. § 124.112.

- **What Is Change of Business Structure?**
  - Change in legal identity of participant, *e.g.*, from sole proprietorship to corporation.
- **Can Firm Continue Participation in 8(a) Business Development Program Subsequent to Change of Ownership or Business Structure?**
  - Requires prior approval from SBA.

- **What Will Happen If a Participant Does Not Request SBA's Approval of a Change of Ownership or Business Structure, or Proceeds Without Approval?**
  - SBA will suspend participant from program participation pending resolution of request or terminate its participation.
- **Can a Decision to Suspend For Change of Ownership or Business Structure Be Appealed?**
  - A decision to suspend an 8(a) participant for failure to obtain prior approval of a change of ownership or business structure may not be appealed.

# **PART 8: JOINT VENTURES AND** **TEAMING ARRANGEMENTS**

- **What Is Joint Venture Agreement?**

- Joint Venture Agreement (JVA) is agreement between eligible 8(a) participant and one or more other business concerns to establish new legal entity solely for performing **specific** 8(a) contract.

**When Are Joint Ventures Permitted?**

- Joint Ventures are permitted only when:
- 8(a) participant lacks capacity;
- Arrangement is fair and equitable;
- Substantial benefit to 8(a) participant.

- **What Role Must 8(a) Participant Have in Joint Venture?**
  - Managing (or lead) venturer, and employee of managing venturer must serve as project manager.
- **What Office Must a Participant Notify if it Intends to Enter into a Joint Venture Agreement and What Information Will be Provided to Participant?**
  - Servicing District Office

- **How Much of Work Under a Requirement Must Joint Venture Perform?**
- **Joint Venture must perform at least following percentages of work:**
  - Services (non-construction). 50% of cost of contract incurred for personnel with its own employees;
  - Supplies or products. 50% of cost of manufacturing supplies or products (not including cost of materials);
  - General construction. 15% of cost of contract with its own employees (not including cost of materials); and
  - Special trade construction. 25% of cost of contract with its own employees (not including cost of materials). *See* 13 C.F.R. § 124.510, 13 C.F.R. § 125.6.

- **How Much of Work of Joint Venture Must 8(a) Participant Perform?**
  - The 8(a) participant (or total of all 8(a) participants involved in Joint Venture) must perform significant portion of contract.
- **What is a Contractor Team Arrangement?**
  - Prime contractor subcontracts work under a specified government contract or acquisition program. *See* FAR §§ 9.601 9.602, and 52.219-14, 48 C.F.R. § § 9.601, 9.602 and 52.219-14. 8(a) firms may team with both 8(a) and non-8(a) firms. SBA approval not required.

# **PART 9: MENTOR/ PROTÉGÉ**

## **PROGRAM**

- **What Is Purpose of Mentor/Protégé Program?**
  - To enhance capabilities of 8(a) participants. **See handout for information.**
- **What Forms of Assistance Can Mentors Provide to Protégés?**
  - Technical and management assistance;
  - Financial assistance, including equity investments and/or loans;
  - Subcontracting support; and
  - Assistance in performing prime contracts through joint venture arrangements.
- **How Long Can Mentor/Protégé Relationship Last?**
  - Relationship should last at least 1 year.

- **What Are Benefits of a Mentor/Protégé Relationship?**
  - The two firms may joint venture as small business for any government procurement, provided that Protégé qualifies as small and program requirements are met.
  - Mentor may own equity interest of up to 40 percent in Protégé. In event Mentor/Protégé relationship ends, Mentor may retain its ownership percentage in Protégé existing at time relationship ends to avoid any detrimental impact on capital.
  - A determination of affiliation or control may not be found between a Protégé firm and its Mentor.
- **Can Contract Be Awarded to Mentor and Protégé Based Simply on Mentor/Protégé Agreement?**
  - No, they must have joint venture agreement.

- **How Does an 8(a) Participant Qualify as a Protégé?**
- 8(a) participant must either:
  - Be in developmental stage of program participation;
  - Have never received an 8(a) contract; or
  - Have a size that is less than half size of standard corresponding to its primary NAICS code.

- **When Will SBA Refuse to Approve a Mentor/Protégé Agreement?**
  - SBA will not approve Mentor/Protégé Agreement when:
    - Developmental gains not tied to firm's approved business development plan;
    - Assistance proposed not sufficient to promote any significant developmental gains to Protégé;
    - Purpose is to enable non-8(a) participant to receive 8(a) contracts.
- **Can a Protégé Have More Than One Mentor? No.**
- **Is There Any Periodic Review of Mentor/Protégé Relationship? Annually.**

# **PART 10: LEAVING THE 8(a) PROGRAM**

- **What Are Ways a Participant May Leave 8(a) Business Development Program?**
  - Term Completion.
  - Graduation.
  - Voluntary Withdrawal.
  - Early Graduation.
  - Termination.

- **What Happens After Participant Leaves Program?**
  - Once a participant leaves program for any reason, no longer eligible to receive 8(a) BD Program assistance. Must complete previously awarded 8(a) contracts.
- **What is Term Completion?**
  - Term completion occurs when firm successfully completes 9 years in program but without demonstrating that it substantially achieved targets, objectives, and goals contained in business plan.

# What Is Graduation?

- “Graduation” means participant is recognized as successfully completing program by substantially achieving targets, objectives and goals contained in participant’s business plan.
- “Early Graduation” means participant has substantially achieved targets, objectives and goals in its business plan and has ability to compete in market place without 8(a) assistance prior to completion of 9 year program term.

- **What Is Voluntary Withdrawal?**

- A participant may choose to withdraw from program voluntarily at any time prior to expiration of its program term.

- **What Is Termination?**

- Termination is involuntary ending, for good cause, of a participant's participation in 8(a) BD Program before expiration of its program term. Examples of good cause are listed in 13 C.F.R. § 124.303.

- **What is Suspension?**

- Suspension is temporary disqualification of a participant by AA/BD from all 8(a) contract support and all other forms of program assistance. See 13 C.F.R. § 124.305.

# **PART 11: OUTREACH AND** **MARKETING**

- **How is Marketing Accomplished for District Office?**
  - Marketing is planning and executing strategies to promote program and to increase procuring agencies' use of 8(a) firms.
- **How Does Business Development Specialist (BDS) Provide Maximum Opportunities for 8(a) Firms?**
  - Reviewing, and training participants to review, FedBizOpps;
  - Notifying qualified 8(a) firms of procurement opportunities and counseling such firms on marketing and promotion strategies; and
  - Communicating with procuring activities on a regular basis in order to maximize their use of 8(a) BD Program.

# **PART 12:      REPRESENTATIVES** **USED      AND COMPENSATION PAID**

- **What is SBA Form 1790 and Who Must Complete It?**
  - SBA Form 1790 is entitled, “Representatives Used and Compensation Paid for Services in Connection with Obtaining Federal Contracts” and must be completed by all current 8(a) Business Development (8(a) BD) Program participants on semiannual basis. The form requires participants to report all agents, representatives, attorneys, accountants, consultants and or parties (other than employees) whom they compensated for assisting them in obtaining federal contracts. They must also report amount paid to such parties and provide a detailed description of activities performed.

# **PART 13: DATA MANAGEMENT**

- **How Does SBA Collect Data for Purposes of 8(a) Business Development (8(a) BD) Program?**
  - SBA primarily uses two electronic database systems to collect data. Central Tracking System (CTS) is primarily used to track applications to 8(a) BD Program. SACS/MEDCOR (Servicing and Contracting Subsystem/Minority Enterprise Development Central Office Repository) used to service and monitor firms and collect data on a nationwide level.

# **PART 14: 7(J) MANAGEMENT AND TECHNICAL ASSISTANCE PROGRAM**

- **What Is Section 7(j) Management and Technical Assistance Program?**
  - SBA provides Section 7(j) assistance by awarding funds to third parties known as awardees/recipients (service providers) to absorb all, or part, of costs of specific management and technical assistance projects. These service providers may be individuals, for-profit concerns or non-profit organizations (SBDCs & SCORE). The service providers, in turn, provide management and technical assistance to eligible 7(j) clients (beneficiaries).
- **What is Executive Education Program?**
  - Executive Education Program (EEP) is business development-training program for CEOs or Presidents of 8(a) certified firms. Limited to two sessions per firm.

# **PART 15: SURPLUS PROPERTY**

- **What is Surplus Property?**
  - Personal property no longer needed by federal agency.
- **Are 8(a) Participants Eligible to Receive Surplus Property?** Yes.
- **How Is Surplus Property Transferred to an 8(a) Participant?**
  - Surplus property is transferred to an 8(a) participant by a State Agency for Surplus Property (SASP).
- **What is a SASP?**
  - Every state has created a SASP - state agency responsible for distributing surplus property to eligible recipients, monitoring its use, and managing future return, transfer or disposal of property, if appropriate.

# **SBA FINANCIAL ASSISTANCE**

- SBA provides a number of financial assistance programs for small businesses including 7(a), 504 and disaster assistance loans. SBA does not provide grants.
- Information on organizations and sites that can be of assistance in locating special purpose grants is on the SBA website, [www.sba.gov](http://www.sba.gov).

# SBA Special Purpose Loans

- SBA offers various special purpose loans: to grow your business to meet demand internationally, to aid businesses that have been impacted by NAFTA, to assist in implementing employee ownership plans, and help implement pollution control mechanisms.

# SBA CAPLines Loan

- CAPLINES
- CAPLines is umbrella program under which SBA helps small businesses meet their short-term and cyclical working-capital needs. A CAPLines loan, except Small Asset-Based Line, can be for any dollar amount that does not exceed SBA's limit.  
<http://www.sba.gov/content/caplines>

# SBA CAPLines Loan

- **Seasonal Line:** These are advances against anticipated inventory and accounts receivable help during peak seasons when businesses experience seasonal sales fluctuations. Can be revolving or non-revolving.

**Contract Line:** Finances direct labor and material cost associated with performing assignable contract(s). Can be revolving or non-revolving.

**Builders Line:** For small general contractor or builder constructing or renovating commercial or residential buildings, to finance direct labor-and material costs. Building project serves as collateral, and loans can be revolving or non-revolving.

**Standard Asset-Based Line:** This is an asset-based revolving line of credit for businesses unable to meet credit standards associated with long-term credit. It provides financing for cyclical growth, recurring and/or short-term needs. Repayment comes from converting short-term assets into cash, which is remitted to lender. Businesses continually draw from this line of credit, based on existing assets, and repay as their cash cycle dictates. This line generally is used by businesses that provide credit to other businesses. Because these loans require continual servicing and monitoring of collateral, additional fees may be charged by lender.

**Small Asset-Based Line:** This is an asset-based revolving line of credit of up to \$200,000. It operates like a standard asset-based line except that some of stricter servicing requirements are waived, providing business can consistently show repayment ability from cash flow for full amount.

# SBA CAPLines Loan

- Small Asset-Based Line has a maximum loan amount of \$200,000.
- **Loan Maturities**
  - Each line of credit has maturity of up to five (5) years.
- **Collateral**
  - Holders of at least 20% ownership in business are generally required to guaranty loan.

# 7(A) LOAN PROGRAMS

- Patriot Express
- SBAExpress

# Patriot Express

- **Issue: Patriot Express**
- Maximum Loan Amount: \$500,000
- Lenders can receive a maximum 7(a) guaranty of 85 percent for loans of \$150,000 or less and 75 percent for loans over \$150,000 up to \$500,000
- Interest Rate: Rate may be fixed or variable and lenders and borrowers can negotiate interest rate, but lenders may not charge more than 2.25 percent over prime for loans of less than 7 years and 2.75 percent over prime for loans greater than 7 years; lenders may charge 1 percent more for loans of \$50,000 or less and 2 percent more for loans of \$25,000 or less.
- Eligibility Decision: Must meet standard SBA eligibility and must be 51 percent or more owned/controlled by: Veteran (other than dishonorably discharged); Service-disabled veteran; Active-duty service members eligible for the military's Transition Assistance Program; Reservists and National Guard members; Current spouses of any of the above, including any service member; Widowed spouses of service members or veterans who died during service or of a service-connected disability
- Collateral: Lenders are not required to take collateral for loans up to \$25,000; may use their existing collateral policy for loans over \$25,000 up to \$350,000, but must take available collateral for loans greater than \$350,000.
- Credit Decision: By Lender

# SBAExpress

- **Issue: SBAExpress**
- Maximum Loan Amount: \$350,000
- Maximum SBA Guaranty %: 50%
- Interest Rate: Lenders and borrowers can negotiate interest rate. Lenders may charge up to 6.5 percent over prime rate for loans of \$50,000 or less and up to 4.5 percent over prime rate for loans over \$50,000.
- Eligibility Decision: By SBA
- Revolving Lines of Credit: SBAExpress allows revolving loans up to 7 years with maturity extensions permitted at outset.
- Turnaround Time: Within 36 Hours
- Forms: Lender Uses Mostly Own Forms and Procedures
- Collateral: Lenders are not required to take collateral for loans up to \$25,000. Lenders may use their existing collateral policy for loans over \$25,000 up to \$350,000.
- Credit Decision: By Lender

# **Minority Prequalification Loan Program:** **Eligibility and Amount**

- Are at least 51 percent owned and managed by a racial or ethnic minority person(s);
- Meet SBA 7(a) Loan Guaranty Program size standards and general eligibility criteria;
- Are not engaged in speculation or investment in rental real estate;
- Maximum loan amount is generally limited to \$250,000.

# Thank You For Coming!!

- Please fill out evaluation form.
- Please let us know what other subjects you are interested in.