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

### **1. What is the Mission and Who Provides Assistance?**

- a. The mission of the 8(a) Business Development (BD) Program is to provide participating businesses with managerial, technical, and procurement assistance to assist them in achieving their full competitive potential.
- b. The 8(a) BD Program provides a logical, systematic approach to federal market access and enterprise growth to businesses owned and controlled by socially and economically disadvantaged individuals. The program promotes business development over a nine-year period. The participant's progress is monitored and measured, and developmental needs are determined by reviewing business plans annually. The program assists firms by facilitating the award of sole-source and limited-competition contracts and by providing business development assistance. The intent of the above assistance is to enable firms to compete successfully in the open market.
- c. The program provides the following management and technical assistance to program participants in support of their business plans:
  - (1) Specialized training;
  - (2) Individual counseling assistance; and
  - (3) High-level executive development support.
- d. Assistance is provided to program participants by SBA's Headquarters staffs, leveraged by resource partners including, but not limited to, Small Business Development Centers (SBDCs), the SCORE, national trade and professional associations, and state and local service providers.

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

The statutory authority for the 8(a) BD Program is contained in §§ 7(j), 8(a) and 8(d) of the Small Business Act of 1953, as amended. Regulatory authority, based on statutory authority, is found in Title 13, Code of Federal Regulations (CFR), Parts 105, 121, and 124. This SOP interprets both the statute and regulations to assist SBA staff in conducting the 8(a) BD Program. In resolving any programmatic issue, the following order of precedence applies:

- a. Statute;

- b. Regulations;
- c. Decisions of the Administrative Law Judge in the Office of Hearings and Appeals <[www.sba.gov/oha/appeals.html#new](http://www.sba.gov/oha/appeals.html#new)>; and
- d. Standard Operating Procedure (SOP).

**3. What is the Purpose of this SOP?**

This SOP provides internal policy and procedural guidance for SBA employees to use in performing their official duties. It delineates the responsibilities of Headquarters components and field offices in implementing the 8(a) BD Program.

**4. Can Provisions of this SOP be Waived?**

The Administrator is the only SBA official authorized to waive the SOP. A District Director (DD) may request waiver of the provisions based on the circumstances at hand. The request must be in writing, addressed to the Associate Administrator for Business Development (AA/BD). It must be specific, citing the provisions of the SOP to be waived, and must provide a detailed justification for the waiver. The DD may forward the request by e-mail, facsimile (fax), or mail. Headquarters will acknowledge the request within two working days of receipt. If the AA/BD agrees with the DD that the SOP should be waived based on the circumstances presented, he or she will forward the request to the Administrator. If the AA/BD does not agree with the DD, he or she has authority to advise the DD that the request for a waiver of the SOP is denied.

**5. What are the Primary Responsibilities of the Office of Business Development?**

- a. The Office of Business Development is responsible for the national management of the 8(a) BD Program and all other services and activities authorized under §§ 8(a), 8(d), and 7(j) of the Small Business Act. These functions include, but are not limited to:
  - (1) Issuing program policy and plans;
  - (2) Coordinating and planning with other SBA offices to insure program integration with other Agency programs;
  - (3) Marketing the program;
  - (4) Coordinating appeals;
  - (5) Evaluating program implementation; and

- (6) Rendering final decisions on program eligibility, changes of ownership, mentor-protégé agreements, and release of requirements from the program.
- b. The Office of Business Development consists of these offices:
  - (1) Office of Certification and Eligibility;
  - (2) Office of Management and Technical Assistance;
  - (3) Office of Outreach and Marketing; and
  - (4) Office of Program Review.

**6. What are the General Responsibilities of the Office of Certification and Eligibility?**

The Office of Certification and Eligibility (OCE) supports the Office of the AA/BD with respect to determinations of initial and continuing program eligibility. It provides support in terms of program planning and policy formulation. The Office's functions include, but are not limited to, the following:

- a. Processing applications for program participation and requests for reconsideration of decisions declining applications;
- b. Processing requests to graduate, terminate, voluntarily withdraw or suspend 8(a) participants;
- c. Processing change of ownership requests; and
- d. Providing technical assistance and support to DOs regarding outreach to potential program participants and continuing eligibility issues.

**7. What are the General Responsibilities of the Office of Management and Technical Assistance?**

The Office of Management and Technical Assistance administers most of the services provided to 8(a) firms that are not provided by the District Offices. These services include sole-source and multiple-award contracting services, mentor-protégé program services, subcontracting assistance, and 7(j) technical and management training assistance, including technical evaluation of unsolicited and/or solicited proposals.

**8. What are the General Responsibilities of the Office of Outreach and Marketing?**

The Office of Outreach and Marketing is responsible for outreach and marketing of the 8(a) BD Program. These responsibilities include:

- a. Overseeing and executing national and local seminars, conferences and other similar activities;
- b. Creating marketing products and updating the 8(a) BD web page;
- c. Establishing co-partnerships with other agencies and/or other groups to market the program;
- d. Reaching out to prime contractors, federal agencies, and the 8(a) BD community;
- e. Reciprocating with other certification entities; and
- f. Promoting and assisting the District Offices with their overall program objectives and initiatives.

**9. What are the General Responsibilities of the Office of Program Review?**

The Office of Program Review is responsible for reviewing currently certified 8(a) BD firms. This office functions separately from the Office of Certification and Eligibility.

**10. What are the District Office Responsibilities for the 8(a) BD Program?**

The DO is responsible for implementation of 8(a) BD Program activities within the geographical area serviced by the office. The DOs:

- a. Develop and implement marketing plans that promote the program by addressing the community of potential program participants, the local acquisition community, and the local community of management and technical assistance service providers.
- b. Provide ongoing management and technical assistance to participants through the use of internal resources and coordination of assistance provided by resource partners. Training should also address business management and contract administration.
- c. Identify contract opportunities and accept requirements into the program (*see* Chapter 4A). Accepting the requirement means that SBA evaluates the appropriateness of a requirement to be performed for business development purposes by current 8(a) BD participants, then documents that analysis in the form of a letter of acceptance. The DOs match sole

source awards with eligible participants, and execute and administer 8(a) BD contracts not awarded directly by procuring agencies with delegated 8(a) contracting authority.

- d. Conduct annual reviews of participants' accomplishments and compare accomplishments against business plan objectives. The DOs determine whether participants are in compliance with program requirements.
- e. Recommend program termination, graduation, or suspension, as appropriate.
- f. Recommend action on changes of ownership and mentor-protégé agreements.
- g. Review management and teaming agreements, render final determinations for joint ventures, and conduct field visits.
- h. Insure that participants submit all required documentation on a timely basis.

**11. What definitions apply?**

Day. Unless otherwise specified, day means calendar days.



## **CHAPTER 2A: PREPARING AND SUBMITTING APPLICATIONS**

### **1. What are the Contents of Chapter 2?**

- a. Due to the complexity of the procedures, Chapter 2 is divided into 5 subchapters. The entire chapter should be read and understood before any work is attempted in any area. To the extent possible, each subchapter should be viewed as stand-alone procedures. In some instances, questions or text is nearly duplicative, but this is intentional and necessary for clarity.
- b. Subchapter 2A addresses procedures on preparing and submitting applications.
- c. Subchapter 2B addresses procedures on screening applications.
- d. Subchapter 2C addresses procedures on reviewing applications.
- e. Subchapter 2D addresses procedures on the final determination of individual and business eligibility.
- f. Subchapter 2E addresses procedures on reconsiderations and appeals.

### **2. How Does the District Office Respond to an Individual Who Requests Information About the 8(a) Business Development Program?**

The District Office (DO) will encourage potential 8(a) Business Development (8(a) BD) program applicants to attend an information session to obtain information regarding the program and its eligibility criteria prior to filing an application. The DO can also refer the applicant to SBA's website for forms, specific eligibility criteria and overall information on the program.

### **3. What Is the Information Session?**

The information session is a meeting between potential 8(a) BD applicants and SBA staff and/or resource partners. This session may take the form of a group workshop involving several potential applicants or it may be a one-on-one interview with a single potential applicant.

### **4. What Is the Purpose of the Information Session?**

The purpose of the information session is to provide potential applicants with information about the 8(a) BD Program, including eligibility and the application process. After attending a session, a potential applicant should be able to

determine if participation in the program is a good idea for his or her business. Further, a potential applicant should be able to look at the disadvantaged status, management capability, and financial and operating capacity of his or her firm and reasonably assess whether or not the firm is eligible for the 8(a) BD Program.

**5. Is a Workshop or Interview Mandatory for an Individual to Obtain an 8(a) BD Application?**

Attendance at a workshop or interview is not a prerequisite to obtaining an application.

**6. Who Conducts the Information Session?**

SBA staff or resource partners designated by the District Office, such as SCORE or Small Business Development Centers (SBDCs), conduct the information session, whether in the form of a workshop or an interview.

**7. What Topics Are Covered in the Information Session?**

The following topics are covered in the information session:

- a. The basic philosophy of the 8(a) BD Program, including appropriate statutory and policy requirements;
- b. Eligibility requirements, including U.S. citizenship and good character (integrity);
- c. Application forms (including a discussion of the penalties under federal law for false statements in the certification process and a recommendation for the applicant to keep copies of all application documents submitted);
- d. The requirement for submission of financial statements;
- e. Representation (it should be made clear in the session that it is not necessary to retain representation to assist in the preparation and submission of SBA applications and that representation has no influence on the application process);
- f. General requirements for program participation, such as annual reviews and continuing eligibility requirements; and
- g. The availability of SBA management and financial assistance and outside resources.

**8. Who Is Responsible for the Preparation of an 8(a) BD Application?**

The applicant is responsible for completing an application package. The Business Opportunity Specialist (BOS) in the Central Office Duty Station (CODS) assigned the application is responsible for answering the applicant's questions and providing information, if needed. Prior to application, potential applicants may seek information from their local District Office. If the applicant needs in-depth assistance, SBA may refer the applicant to an appropriate resource partner.

**9. Who Screens and Processes the Application?**

- a. The screening and processing of applications not owned by an Alaska Native Corporation (ANC) is conducted by the BOS in the CODS serving the territory where the applicant's principal place of business is located. SBA Form 1010 designates the territories served by each CODS. The applicant concern must forward its application to the appropriate CODS.
- b. The Alaska District Office reviews all applications by ANC-owned concerns for completeness, regardless of where the concern is located, and serves as a liaison during the processing of the application. Other SBA offices receiving these applications must forward them immediately to the Alaska District Office. Offices receiving inquiries from an ANC-owned concern seeking to submit an application must advise the concern to submit its application directly to the Alaska District Office. Unless otherwise specified, future references to the CODS in this chapter include the Alaska District Office.
- c. Upon receipt of an application, the CODS and Alaska District Office must stamp it to indicate the date of receipt and immediately enter pertinent information into the Certification Tracking System (CTS). Due to proximity and expertise, ANCs use the Alaska District Office to process applications; the other CODS do not process applications from ANCs.

**10. Does the CODS Staff have the Authority to Disclose Any Information to an Individual Regarding His or Her Application?**

The CODS staff may not inform an applicant or its representative of actions, recommendations or decisions concerning a formal application. The CODS staff may advise an applicant about the stage of processing of an application, but may not divulge information to the applicant or its representatives regarding any recommendations or actions. In all cases, SBA staff will remind the applicant that the AA/BD makes the final decision to approve or decline an application.

### **11. Who May Request Information Regarding the Status of the Application?**

Only an authorized representative listed on the application as an owner, officer director, or consultant may request information regarding an application's status.

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

Except for the special requirements for concerns owned by Indian Tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), and Community Development Corporations (CDCs) (*see* 13 CFR 124.109, 124.110, and 124.111), all applicants are required to submit the following documentation, including any required attachments, for an eligibility determination:

- a. SBA Form 1010, "Application for 8(a) Business Development (BD) and Small Disadvantaged Business (SDB) Certification." The applicant owner(s), partner(s), member(s), or, if a corporation, those designated on the form, must complete and sign SBA Form 1010. Concerns owned by Indian Tribes, ANCs, Native Hawaiian Organizations (NHOs) and Community Development Corporations (CDCs) must complete the appropriate SBA Form 1010B. Since an incomplete form may delay processing the application, the BOS must remind the applicant to complete all headings and attach all required supporting documents noting "N/A" (not applicable) under those headings not applicable.
- b. SBA Form 413, "Personal Financial Statement."
  - (1) Each individual upon whom eligibility is based and his or her spouse must file a separate, detailed personal financial statement. The statement must include all assets owned by the individual, including any ownership interest in the applicant concern, personal assets and the value of his or her personal residence.
  - (2) Married individuals must provide separate financial statements showing the value of each spouse's personal assets and liabilities (*see* 13 CFR 124.104). For jointly held assets in which the ownership is held equally by both spouses, one half the value of the asset should be listed on each form. For other shared assets, the value of the percentage of ownership held by each individual should be listed on that person's form. If assets listed on a non-disadvantaged spouse's SBA Form 413 were included on the disadvantaged spouse's SBA Form 413 and would cause the disadvantaged spouse to exceed the \$250,000 net worth limitation for economic disadvantage, the applicant must provide:
    - (a) In non-community property states, documentation of the non-disadvantaged spouse's ownership such as bank

statements, brokerage account statements, deeds and titles to vehicles.

- (b) In community property states, the applicant also must file (1) evidence of each individual's community property and separate property and (2) if an interest in community property would cause the disadvantaged spouse's net worth to exceed the limitation for economic disadvantage, evidence that the disadvantaged spouse has waived enough of his or her interest in the community property (that is, through a transmutation agreement) that his or her net worth does not exceed the limitation for economic disadvantage. *Matter of Philip Hawkins Architect, Inc. + Associates*, SBA No. BDP-197, at 3-5 (2003) (Transmutation agreement not required to prove disadvantaged husband's 51 % ownership of applicant concern if his combined separate and community property interests in applicant concern totaled at least 51%). Property that is not community property must be shown on SBA Form 413 as the separate property of the owning spouse.
- c. SBA Form 912, "Statement of Personal History." Each individual upon whom eligibility is based, each proprietor, each partner, each management member, each officer, each director, each owner of more than 10 percent of the stock in the applicant concern, and any other person, including a hired manager, who has authority to speak for and commit the concern in the management of the business, must complete this form. If there are reasons to question the participation of any Advisory Board members or Executive Committee members, SBA may also require those individuals to complete an SBA Form 912.
- d. FD 258, "Fingerprint Card." Any individual indicating on SBA Form 912 that he or she has an arrest record must submit a completed SBA Fingerprint Card, FD 258. **THE CARD CANNOT HAVE HOLES, STAPLES OR ADDITIONAL MARKINGS, AND MUST BE COMPLETED IN BLACK INK.**
- e. Business Organization Information.
  - (1) If the applicant is a corporation, it must provide copies of:
    - (a) Articles of Incorporation filed with the state;
    - (b) By-laws, including all amendments;

- (c) Minutes of all shareholders' meetings for the past two years, especially minutes of annual meetings involving the election of Directors;
  - (d) Minutes of Board of Directors' meetings for the past two years, especially minutes of annual meetings involving the election of Officers;
  - (e) Stock certificates (front and back);
  - (f) The stock register;
  - (g) Any stock option plans;
  - (h) Any buy/sell agreements;
  - (i) Any voting agreements;
  - (j) A certificate of good standing in the state of incorporation; and
  - (k) If the firm is not operating in the state of incorporation, a certificate to operate as a foreign corporation (certificate of authority) and a certificate of good standing in the state of operation.
- (2) If the applicant is a sole proprietorship and is operating under an assumed or fictitious business name, i.e., a name other than the legal name of the individual, it must provide copies of the Assumed Name Certificate, Fictitious Business Name Statement, or DBA filings.
- (3) If the applicant is a partnership, it must provide copies of the Partnership Agreement, including any buy/sell agreements and any voting agreements.
- (4) If the applicant is a Limited Liability Company, it must provide copies of:
- (a) Articles of Organization filed with the state;
  - (b) Operating Agreement (if the applicant is established in a state where LLCs have a limited life, the operating agreement must state that the duration of the existence of the LLC is at least nine (9) years);
  - (c) Minutes of all Members' meetings for the past two years;
  - (d) Any buy/sell agreements;

- (e) Any voting agreements;
  - (f) A certificate of good standing; and
  - (g) If the firm is not operating in the state of organization, a certificate to operate as a foreign corporation (certificate of authority) and a certificate of good standing in the state of operation.
- f. Federal Income Tax Returns.
- (1) Each individual upon whom eligibility is based, each general partner, each management member, each officer, each director, and each owner of more than 10 percent of the stock of the applicant concern must provide signed copies of personal Federal tax returns filed for the two years preceding the date of application, including all W-2 forms, schedules and other attachments. If an individual listed above is married and filing separately, his or her spouse must also provide signed copies of complete tax returns for the same period.
  - (2) If the applicant concern is a sole-proprietorship, the owner must submit copies of Schedule C from the personal tax returns for the three years preceding the date of application.
  - (3) If the applicant is organized as a partnership, corporation or LLC, it must submit copies of business Federal tax returns filed for the three years preceding the date of application, including all schedules and other attachments.
  - (4) To ensure the accuracy of tax information submitted during the application process and also during the business development phases of the 8(a) BD Program, the applicant must complete IRS Form 4506T (Request for Copy or Transcript of Tax Form) for the firm and each individual upon whom eligibility is based, each general partner, each management member, each officer, each director and each owner of more than 10 percent of the stock of the applicant concern. The applicant must also submit an IRS Form 4506T for affiliated firms.
  - (5) If any tax return submitted to SBA by an individual or the applicant concern reflects a federal tax liability, the taxpayer must provide SBA with copies of cancelled checks for full payment of the tax liability or a copy of a repayment plan signed by IRS along with evidence that all payments under the plan are current.
- g. Business Financial Statements. The applicant must submit a copy of the last three fiscal year-end balance sheets and income statements as well

as an interim financial statement (no older than 90 days prior to the submission of the application), including a balance sheet and an income statement with an aging of accounts receivable and accounts payable. Extraordinary items must be explained.

- h. Additional Requirements. The applicant must provide:
- (1) A brief narrative describing the history and description of the business.
  - (2) A resume for all individuals claiming disadvantaged status, each officer, each director, each key employee and each owner of more than 10 percent of the stock of the applicant concern. The personal resume must indicate in chronological order, education, technical training, and business and employment experience with the employer's name, dates of employment, type of work and duties for each position. The resume must reflect all positions held by the individual, and any gaps in dates of employment must be explained.
  - (3) Information from the applicant firm's bank or other financial institution to document any available line of credit or other financing arrangements (long or short term) plus complete copies of any loan agreement(s), including any shareholder, officer or partner loans and/or inter-company loans.
  - (4) Copies of signature cards for all business bank accounts, or a letter from the bank indicating who has signature authority and how many signatures are required to transact business as well as any limitations placed on the account.
  - (5) For construction firms, a statement of the single and aggregate bonding limit from the firm's surety, if applicable.
  - (6) Copies of any licenses required to conduct business, including state and local business licenses (as required by law) and other special licenses, such as Contractor's, CPA, professional engineer, etc.
  - (7) Information regarding any affiliates, including all information necessary to determine size, such as tax returns showing the affiliate's receipts for the past three fiscal years and/or the numbers of employees on the most recent company payroll records.
  - (8) Any applicant owned by a trust must submit a copy of the trust agreement. The trust agreement must specify whether or not the trust is revocable and identify the grantor(s), trustee(s), and current beneficiary(ies).



- (9) SBA Form 1623 (Certification Regarding Debarment, Suspension, and other Responsibility Matters).
- (10) If waiving the 2-year rule, copies of contracts or invoices demonstrating performance of work in the industry for which the applicant seeks 8(a) certification.
- (11) Evidence of registration of the firm in the Department of Defense's (DoD) Central Contractor Registration (CCR). Please see <http://www.ccr.gov/>.
- (12) A narrative statement of economic disadvantage from any individual claiming disadvantaged status. The statement must reflect how their ability to compete in the free enterprise system has been impaired due to discriminatory practices against them due to their identification as a member of a designated group.
- (13) If the individual is not a member of a group designated by SBA as socially disadvantaged and claims disadvantaged status, a narrative statement of social disadvantage. The statement must demonstrate social disadvantage by a preponderance of evidence. *See* 13 CFR 124.103(c).
- (14) If an individual claiming disadvantaged status is a foreign born national, evidence of U.S. citizenship, such as a U.S. passport or naturalization papers.
- (15) If any sole proprietor, partner, management member, officer, director, or holder of more than a 10 percent ownership interest in the applicant, or a household member, is an employee of the federal government holding a position of GS-13 or above, that individual must submit a letter of no objection from his or her employer. *See* 13 CFR 105.301.
- (16) Please refer to FAR 3.601. Except as specified in 3.602, a contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.

**13. 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 the 8(a) BD Program?**

Concerns owned by Indian Tribes, ANCs, NHOs, and CDCs must submit the same information as other concerns in order to establish program eligibility except to the extent that requiring this information is inconsistent with 13 CFR 124.109 (Indian Tribes and ANCs), 124.110 (NHOs) and 124.111 (CDCs). Further, in several instances, concerns owned by these special entities must submit additional information. The main areas of differentiation for information required by concerns owned by these special entities are as follows:

- a. Documentation not required by concerns owned by these special entities.
  - (1) Social disadvantage. Indian Tribes, ANCs, NHOs and CDCs, as defined in 13 CFR 124.3, are considered socially disadvantaged and concerns at least 51 percent owned by them do not have to submit documentation on social disadvantage. However, CDCs must evidence that they have received financial assistance under 42 USC § 9805, et seq.
  - (2) Economic disadvantage except Indian Tribes. ANCs, NHOs and CDCs, as defined at 13 CFR 124.3, are considered economically disadvantaged and concerns owned by them do not have to submit documentation on economic disadvantage, including SBA Form 413 by individuals responsible for their management and control. However, Indian Tribes themselves must submit documentation of economic disadvantage as detailed in 13 CFR 124.109(b)(2). Concerns owned by economically disadvantaged Indian Tribes are considered economically disadvantaged, but they must have a “sue and be sued” clause in their Articles of Incorporation, Articles of Organization, or Partnership Agreement as detailed in 13 CFR 124.109(c).
  - (3) Affiliation. The general affiliation rules do not apply to concerns owned by these special entities. SBA determines the size of concerns owned by these special entities without regard to their affiliation with the special entities or any other business enterprise owned by these special entities, unless the Administrator determines that one or more concerns owned by the special entities have obtained a substantial unfair competitive advantage within an industry category. (See 13 CFR 124.109(c)(2), 124.110(b) and 124.111(c).)
- b. Additional documentation requirements for Indian Tribes or concerns owned by them.

- (1) Economic disadvantage. Indian Tribes themselves must submit documentation of economic disadvantage as specified in a.(2) above.
  - (2) Tribal existence. An Indian Tribe must submit all governing documents such as its constitution or business charter as well as evidence of its recognition as a tribe eligible for the special programs and services provided by the United States or its state of residence.
  - (3) Sue and be sued clause. The concern owned by an Indian Tribe must have a “sue and be sued” clause in its Articles of Incorporation, Articles of Organization, or Partnership Agreement as specified in a.(2) above. For additional guidance on “sue and be sued,” please see Chapter 2D.
- c. Other significant considerations.
- (1) Ownership by these special entities of another concern in the same primary North American Industry Classification System (NAICS) code. These special entities may not own 51 percent or more of another concern which, either at the time of application or within the previous two years, operates or operated in the 8(a) BD Program under the same primary NAICS code as the applicant.
  - (2) Control and management of concerns owned by Indian Tribes and ANCs. Indian Tribes and ANCs may manage and control concerns owned by them through non-tribal members if SBA determines that such management is required to assist the concern’s development, these special entities will retain control of all management decisions, and a written management development plan exists showing how disadvantaged tribal members will develop managerial skills sufficient to manage the concern or similar tribally-owned concern in the future.
  - (3) ANCs, Indian Tribes, NHOs and CDCs. These entities must meet the definitions at 13 CFR 124.3.

## **Chapter 2B: APPLICATION SCREENING**

### **1. What Is the Purpose of the Screening Process?**

Applications for participation in the 8(a) Business Development (8(a) BD) Program undergo a screening process so that SBA can identify any deficiencies or matters that may need further explanation. This process is necessary in order to ensure that applications are complete and ready for eligibility review (processing).

### **2. Who Is Responsible for Screening Applications?**

- a. For all applicants except for concerns owned by Alaska Native Corporations (ANCs): The Business Opportunity Specialist (BOS) in the Office of Certification and Eligibility (OCE)/ Central Office Duty Station (CODS) serving the territory where the applicant's principal place of business is located screens the application. SBA Form 1010 designates the territories served by each CODS.
- b. For applicants owned by ANCs: The Alaska District Office initially reviews all applications by ANC-owned concerns for completeness, regardless of where the concern is located, and serves as a liaison during the processing of the application. Other SBA offices receiving these applications must forward them immediately to the Alaska District Office. Offices receiving inquiries from an ANC-owned concern seeking to submit an application must advise the concern to submit its application directly to the Alaska District Office. NOTE: Unless otherwise specified, all references to CODS in this chapter include the Alaska District Office.

### **3. How Long Does the CODS Have to Screen an Application?**

The CODS has 15 calendar days to screen an application for completeness and clarity. This 15-day screening clock begins to run as soon as the CODS receives the application. Upon receipt of an application, the CODS must stamp it to indicate the date of receipt and immediately enter pertinent information into the Certification Tracking System (CTS). In performing the screening, the BOS must verify that the applicant has completed all the required forms, enclosed all required documents, and explained any issues of eligibility that require clarification.

**4. What Must the CODS Do If an Application Is Incomplete?**

- a. If the BOS completes the screening process and concludes that an application is incomplete or unclear, he or she must send a deficiency notice to the applicant. This notice must identify missing information or raise specific questions regarding the application. The deficiency notice must be sent to the applicant via e-mail, fax, certified or first class mail. The BOS must attempt to clear up any problems with the application by e-mail, if possible. The applicant firm must respond to this deficiency notice within 15 calendar days of receipt of the letter, fax or e-mail. If the application is found to be significantly incomplete, the application may be returned to the applicant with a letter outlining the missing information or deficiencies, and no further processing is required. The applicant may resubmit a new application at any time.
- b. Copies of all letters and e-mail messages to the applicant as well as the applicant's responses must be placed in the application file. If the BOS contacts the applicant via telephone, he or she may make a written record of that conversation and add it to the application file.

**5. Can the Applicant Decide to Withdraw Its Application?**

The applicant may withdraw its application at any time prior to the point when the Associate Administrator makes his/her decision, even after receiving the deficiency notice. If the applicant decides to withdraw its application, it must inform the CODS of its intent to do so in writing. Upon receipt of this letter, the CODS must immediately return the entire application package to the applicant firm. The applicant may then resubmit a new application at any time.

**6. What Should the CODS Do If the Applicant Fails to Respond to the Screening Deficiency Notice?**

If the applicant does not respond to the deficiency notice within 15 calendar days of its receipt, the BOS must return the entire application package to the applicant by mail. The BOS must attach a cover letter to the file explaining to the applicant why its application has been returned.

**7. What Should the CODS Do If the Applicant Responds to the Screening Deficiency Notice?**

If an applicant responds to the deficiency notice, the CODS has 10 calendar days to review the applicant's response to determine whether to return it to the applicant as incomplete or accept the application for processing.

**8. What Happens If the CODS Determines the Application Is Still Incomplete After Reviewing the Applicant's Response to the Screening Deficiency Notice?**

If the CODS determines that the application remains significantly incomplete after reviewing the applicant's response to the deficiency notice, it must return the entire application package along with all copies to the applicant via First Class or certified mail. The CODS will attach a cover letter to the application listing the deficiencies not corrected by the applicant and identifying any matters that require further explanation. This cover letter will be signed by the Chief or Team Leader of the CODS.

**9. What Happens If the CODS Accepts the Application for Processing?**

If the CODS accepts the application, it must immediately notify the applicant by first class mail, e-mail, or fax transmission. The BOS may determine that although the application is substantially complete, additional items or clarification may be required. If this has been determined, a letter advising the applicant of what is still required will be sent via email, fax or first class mail and allow the applicant five (5) calendar days to provide the additional material and/or clarification. The applicant will be notified of the ending date for the 90 day clock unless there is an SBA Form 912 requiring Office of the Inspector General (OIG) processing. Once the CODS accepts an application, the 90-day processing clock begins to run and the CODS will immediately enter the acceptance date in the Certification Tracking System (CTS). The 90-day processing also stops for size determinations.

**10. Does an SBA Form 912 (Statement of Personal History) Indicating an Arrest Record Suspend the 15 Day Screening Period or the 90 Day Processing Period?**

If SBA Form 912 indicates an individual has an arrest record, the BOS will complete the screening of the application within the standard time frame. However, upon acceptance of the application for processing, the BOS will enter the date of transfer of the case to the OIG (Investigations Division, Office of Security Operations (OIG/OSO)) in the CTS. This entry freezes the 90-day processing clock.

**11. Does the CODS Inform the Applicant that the 90 Day Processing Period Has Been Suspended Due to OIG Review of SBA Form 912?**

The CODS will inform the applicant that it has referred the SBA Form 912 to the OIG/OSO for review and that this referral suspends the 90 day processing period. However, during the review by the OIG, the CODS may not make statements of any kind regarding any action being taken by the OIG/OSO to anyone outside of

the Agency. The CODS must forward any requests from applicants or their representatives for information concerning actions by the OIG to the OIG/OSO for response. The OIG/OSO will respond back to the CODS, who will, in turn, respond back to the firm or representative. The OIG/OSO deals directly only with the CODS, and does not deal directly with the firm or the firm's representative.

## **12. How Does a BOS Review and Screen SBA Form 912?**

- a. The BOS will review the original copy of each individual's SBA Form 912 as part of the application screening process. If the applicant has not signed the original or has failed to answer any of the questions, the BOS will notify the applicant of the required corrections. If an individual has answered "No" to all of the arrest record questions (questions 7-9), the BOS will put the SBA Form 912 in the application file.
- b. When reviewing an individual's statement of personal history for completeness during the screening process, a BOS will verify the following:
  - (1) Have completed forms been provided for all individuals claiming disadvantaged status and also for all officers, directors, general partners, managing members, holders of more than 10 percent ownership interest, managers with authority to speak for and commit the applicant concern, and individuals with signatory authority on the business bank account?
  - (2) Are all blocks completed on the form?
  - (3) Have all names used and the dates of use been included? Has the birth name been included?
  - (4) Does the ownership percentage listed in Block 4 correspond with information reported on the SBA Form 1010, the stock certificates, tax returns, and other documentation in the file?
  - (5) If the individual claiming disadvantaged status was born outside the U.S, has verification of U.S. citizenship been provided?
  - (6) Has the individual answered "Yes" to any of the arrest record questions? If so, has he or she submitted a completed FD-258 Fingerprint Card? If he or she has not submitted this form, has one been requested? Did he or she provide details of the arrest (*i.e.* fines paid, jail time, probation served and court disposition papers)?

**13. What Does the CODS Do When an SBA Form 912 Indicates That an Individual Has an Arrest Record?**

- a. Each individual who indicates that he or she has an arrest record must submit a completed, SBA specific FD-258 Fingerprint Card. NOTE: THIS CARD MUST NOT HAVE HOLES, STAPLES, ADDITIONAL MARKINGS OR ANY ALTERATIONS, AND MUST BE COMPLETED IN BLACK INK.
- b. When fingerprints are required, they must be provided before an applicant can receive SBA assistance. The BOS must tell applicants that it is their responsibility to supply legible fingerprints and direct them to go to local law enforcement agencies for assistance.
- c. After the applicant returns a fingerprint card to the CODS, the BOS will review it for completeness. The BOS will enter the SBA Office ID code and the name of the applicant firm on the reverse side of the card.
- d. The CODS will then forward the SBA Form 912 and completed Fingerprint Card to the OIG/OSO. The OIG/OSO then forwards the individual's Fingerprint Card to the FBI for review. The BOS will enter the transfer for OIG/OSO review in the CTS. This entry freezes the 90 day processing clock.
- e. The OIG/OSO sends information to the Assistant Administrator for Certification & Eligibility (AA/OCE) or his or her designee when (1) the FBI Name Check and/or the FBI Fingerprint results contradict what the applicant disclosed on his/her SBA Form 912 regarding their criminal history, or (2) the disclosed criminal history raises a question about the character of the applicant (for example, rape, child molestation, murder, tax evasion, financial fraud, etc.). Otherwise, a clearance memo will be sent by OIG/OSO directly to the CODS. If the OIG/OSO's report contains arrests and/or convictions not disclosed by the individual, the CODS must contact the individual and provide him or her with the opportunity to explain the reasons for failing to disclose them since Department of Justice regulations state that a deciding official will not use FBI identification records to disqualify an applicant "until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so." See 5 CFR 50.12.
- f. If a character evaluation referral is forwarded to the AA/OCE for clearance, the AA/OCE will determine whether further processing will be allowed and notify the CODS of the appropriate action



**14. Can the CODS Continue Processing an Application, If It Has Information Indicating That the Applicant May Have Committed a Crime?**

If the CODS obtains information from a credible outside source or from the applicant itself indicating that the applicant may have been involved in criminal conduct or activities, it must immediately telephone the appropriate Special Agent in Charge, Investigations Division, Office of Inspector General (SAIC/ID/OIG). This phone call must be followed by a written report of confirmation that includes all information developed from local sources. After consulting with the SAIC/ID/OIG, the CODS will determine whether it should continue to process the application. (For additional guidance in this area, *see* SOP 90 22 “Investigations Program”.)

**15. Does the CODS Obtain a Business Credit Report During the Screening Process?**

Normally, the CODS do not obtain a business credit report on the applicant and its affiliates until after it accepts an application for processing. However, if the CODS has any concerns regarding the business credit of an applicant firm during the screening process, it may immediately request a business credit report. Personal credit reports are not required, but the BOS may request them from the applicable District Office, if needed.

**16. How Does a BOS Review and Screen an SBA Form 1010?**

When reviewing SBA Form 1010 for completeness during the screening process, a BOS will verify the following:

- a. Have all numbered items been completed?
- b. Have all the information fields been completed, such as the date the business was established, the number of employees and CCR identification number?
- c. If any questions are marked “Yes,” is the required additional information included with the correct numbered attachment?
- d. Does the NAICS code correspond with the firm’s primary revenue area as verified by a review of its tax returns, business history and CCR profile?
- e. Has the firm been in business in its primary industry for at least 2 years? If the two-year rule is not met, is each of the waiver conditions addressed? Is the evidence sufficient to enable SBA to fully evaluate each waiver condition or is additional documentation needed? For more

detailed procedures on making this determination, please see Chapter 2D.

- f. If the applicant concern is a corporation, have the officers and directors been identified on page 2 and does this information correspond with the minutes of the meetings electing individuals to these positions?
- g. If the applicant concern is a partnership, have all general and limited partners been identified on page 2?
- h. If the applicant concern is a limited liability company, have all members been identified on page 2?
- i. If the applicant concern is a corporation, have all officers, directors and other applicable individuals signed?
- j. If the applicant concern is a partnership, have all partners signed?
- k. If the applicant concern is a limited liability company, have all members signed?
- l. Are all individuals claiming social disadvantage members of a designated group?
- m. If an individual claiming social disadvantage is not a member of a designated group, did he or she identify the basis of discrimination?
- n. If the individual claiming social disadvantage is a member of a designated group, does his or her last name appear to be consistent with the designated group? For example, if the individual's last name is "Smith" and he or she is claiming to be a Hispanic American, further clarification or proof of heritage may be required.
- o. If the individual claiming social disadvantage is an Alaska Native, does he or she meet the requirements of 13 CFR 124.3 (*i.e.* is at least one-fourth degree Alaskan Indian, Eskimo, or Aleut blood or other proof of ethnicity)?
- p. Native Hawaiians means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii. *See* 13 CFR 124.3.
- q. Any individual claiming as Native American must verify their membership in a State or Federally recognized tribe. If they are not members of either a state or Federally recognized tribe, they must supply information based upon the preponderance of the evidence.
- r. Is the economic disadvantage narrative sufficient for all individuals claiming disadvantage?

- s. Are all individuals claiming disadvantaged status U.S. citizens?
- t. If the applicant concern is owned through a trust, is that trust revocable and is the disadvantaged individual the grantor, the trustee and the sole current beneficiary?

**17. How Does a BOS Review and Screen the Résumés Submitted Along With an Application?**

When reviewing personal résumés for completeness during the screening process, the BOS will review the following:

- a. Are there résumés for each individual claiming disadvantaged status, as well as for each officer, director, partner, member, key employee, and holder of more than a 10 percent ownership interest?
- b. For those individuals required to provide personal tax returns, does the employment information on their résumés match their W-2 forms?
- c. Are there any gaps in employment?
- d. Is there a listing of the individual's duties and responsibilities with the applicant concern?
- e. Does someone's résumé reflect that he or she possesses the technical expertise needed for this type of business?
- f. Does a disadvantaged individual have the requisite managerial experience?
- g. Is clarification required regarding full time devotion by disadvantaged individuals?
- h. Does negative control exist through a non-disadvantaged individual's technical or managerial expertise? Please refer to 13 CFR 124.106.
- i. Review major areas of study in which the disadvantaged individual has degrees.

**18. How Does a BOS Review and Screen the Business History Summary?**

When reviewing the summary of an applicant's business history for completeness during the screening process, a BOS will verify the following:

- a. Does this document reflect the business start date?
- b. Does the start date correspond with the other information in the file, *i.e.*, SBA Form 1010, résumés, tax returns, meeting minutes?

- c. Does the history reflect changes in the legal structure of the business, if applicable?
- d. Does the history reflect changes in the business focus?
- e. Does the history reflect any major changes in ownership?
- f. Is the business activity accurately and clearly described?
- g. Does this description correspond with the firm's tax information and SBA Form 1010?

**19. How Does a BOS Review and Screen the Current Financial Statements?**

When reviewing an applicant's current financial statements for completeness during the screening process, a BOS will verify the following:

- a. Are the statements no older than 90 days from date of receipt by SBA?
- b. Are they for the full performance period (*i.e.*, from the beginning of the calendar or fiscal year to the ending date)?
- c. Are profit and loss statements and a balance sheet included?
- d. Have the statements been prepared in accordance with generally accepted accounting principals or an accepted cash basis?
- e. Are the aging schedules for accounts payable and receivable consistent with the interim balance sheet?
- f. Are any accounts payable or receivable significantly old?
- g. Do the balance sheets balance?
- h. Are current assets recorded properly?
- i. If the applicant concern is a dealer, wholesaler, or supplier, does the firm maintain any inventory?
- j. Does the firm have fixed assets? If so, are these fixed assets recorded properly?
- k. Are the fixed assets reported with depreciation or at actual value?
- l. Do the firm's fixed assets correspond with its type of business? For example, if the firm performs construction work does it have construction equipment?

- m. If there is a partner shareholder or officer loan, is there a copy of the loan document? Is this loan reflected on the individual's SBA Form 413, Personal Financial Statement?
- n. Are there loans or notes receivable from a shareholder, officer or partner?
- o. Has a copy of the loan or note been provided?
- p. Does the loan reflect generally accepted repayment terms? If not, is this item over-inflating the firm's assets?
- q. Does the firm have the ability to service debts?
- r. Are there any loans that are questionable or that may raise concerns regarding control?
- s. Do retained earnings reconcile with previous financial statements?
- t. Does the listed business equity match that reported on the Personal Financial Statements of the owners?
- u. Is the profit and loss statement correctly calculated?
- v. Does the profit and loss statement show revenues in the appropriate business activity?
- w. Is "Cost of Goods Sold" included?
- x. Are the line items properly recorded?
- y. If there is an expense for salaries for employees, are employees listed on SBA Form 1010?
- z. If there is an expense for workmen's compensation, are employees listed on SBA Form 1010?
- aa. Is the disadvantaged individual the firm's highest compensated officer or employee? If not, has an explanation of the salary structure been provided? Please see Chapter 2D for a list of questions that guide analysis of salary, management and control.
- bb. Are there any large subcontracting expenses that appear questionable?
- cc. Does the firm appear to be in compliance with the percentage of work requirements for its primary business?
- dd. Does the firm appear to have the necessary equipment, financial resources, working capital, *etc.*, to perform 8(a) contracts it may be awarded?

- ee. Are there questionable items listed on the statements, or have things changed significantly from the previous year end statement?
- ff. Are there indications that excessive withdrawals have occurred?
- gg. Does the firm have financing by non-disadvantaged individual(s) that would be considered critical financing? Also, is the loan payable upon demand?

## **20. How Does a BOS Review and Screen the Year End Financial Statements?**

When reviewing an applicant's year-end financial statements for completeness during the screening process, a BOS will verify the following:

- a. Are the statements in the file?
- b. Are the statements for the appropriate calendar or fiscal year end?
- c. Are the revenues in the same line?
- d. Are there any significant changes in any categories that create a concern? For example, have loans disappeared?
- e. What pattern are the revenues, profits, and losses showing? Is there a need to ask for clarification, such as an explanation of the reason for a downward trend or sudden revenue drop?
- f. Are there any discrepancies between the firm's tax returns and the statements? Are these discrepancies based on cash versus accrual? If not, is reconciliation required? Does taking into consideration cash versus accrual reconcile the accounts?
- g. Do the balance sheets correspond with the tax return schedules? For example, are there shareholder loans on the tax return schedules that are not reflected on the financial statements?
- h. Do the statements and corresponding tax returns reflect any conversions from accrual to cash accounting?

## **21. How Does a BOS Review and Screen the Bonding Information?**

When reviewing an applicant's bonding documents for completeness during the screening process, a BOS will verify the following:

- a. If the applicant concern is a construction firm, has it provided bonding information that includes its single-job and aggregate levels?
- b. Is a minimum contractor's bond required by the state?

- c. Who is the indemnitor or guarantor on the bonding? If it is a nondisadvantaged individual or entity, does this create a potential for negative control?

## **22. How Does a BOS Review and Screen the Credit Information?**

When reviewing information regarding an applicant's line of credit for completeness during the screening process, a BOS will verify the following:

- a. Have copies of all credit line agreements been provided?
- b. Are the agreements complete?
- c. Is the credit line exhausted? If not, how much credit is available?
- d. Are there sufficient lines of credit to finance the firm's operations?
- e. Is there a guarantor on the line of credit? If the guarantor is a nondisadvantaged individual, does this give him/her the power to exercise control over the firm?

## **23. How Does a BOS Review and Screen the Loan Information?**

When reviewing information regarding the loans held by an applicant for completeness during the screening process, a BOS will verify the following:

- a. Have copies of all loans listed on financial statements and tax returns been provided?
- b. Is there a guarantor for any of the loans? If so, is the guarantor a non-disadvantaged individual?
- c. Are the terms of the loan problematic? For example, does the loan agreement contain payable upon demand clauses, short repayment periods, high interest rates, burdensome collateral requirements, *etc.*?
- d. If there are shareholder loans to or from the firm, are these loans reflected on the relevant individuals' Personal Financial Statements?

## **24. How Does a BOS Review and Screen the Individual Tax Returns?**

When reviewing the individual tax returns for completeness during the screening process, a BOS will verify the following:

- a. Does the application include complete, personal Federal tax returns for the two most recent periods from all required individuals? (Returns are required from each person claiming disadvantaged status, as well as

from each officer, director, general partner, managing member, and holder of more than a 10 percent ownership interest.)

- b. Are any of the individuals who are required to submit personal income tax returns married? If so, did they file jointly with their spouses? If they are married and filed separately, did they also provide copies of their spouses' tax returns?
- c. Do the W-2 forms add up to the reported wages?
- d. Are all schedules and attachments included?
- e. Do the tax returns verify or contradict a claim of full-time devotion to the business by one or more disadvantaged individuals? For example, does the return indicate wages not contained on tax return or W-2 forms, foreign income tax credit or is there a "Schedule C" or "Schedule E" that would call into question a disadvantaged individual's full-time devotion or indicate outside business interests?
- f. If any of the disadvantaged individuals have outside employment or outside business interests, did they submit information reflecting the nature of the outside employment and its anticipated duration?
- g. Do the tax returns show that a disadvantaged individual receives the highest compensation from the firm?
- h. Has a properly completed IRS Form 4506T (Request for Copy or Transcript of Tax Form) been provided for all individuals required to submit personal income tax returns?
- i. Is the signature date on the IRS Form 4506T within the 60-day limitation set by the IRS?

## **25. How Does a BOS Review and Screen the Firm's Tax Returns?**

When reviewing the applicant concern's tax returns for completeness during the screening process, a BOS will verify the following:

- a. Has the applicant concern provided complete copies of its Federal business tax returns for the last three years? (Or, if the firm is a sole proprietorship, has the owner submitted his or her Schedule C for the last three years?)
- b. Have all schedules and additional statements been included?
- c. Are there any questionable items on the schedules or statements?
- d. Do the returns indicate that the firm has been operating in its primary industry for at least two years?



- e. Does the tax information correspond with the business financial statements for the same period?
- f. Can the wages of disadvantaged owners, officers or partners be verified, if applicable?
- g. Does the ownership percentage information correspond with the ownership percentages on SBA Form 1010 as well as with the stock certificates, partnership agreement or operating agreement?
- h. If the firm is an S Corporation or partnership, has it provided copies of all its Schedule K-1s?
- i. Has the applicant concern provided a properly completed IRS Form 4506T? If so, is the signature date on this form within the 60-day limitation set by the IRS?
- j. What do the trends indicate?

## **26. How Does a BOS Review and Screen the Bank Signature Card?**

When reviewing the applicant concern's bank signature cards for completeness during the screening process, a BOS will verify the following:

- a. Is the card for the BUSINESS bank account as opposed to a personal bank account?
- b. Does it reflect the appropriate name, legal structure, EIN number, and address of the applicant concern?
- c. Do the business' financial statements reflect more than one account? If so, have all signature cards been provided?
- d. Does a non-disadvantaged individual have unlimited signing authority?
- e. Do the disadvantaged individuals have unrestricted access to the bank account?
- f. Do signature titles correspond with other information? For example, is disadvantaged Mr. X listed as the President on SBA Form 1010, while the signature card lists Mr. X as the Vice President and non-disadvantaged Ms. Y as the President?
- g. Are there any limitations on signing authority? For example, are two signatures required for anything over a certain dollar level?

**27. How Does a BOS Review and Screen the Business Licenses?**

When reviewing the applicant concern's business licenses for completeness during the screening process, a BOS will verify the following:

- a. Are copies of all the required licenses provided (*e.g.* city, county, and state business licenses, *etc.*)?
- b. Are there any zoning issues that may create a problem?
- c. Are the licenses specific to the firm's business?
- d. Are licenses provided for all business locations?
- e. Whose name is on the license? If a non-disadvantaged individual holds the license, this may raise control issues.
- f. Does the business location covered by the license correspond with the address on the SBA Form 1010? If not, is the license non-transferable?
- g. Who is the business owner on the license?
- h. Are the licenses current or expired?

**28. How Does a BOS Review and Screen the Special Licenses?**

When reviewing the special licenses for completeness during the screening process, a BOS will verify the following:

- a. Is any special licensing required for the industry in which the firm operates, such as a contractor's license, professional certification, or EPA licensing? If so, has this licensing requirement been verified and met?
- b. Have copies of all the required special licenses been provided?
- c. Do the résumés or SBA Form 1010 refer to any licenses that have not been provided?
- d. Who is listed on the license? Who is the qualifier? Are there any concerns regarding potential control by non-disadvantaged individuals?
- e. If the license is not transferable, does it list the appropriate individuals and address?
- f. Are the licenses current or expired?
- g. If the firm is in the sales industry, has it provided a copy of its resale license, seller's permit or state sales tax permit? Does this license or

permit correspond to the correct location, legal structure, and business activity of the firm?

**29. How Does a BOS Review and Screen the Fictitious Business Name Statements?**

When reviewing the fictitious business name statements for completeness during the screening process, a BOS will verify the following:

- a. Was a fictitious name statement filed with the city, county, or state, if appropriate?
- b. Did a disadvantaged individual file the statement?

**30. How Does a BOS Review and Screen the Management and Consulting Agreements or Contracts?**

When reviewing the management and consulting agreements a firm has entered into for completeness during the screening process, a BOS will verify the following:

- a. Have copies of any agreements been provided?
- b. Do the agreements raise any concerns that need to be addressed? For example, is there an employment agreement involving consultant fees that exceed the amount of compensation paid to the disadvantaged owner?
- c. If a representative or outside consultant prepared the application, has a copy of the consultant's agreement been provided? If so, is the agreement in compliance with the 8(a) requirements regarding payments, fee structure, and contingency fees?

**31. How Does a BOS Review and Screen SBA Form 413 (Personal Financial Statement)?**

- a. When reviewing an individual's personal financial statement for completeness during the screening process, a BOS will verify the following:
  - (1) Has a completed statement been provided for each individual claiming disadvantaged status? If any of these individuals are married, have they submitted separate forms for their spouses?
  - (2) If the individual filing a Personal Financial Statement is married, are his or her assets and liabilities properly divided? Does the division of assets and liabilities correspond with any pre- or

postnuptial agreements? Have copies of these agreements been submitted?

- (3) If the individual is married and resides in a community property jurisdiction (Arizona, California, Guam, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington and Wisconsin), have all of his or her community property assets and liabilities been halved accordingly? Does the division of assets and liabilities correspond with any pre- or postnuptial agreements? Have copies of these agreements been submitted? Has a transmutation agreement, or other acceptable evidence, been provided?
- (4) Is the date on the first page of SBA Form 413 within 30 days of SBA's receipt of the application?
- (5) Is the individual's Personal Financial Statement signed and dated and does it include his or her social security number?
- (6) Are the "Assets" and "Liabilities" columns totaled properly, and is the individual's net worth correctly computed?
- (7) The BOS needs to be mindful of the amounts in the various categories of assets and liabilities, making sure there is an appropriate corresponding asset and liability. For example, if there is a mortgage on real estate, there should be a corresponding asset for real estate.
- (8) Do the cash and savings listed on the statement correspond with the Schedule B interest earnings shown on the individual's most recent tax return? If the firm is an 1120S, cash assets for the applicant firm should not be included on the SBA Form 413. If amounts appear significant, this may be an indication that assets for the business have been co-mingled on the form.
- (9) Does the Schedule B of the most recent tax return reflect dividend income? If so, does the individual's Personal Financial Statement show corresponding investment assets?
- (10) If the tax returns reflect any outside business holdings (*e.g.* in the Schedule B, C or E), are these holdings reported on the Personal Financial Statement?
- (11) Do personal tax returns contain any reported foreign income credits? Is there a corresponding asset reflected on the individual's Personal Financial Statement?

- (12) Is the cash surrender value of the individual's life insurance policy appropriately listed on his or her Personal Financial Statement? If other than term.
- (13) Are all assets properly reported and valued?
- (14) Do any assets appear to be undervalued or unreported?
- (15) Has each individual owner reported his or her share of equity in the applicant concern in the appropriate place on the Personal Financial Statement?
- (16) If the applicant concern is a corporation, has the individual's stock information been listed in Section 3?
- (17) Does the individual have IRS debt or Federal student loan debts? If so, has a repayment plan for IRS debts been provided along with evidence of current compliance with this plan?
- (18) Does Section 1 reflect all of an individual's income (rental, wages, 401(k)s, retirement benefits, IRAs, *etc.*)? Does this amount correspond with what is reported on the individual's personal tax returns?
- (19) Has the primary residence been listed. Compare the most recent tax return personal address with the addresses listed in section 4 to ensure that the applicant has included the primary residence. Is the address listed the same as the address where they claim to reside, if not a deduction for the equity in the residence may not be applicable.
- (20) Does the information listed in the "Notes Payable to Banks and Others" line item equal the "Current Balance" listings in Section 2?
- (21) Does Section 4 include all of the individual's property holdings and does the amount paid in property taxes shown on tax returns correspond with the value noted for the property?
- (22) Are the second mortgages (if any) correctly listed in Section 4 with the corresponding property for correct valuation of equity?
- (23) If Schedule E reflects rental income, are the rental properties included in Section 4? Conversely, are all rental properties in Section 4 also shown on the most recent Schedule E?
- (24) Does Section 5 include personal assets such as furniture, jewelry, clothing, *etc.*?

- (25) Do the amounts reported in Sections 2 through 8 correspond with the amounts listed in the assets and liabilities columns?
  - (26) If an individual is claiming disadvantaged status, does his or her adjusted net worth exceed \$250,000?
  - (27) Have business and personal items been co-mingled? Can the individual's actual net worth be determined?
  - (28) If the business financial statements or business tax returns reflect a shareholder's or officer's loan to the company, is it reported on the relevant individual's Personal Financial Statement as a receivable?
  - (29) If an individual has an obligation that is payable to the business, is it listed as debt on his or her Personal Financial Statement?
  - (30) Do any of the liabilities appear to be contingent, such as personal guaranty for debts owed by the applicant concern? If so, are they listed in Section 1 of the form under contingent liabilities?
- b. Checklist for Evaluating Economic disadvantage
- (1) SBA Form 413 should contain information no older than 30 days.
  - (2) If the applicant is married, ensure his/her spouse submits a separate SBA Form 413.
    - (a) If the applicant resides in a community property state, all community property items should be halved unless a separate property agreement has been executed or pre or post nuptial agreements have been provided.
    - (b) If applicants reside in a non-community property state, ensure that the SBA Form 413s reflect each individual's respective assets and liabilities. Jointly owned items should be halved accordingly.
  - (3) There should be no co-mingling of personal and business items. High accounts payable, ownership of business equipment, or business line of credit, etc., may be an indication that there is co-mingling of items.
  - (4) Compare the taxable interest recorded on the tax return, specifically, the Schedule B, with the savings and bank holdings reflected on the SBA Form 413. For example, do the amounts noted on the Cash on hand and in Banks and on the Savings Account lines of the SBA Form 413 seem appropriate given the interest income earned at the prevailing interest rate? If the amounts do not appear reasonable, investigation is needed. Did the

applicant transfer funds to a third party? Were funds injected into the applicant firm? For verification, copies of bank statements may be requested.

- (5) Personal tax returns can be used to assess whether an applicant has transferred assets. For instance, if the 1999 tax return, specifically the Schedule E, indicates ownership of a rental property, and the 2000 tax return does not indicate sale of the property, then the asset may have been transferred. An investigation is needed.
- (6) Assets, such as stock or rental property, that generate income will be reflected on the personal tax returns. Therefore, the assets on the SBA Form 413 should reconcile with the tax return. Capital gains are reported on the Schedule D, and income from real estate is noted on the Schedule E. Ensure the assets are reflected accordingly on the SBA Form 413. If the applicant claims real estate has been sold, request a copy of the sale agreement. The sale agreement will provide information regarding the sale proceeds.
- (7) If the applicant owns real estate property, review Schedule A or E (Since the taxes paid on a rental may be reflected in the Schedule E) of the tax return to verify the amount of real estate taxes paid. This is to ensure that real estate property has not been undervalued.
- (8) BOS may need to question whether Section 4 of the SBA Form 413 contains total or halved values. Section 4 should reflect total values, while the Real Estate line of the Assets column and the Mortgages on Real Estate line of the Liabilities column should reflect halved values. In addition, second mortgages should be reflected in Section 4 under the applicable property holding. This will impact the calculation for residential equity.
- (9) If applicable, the personal tax return will indicate ownership of retirement assets, such as IRA accounts, pension plans, etc. The BOS should review lines 15a and 16a of the tax return, and the W2 forms to verify ownership of these assets. The W2 forms may also reflect deferred compensation plans which would indicate some type of retirement program. The IRA and Other Retirement Account line of the SBA Form 413 indicate the current account balance of the retirement accounts. Obtaining statements may be necessary to verify current account balance of retirement accounts. See In the Matter of: Information Sciences Corp., SBA No. MSB-563 (1996).
- (10) Ownership of all outside businesses should be included on the SBA Form 413, either in Section 3 or Section 5, depending on their

legal structure. The value of each outside business should also be verified against the business financial statements and business returns. If applicable, the personal tax returns generally indicate ownership of an outside business on the Schedule C (sole-proprietorship) or E (partnership, limited liability company, S-corporation). However, ownership in a C-corporation will not be reflected on the personal tax return. Dividend reported on the Schedule B may also indicate ownership in an outside business.

- (11) Review the business tax returns and financial statements to verify the existence of shareholders' loans. If applicable, the SBA Form 413 should reflect the shareholders' loan on the Accounts and Notes Receivable line. On any outside business holdings or affiliate firms if there are loans to the business from the owner, are these reported as notes receivables?"?
- (12) Check debt from banks, finance companies, etc., which are listed in Section 2 and/or 7. If large, obtain additional information. What were the funds used for? If applicable, ensure the asset(s) associates with the debt is included on the SBA Form 413.
- (13) Ensure contingent liabilities are not included in the Liabilities column.
- (14) SBA Form 413 should include the business equity amount in Section 3 or 5 depending on the firm's legal structure.

### **32. How Does a BOS Review the Partnership Agreement?**

When reviewing an applicant concern's Partnership Agreement for completeness during the screening process, a BOS will verify the following:

- a. Was a current partnership agreement provided?
- b. Is a disadvantaged individual listed as the managing partner?
- c. Does the ownership structure comply with the 8(a) criteria?
- d. Does distribution of profits comply with the 8(a) criteria?
- e. Is there anything in the agreement that may affect ownership, control or management, *etc.*?
- f. When did the partnership begin? If it has changed, have copies of the original agreement and all subsequent changes been provided?
- g. Is the agreement properly signed and dated by the partners?



**33. How Does a BOS Review the Articles of Organization?**

When reviewing an applicant Limited Liability Company's Articles of Organization for completeness during the screening process, a BOS will verify the following:

- a. Were the articles and all amendments provided?
- b. Were these articles and amendments filed with the state?
- c. Is there a filing stamp or receipt of filing? If not, was evidence of filing with the state submitted?

**34. How Does a BOS Review the Operating Agreement?**

When reviewing a Limited Liability Company's Operating Agreement for completeness during the screening process, a BOS will verify the following:

- a. Is each member and respective ownership interest identified?
- b. Is a disadvantaged individual listed as the managing member?
- c. Does the ownership structure comply with the 8(a) criteria?
- d. Does the distribution of profits comply with the 8(a) criteria?
- e. Is there anything in the agreement that affects ownership, control and management, *etc.*?
- f. When did the Limited Liability Company begin? If it has changed, have copies of the original and the subsequent changes to the agreement been provided?
- g. Have all members signed the agreement?

**35. How Does a BOS Review the Articles of Incorporation?**

When reviewing an applicant corporation's Articles of Incorporation for completeness during the screening process, a BOS will verify the following:

- a. Have the articles and all amendments been provided?
- b. Were these articles and amendments filed with the state?
- c. Is there a filing stamp or receipt of filing? If not, was evidence of filing with the state submitted?
- d. Does the number of authorized shares correspond with the information listed on the stock certificates?

- e. Is the number of authorized board members included in the articles? If so, and if it has changed, were copies of the amendments changing the articles filed with the state?
- f. Is there more than one kind of stock (*e.g.* Preferred/Common, Voting/Nonvoting)?
- g. Is the company name the same or are there any amendments or *d.b.a.* (“doing business as”) filings?

### **36. How Does a BOS Review the Bylaws?**

When reviewing an applicant corporation’s bylaws for completeness during the screening process, a BOS will verify the following:

- a. Are the bylaws, including all amendments, complete?
- b. Are they signed?
- c. Are there any supermajority voting requirements?
- d. Does the structure of the board of directors comply with state law and the Articles of Incorporation? If not, are there copies of any amendments changing the structure?
- e. How many directors are authorized? Has the correct number been elected and accounted for?
- f. Do the authorized officer positions correspond with the titles and positions currently filled? For example, is one person the CEO and another the President, despite the fact that the corporate bylaws only authorize the office of President
- g. Is the distribution of profits in compliance with 8(a) criteria?

### **37. How Does a BOS Review the Shareholder Meeting Minutes?**

When reviewing an applicant corporation’s shareholder meeting minutes for completeness during the screening process, a BOS will verify the following:

- a. Have the meeting minutes electing the board of directors for the last two years been provided?
- b. Does the board structure comply with the corporate bylaws?
- c. Have the most recent shareholders meeting minutes been provided?
- d. Are there discussions of loans or business arrangements that cause concerns about control, affiliation, *etc.*?

**38. How Does a BOS Review the Board of Directors Meeting Minutes?**

When reviewing an applicant corporation's Board of Directors meeting minutes for completeness during the screening process, a BOS will verify the following:

- a. Have the meeting minutes for the last two years been provided?
- b. Do the minutes reflect the election of corporate officers?
- c. Have copies of all bylaw amendments been provided? For example, if the number of directors was reduced, is there a copy of the amendment reducing the board in the meeting minutes?
- d. Has a copy of the resolution to seek 8(a) status been provided?
- e. Are there any concerns regarding control by non-disadvantaged individuals? For example, did a non-disadvantaged owner recently hold the office of President, or has control of the firm been otherwise transferred within the last two years?
- f. Are there any other troubling issues or concerns? For example, is there a discussion in the meeting minutes of a merger, acquisition or joint venture that is not presented in the application or any other issue that may cause problems with control or ownership?
- g. Do meeting minutes reflect stock options? If so, has a copy of the stock option plan been provided?
- h. Have any stock options been exercised? Do the disadvantaged individuals still own 51 percent of the firm treating unexercised options held by non-disadvantaged individuals as exercised?

**39. How Does a BOS Review the Stock Certificates and Stock Ledger?**

When reviewing an applicant corporation's stock certificates and stock ledger for completeness during the screening process, a BOS will verify the following:

- a. Have copies of the front and back of all stock certificates been provided? Are stock certificate numbers legible?
- b. Has a copy of the stock ledger or register been provided?
- c. Do the stock certificates and the ledger information correspond with other ownership information in the file (*e.g.*, the SBA Form 1010, corporate tax returns, Personal Financial Statement, *etc.*)?
- d. Have the stock certificates been properly issued (*e.g.* do they comply with the bylaws, have they been signed, is the number of shares noted in upper right hand corner, *etc.*)?

- e. Has majority stock ownership been transferred from a non-disadvantaged individual to a disadvantaged individual within the last two years? If so, did this transfer comply with the 8(a) criteria?
- f. Do disadvantaged individuals own at least 51 percent of the aggregate of all outstanding shares of stock and at least 51 percent of all voting stock?

**40. How Does a BOS Review the Certificate of Good Standing?**

When reviewing an applicant corporation's certificate of good standing for completeness during the screening process, a BOS will verify the following:

- a. Is the certificate current or has it been issued within the most recent year end or fiscal year end filing?
- b. Does the certificate reflect the corporate name?
- c. Was the certificate issued by the state of incorporation?
- d. If the firm was incorporated outside the state where its corporate headquarters is located, is there a foreign corporation certification from the headquarters state?
- e. If the firm operates in more than one state, are there current certificates of good standing and foreign corporation certificates for these other states?

**41. How Does a BOS Review the Materials Regarding Size and Affiliation?**

When reviewing the size and affiliation data for completeness during the screening process, a BOS will verify the following:

- a. Do any documents in the application file indicate that the firm may have affiliates? If so, has any information been provided on these possible affiliates?
- b. Including affiliates, is the firm within size requirements?
- c. Do affiliated firms have an inappropriate amount of control over the applicant?
- d. Does any disadvantaged manager work for an affiliated firm (other than a wholly owned subsidiary of the applicant concern) and does this raise concern regarding his or her full-time devotion to the applicant concern?
- e. If there are affiliates, has each affiliate provided tax returns and financial statements?

**42. How Does a BOS Review the Contracts Held by the Applicant Concern?**

When reviewing an applicant concern's contracts and agreements for completeness during the screening process, a BOS will verify the following:

- a. If the firm has not been in business for two years, did it provide information on the contracts it holds, including copies of the contracts and letters of reference from its clients, to evidence a successful track record of performance?
- b. Have any letters been included from potential clients pledging contract support?

**43. What Other Information Must the BOS Review?**

When reviewing an application package during the screening process, a BOS will make the following additional inquiries:

- a. Have there been any personal or business bankruptcies? If so, has information on the current status of this bankruptcy been provided (including bankruptcy discharge documentation)?
- b. Does the firm or any of its principals have tax liens against them? If so, has all necessary information been provided regarding these liens? How significant are the liens?
- c. If a disadvantaged owner is married and resides in a community property jurisdiction, has he or she provided a transfer of community property interest agreement? Is the agreement notarized and does it transfer a sufficient percentage to allow for at least 51 percent unconditional ownership by disadvantaged individuals?
- d. Is the applicant concern a franchise? If so, has a copy of the franchise agreement been provided? Is there undue control of the applicant by the franchisor? Is the franchise listed on SBA's Franchise Registry?
- e. Does the firm appear to be a broker (*i.e.* does the firm merely distribute products manufactured by other firms without adding any value to these products and without taking possession of the goods as inventory or handling them with its own equipment or facilities)?
- f. Has any individual claiming disadvantaged status transferred assets to an immediate family member, or a trust benefiting an immediate family member, within the last two years? If so, is there an explanation of the transfer with supporting documents? Does the purpose of the transfer comply with the program criteria? (*See* 13 CFR 124.104(c)(1).)

## **CHAPTER 2C: THE APPLICATION REVIEW PROCESS**

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

- a. For all applicants except for those concerns owned by Alaska Native Corporations (ANCs), the Business Opportunity Specialist (BOS) in the Office of Certification and Eligibility (OCE)/ Central Office Duty Station (CODS), serving the territory where the applicant's principal place of business is located, reviews (processes) an 8(a) application to determine if it satisfies the relevant program criteria. SBA Form 1010 designates the territories served by each CODS.
- b. For applicant concerns owned by ANCs, the Alaska District Office reviews (processes) an 8(a) application no matter where the applicant's principal place of business is located. NOTE: Unless otherwise specified, all references to CODS in this chapter include the Alaska District Office.
- c. Upon completion of screening and the decision to accept an application for processing, the CODS or Alaska District Office must immediately enter the acceptance date in the Certification Tracking System (CTS).

### **2. What Information and Criteria Must the BOS Consider When Conducting an Eligibility Review?**

When reviewing an application for program eligibility, the BOS must examine and evaluate the entire application. The BOS's review must address all issues of 8(a) BD program eligibility.

### **3. How Long Does SBA Have to Review (Process) an Application for Program Eligibility?**

For all applicants, the SBA has 90 days to process an application and issue a decision letter to the applicant. This 90 day period includes processing times for the CODS and OCE.

### **4. How Much of the 90 Day Processing Period Does the CODS Have to Review an Application?**

The CODS must review and evaluate all submitted eligibility application material within 80 calendar days after accepting a completed application package. It must recommend approval or denial on SBA Form 1392, BOS Analysis Form, and

clearly show the rationale for the recommendation. This 80 calendar day period includes 10 days allowed for review by the CODS chief. The Office of General Counsel will be allowed 3 working days for reviews.

**5. Can the CODS Request Additional Information After an Application Has Been Accepted for Processing?**

- a. If, during the eligibility review process, the CODS determines that an application is incomplete, the BOS may request additional information or clarification from the applicant. The BOS must send this request for supplemental information to the applicant via e-mail, fax, or first class mail. The applicant must provide the requested information within five (5) calendar days of its receipt of the request for supplemental information. The BOS must inform the applicant that its failure to timely submit additional information may force SBA to conclude that it is not eligible for participation in the 8(a) BD Program.
- b. A request for additional information does not stop the 80 day processing clock. As a result, once the requested information is provided, the case may require priority handling in order for the CODS to complete the eligibility review within the 80 day period.

**6. Is a BOS Required to Fully Process an Application That Appears to Be Obviously Ineligible for the Program?**

The BOS must conduct a complete review and analysis of each application and address all eligibility areas even if an application appears to be obviously ineligible due to the firm's failure to satisfy threshold matters such as the size or citizenship requirements. Although the reasons for declining an application may appear obvious and clear-cut, an applicant may be able to overcome these reasons upon reconsideration. Because an applicant may typically submit only one request for reconsideration, it is essential that the BOS address all of the eligibility requirements during the original eligibility review so that the applicant knows what steps it needs to take in order to correct each of its eligibility problems.

**7. When Are Legal Reviews Required for an 8(a) Application?**

- a. The CODS must obtain a legal review for all proposed decline decisions, except those decisions based solely on the two-year rule and/or potential for success, and all proposed decisions on applications involving non-designated group members, Indian tribes, NHOs, and CDCs. Counsel to the CODS performs this legal review and issues an opinion regarding the legal sufficiency of the proposed decision.

- b. The Alaska District Office must obtain a legal review for all applications involving concerns owned by ANCs. Counsel performs this legal review and issues an opinion regarding the legal sufficiency of the proposed decision.
- c. In all other cases, the CODS and OCE have the discretion to seek legal review of proposed decisions on applications or related documentation.
- d. The request for a legal review does not extend the time frames for review by the CODS, Alaska District Office or OCE.

**8. What Role Does the Chief of the CODS Play in the Review Process?**

- a. After a BOS has finished reviewing an application, the BOS will submit the case file, a signed summary memorandum and signature sheet, the BOS Analysis Form, Financial Spreadsheet with RMA comparisons and a decision letter, to the Chief for review. The application package must clearly present the recommendations and identify any noteworthy issues or concerns. The Chief will examine each section of the BOS analysis and decision letter to verify that the BOS has taken all required steps and properly applied all regulations.
- b. After the Chief completes this examination, he or she will return the case file and attachments to the BOS along with any applicable comments and recommendations.

**9. What Happens After the Reviewing BOS Receives an Application Back From the Chief?**

- a. After receiving the Chief's comments, the BOS will make any changes/corrections to the analysis or decision letter requested by the Chief.
- b. After the BOS analysis and decision letter have been cleared by the CODS Chief, the Chief will sign the summary/signature sheet and return the case file to the processing BOS. The BOS will transmit electronic copies of the BOS Analysis Form, memorandum and signature sheet, and the decision letter to the OCE via e-mail to the community email address.
- c. The BOS will enter the date the CODS transmitted the BOS analysis Form, memorandum and signature sheet, and decision letter to the OCE into the CTS.



- 10. What Does the Division of Program Certification and Eligibility Do After It Receives an Application File From the CODS or the Alaska District Office (for ANC-Owned Concerns)?**
- a. Upon receiving the BOS Analysis Form, summary and signature sheet and decision letter, from the CODS or the Anchorage District Office, the OCE will enter the date of receipt into the CTS. The Office Certification and Eligibility will then review the application and forward it to the AA/BD for final decision.
  - b. If legal review of the case is required or desired, the OCE will submit copies of all relevant documents (including its recommendations and comments) to the Office of General Counsel. The transmission of an application package to the Office of General Counsel for legal review does not stop the processing clock.
- 11. Who Is Responsible for Making the Final Determination as to Whether an Applicant is Eligible for Participation in the 8(a) BD Program?**
- a. The ultimate responsibility and authority for deciding whether to accept or decline an application rests with the AA/BD. Although the AA/BD may draw upon the policy recommendations and legal opinions presented by other SBA personnel when making his or her decision, decision-making authority over 8(a) applications is vested solely in the AA/BD.
  - b. The AA/BD will make his or her decision within 5 days of receiving the OCE's recommendation. Once the AA/BD has made his or her decision regarding the applicant's eligibility, he or she signs the decision letter and returns it to the OCE.
- 12. What Does the OCE Do After Receiving the AA/BD's Decision?**
- a. If the application has been approved, the OCE must send the approval letter to the applicant by certified mail, return receipt requested, along with two copies of the Participation Agreement (Federal Express or other commercial delivery methods may be used if appropriate delivery tracking systems are in place). The approval letter will instruct the applicant to immediately sign and return one copy of the Participation Agreement to the District Office where the applicant's principal place of business is located. The OCE will also fax a copy of the signed and dated approval letter to the processing office.
  - b. If the application has been declined and the applicant has a right to submit an appeal to Office of Hearings and Appeals (OHA), the OCE must send the decline letter to the applicant by overnight courier unless

it is in an area not served by courier services in which case the OCE must send the decline letter by certified mail, or other return receipt verification. If the application is rejected and the applicant has no appeal right, the final decline letter may be sent by first class mail. The decline letter must clearly explain the reason(s) for decline, including a direct reference to those provisions of the regulations that the applicant has failed to satisfy. The letter must also inform the applicant of its right to request a reconsideration and, if applicable, an appeal of the AA/BD's decision to the Office of Hearings and Appeals, and must briefly describe the procedures the applicant must follow in order to exercise these rights, as prescribed in 13 CFR part 134.

- c. The OCE will enter the AA/BD's decision into the CTS and fax a copy of the signed and dated decision letter to the processing office.

### **13. Does the OCE Have Any Reporting Requirements?**

Public Law 100-656, §408, requires the OCE to maintain a data file of all firms approved during each fiscal year. This file will include the average personal net worth of individuals who own and control each concern and the dollar distribution of personal net worth, at \$50,000 increments, of all such individuals found to be socially and economically disadvantaged.

### **14. After the CODS Receives Notice of the AA/BD's Decision From the OCE, What Happens to the Application Case File?**

The CODS will place a copy of SBA Form 1392, copies of any separate memoranda related to the eligibility recommendations or final action, and a copy of the decision letter in the application file (and place copies of the same material in its case reading file). If the application is approved, the CODS will forward the complete file to the ADD/8(a)BD in the District Office where the applicant's principal place of business is located. If the application is declined, the CODS will store the file in its file room for archives and eventual disposal.

## CHAPTER 2D: DETERMINING INDIVIDUAL AND BUSINESS ELIGIBILITY

### 1. What General Requirements Must an Applicant Concern Meet in Order to Be Eligible for the 8(a) Business Development (8(a) BD) Program?

The general requirements for program eligibility include: social disadvantage, economic disadvantage, ownership, control and management, size, character, potential for success, and U.S. citizenship. For Office of Hearing and Appeals (OHA) interpretations of social disadvantage, economic disadvantage, ownership, control and management, please see their decisions at <http://www.sba.gov/oha/appeals.html#new>.

### 2. How Does SBA Define Socially Disadvantaged Individuals?

- a. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. *See* 13 CFR 124.103(a).
- b. An individual who uses his or her social-disadvantage eligibility to qualify a business for the 8(a) BD Program is no longer treated as disadvantaged for future applications.

### 3. How Does the BOS Determine Social Disadvantage?

- a. Members of designated groups.
  - (1) If an individual is a member of a group designated by SBA as socially disadvantaged [*i.e.*, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, and Subcontinent Asian Americans], there is a rebuttable presumption that the individual is socially disadvantaged. In the absence of evidence to contradict this presumption, the BOS must find the individual to be socially disadvantaged. Note: SBA has defined “Hispanic American” as an individual whose ancestry and culture are rooted in South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, or the Iberian Peninsula, including Spain and Portugal.
  - (2) If a BOS has reason to question whether an individual holds himself or herself out as a member of a designated group, the BOS must require the individual to provide credible evidence that the

individual, in fact, holds himself or herself out as a member of the group and that others identify him or her as belonging to that group. For example, individuals who claim disadvantaged status as Native Americans may establish their membership in that designated group by providing a copy of their tribal card or certification from an ANC. An individual is not a member of a designated group merely because he or she was born in the particular region typically associated with members of that group. In addition, if an individual is claiming disadvantaged status as a Native American and they are not members of a State or Federally recognized tribe they must make a case based upon the preponderance of the evidence.

- b. Individuals not members of designated groups. If an individual claiming social disadvantage is not a member of a group designated by SBA as socially disadvantaged, the BOS must examine all the evidence of social disadvantage presented by the individual to determine if the individual has established all of the elements of social disadvantage by a preponderance of the evidence.
  - (1) “Preponderance of the Evidence” standard. This standard requires the individual to present evidence of greater weight or more convincing effect than the evidence in opposition to it. The Office of Hearings and Appeals has held that an individual’s statements claiming discrimination are, by themselves, sufficient to establish social disadvantage if uncontradicted by other evidence unless the statements are inherently improbable, inconsistent, lacking in sufficient detail or conclusory or if the individual fails, without sufficient explanation, to provide apparently available evidence to support the claim. *See In the Matter of Bitstreams, Inc.*, SBA No. 122 (1999). The individual is not required to corroborate statements of discrimination with independent evidence, but may strengthen a case that would otherwise inadequately demonstrate discrimination by submitting information such as statements or affidavits from third parties, court or administrative findings, documentation relating to rejected contracts (*i.e.*, bid abstracts, solicitations, and other typical contract correspondence), or payroll and personnel records. A decline letter must clearly state why SBA believes that statements are inherently improbable, inconsistent, conclusory or lacking detail or what apparently available evidence has not been submitted by the individual. *See In the Matter of Woroco International*, SBA No. BDP-174 (2002).
  - (2) Common elements of social disadvantage.

- (a) Objective Distinguishing Feature. In order to conclude that an individual who is not a member of a designated group is socially disadvantaged, the BOS must verify that the individual possesses at least one objective distinguishing feature that has contributed to his or her social disadvantage. This feature may take one of many forms, including race, ethnic origin, gender, physical handicap, or long-term residence in an environment that is isolated from mainstream America (*e.g.* a Hasidic Jewish enclave or Amish community).
- (b) Chronic and Substantial Discrimination – The BOS must also review the information provided in order to determine if the individual has personally suffered recurring (chronic) episodes of discrimination. This discrimination must be substantial or serious in nature and must have stemmed from circumstances beyond the individual’s control. General patterns of discrimination against a non-designated group or statistics showing that businesses owned by members of a particular non-designated group are chronically underrepresented in a given industry may be used to provide additional support for an individual’s claim of social disadvantage, but do not alone establish discrimination since they do not reflect personal experiences of discrimination encountered by the individual claiming social disadvantage. Further, this discrimination must have occurred within American society, not in other countries.
- (c) Negative Impact on Business Opportunities. The BOS must also verify that the discriminatory treatment the individual received has had a negative impact upon his or her business opportunities. In determining whether this type of negative impact has occurred, the BOS must consider the individual’s education, employment, and business history. It is not necessary for an individual to present evidence of social disadvantage in all three of these areas. Rather, the BOS must look to the totality of the circumstances in order to determine whether the individual has suffered discrimination in his or her efforts to enter into or advance in the business world. If an individual presents credible, preponderant evidence of social disadvantage in one of the three stipulated areas but offers no evidence in the other two, the totality of the circumstances test may still be satisfied. Individuals who can show social disadvantage

in all three areas may not have to present evidence that is as weighty as those who can only show such disadvantage in one or two areas. The Office of Hearings and Appeals has held that two instances of discrimination in one area were sufficient to establish social disadvantage in several cases. Note the case-by-case weighing of evidence in the social disadvantage determination as illustrated in the following OHA decisions: In the Matter of D.L. King & Associates, Inc., SBA No. BDP-177 (2002), *affirmed after remand*, SBA No. BDP-189 (2003); In the Matter of Woroco International, SBA No. BDP-174 (2002); In the Matter of Custom Copper & Slate, Ltd., SBA No. BDP-60, *dismissed after remand*, SBA No. BDP-162 (2001); and In the Matter of Bitstreams, Inc., SBA No. MSB-615 (1998), *affirmed after remand*, SBA No. BDP-122 (1999).

- (i) Negative Impact on Education. If an individual who is not a member of a designated group claims that he or she has experienced social disadvantage in the area of education, the BOS must examine the evidence presented to determine if the individual has suffered any of the following forms of discrimination: Denial of equal access to institutions of higher learning; exclusion from social or professional association with students or teachers; denial of educational honors rightfully earned; and/or social patterns or pressures that discouraged the individual from pursuing a professional or business education.
- (ii) Negative Impact on Employment. If an individual who is not a member of a designated group claims that he or she has experienced social disadvantage in the area of employment, the BOS must examine the evidence presented to determine if the individual has suffered any of the following forms of discrimination: unequal treatment in hiring, promotions, or other aspects of professional advancement; unequal treatment in the receipt of pay, fringe benefits, or other terms and conditions of employment; retaliatory or discriminatory behavior by employers; and/or social patterns or pressures that channeled the individual into non-professional or non-business fields.

(iii) Negative Impact on Business History. If an individual who is not a member of a presumed group claims that he or she has experienced social disadvantage in the area of business history, the BOS must examine the evidence presented to determine if the individual has suffered any of the following forms of discrimination: unequal access to credit or capital, or the acquisition of credit or capital under commercially unfavorable circumstances; unequal treatment in obtaining opportunities for government contracts or other work; unequal treatment by potential customers or business associates; and/or exclusion from business or professional organizations.

- c. The CODS' or Alaska District Office's evaluation of the claim of social disadvantage submitted by an individual who is not a member of a designated group must be recorded on the Social Disadvantage Worksheet for Non-designated Group Members. This also includes any individual claiming to be Native American who is not a member of a State or Federally recognized tribe.

#### **4. How Does SBA Define Economically Disadvantaged Individuals?**

Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished credit and capital opportunities as compared to others in the same or similar line of business that are not socially disadvantaged. See 13 CFR 124.104.

#### **5. How Does the BOS Determine If an Individual Is Economically Disadvantaged?**

In determining if an individual's ability to compete in the free enterprise system has been impaired due to diminished credit and capital opportunities, the BOS must consider the following factors:

- a. Adjusted net worth of the individual.
- (1) Dollar ceiling. If an individual has an adjusted net worth \$250,000 or more, the individual is not economically disadvantaged for initial 8(a) eligibility. However, for continued eligibility purposes, the individual's adjusted net worth must be less than \$750,000.
  - (2) Adjustments to net worth.

- (a) Equity in primary residence. The BOS must exclude from the individual's net worth the individual's share of the equity in his or her primary personal residence, except for any portion of the equity attributable to excessive withdrawals from the applicant. *See* 13 CFR 124.112(d). The equity is the market value of the residence less any mortgages and home equity loan balances. The BOS must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on SBA Form 413.
  - (b) Ownership interest in the applicant. The BOS must exclude from the individual's net worth his or her ownership interest in the applicant.
  - (c) Contingent liabilities. These liabilities do not reduce an individual's net worth for 8(a) eligibility purposes.
  - (d) Retirement accounts. The full value of retirement accounts is included in the individual's net worth without any deduction for taxes or penalties for early withdrawal.
  - (e) Transfers to immediate family members within two years. The BOS must include in the individual's net worth the value of any assets transferred for less than fair market value to an immediate family member within two years of the date of the application, unless the assets were transferred for educational or medical expenses or some other form of essential support or were legitimate presents for special occasions such as birthdays, anniversaries, or graduations. This includes assets the individual transferred to a trust if one of his or her immediate family members is a beneficiary of the trust.
- (3) Separate SBA Form 413.
- (a) Each individual upon whom eligibility is based and his or her spouse must file a separate, detailed personal financial statement. The statement must include all assets owned by the individual, including any ownership interest in the applicant concern, personal assets and the value of his or her personal residence. However, when computing an individual's net worth to determine economic disadvantage, the BOS must make the adjustments in subsection (2) above.



- (b) Married individuals must provide separate financial statements showing the value of each spouse's personal assets and liabilities (*See* 13 CFR 124.104). If assets listed on a non-disadvantaged spouse's SBA Form 413 were included on the disadvantaged spouse's SBA Form 413 and would cause the disadvantaged spouse to exceed the \$250,000 net worth limitation for economic disadvantage, the applicant must provide:
  - (i) In non-community property states, documentation of the non-disadvantaged spouse's ownership by submitting items such as bank statements, brokerage account statements, deeds and titles to vehicles.
  - (ii) In community property states, the applicant also must file (1) evidence of each individual's community property and separate property and (2) if an interest in community property would cause the disadvantaged spouse's net worth to exceed the limitation for economic disadvantage, evidence that the disadvantaged spouse has waived enough of his or her interest in the community property (that is, through a transmutation agreement) that his or her net worth does not exceed the limitation for economic disadvantage. Matter of Philip Hawkins Architect, Inc. + Associate, SBA No. BDP-197, at 3-5 (2003) (Transmutation agreement not required to prove disadvantaged husband's 51 % ownership of applicant concern if his combined separate and community property interests in applicant concern totaled at least 51%). Property that is not community property must be shown on SBA Form 413 as the separate property of the owning spouse.
  - (iii) Copies of post or pre-nuptial agreements may be required.
- b. Personal income of the individual for the past two years.
  - (1) Adjusted gross income threshold. If an individual's adjusted gross income, based on his or her personal federal income tax returns for the past two years, exceeds the threshold identified by OHA case law, SBA may find the individual not economically disadvantaged. In any case in which the adjusted gross income of an individual exceeds the amount upheld by OHA case law for an individual to

be deemed not economically disadvantaged, the BOS must adequately explain and justify any recommendation to find the individual economically disadvantaged. Upon review of such a finding, the BOSs' supervisor must specifically approve that finding of economic disadvantage. If an individual's adjusted gross income for the past two years does not exceed the threshold identified by OHA case law, the SBA may still find the individual not economically disadvantaged, as long as the SBA explains how it reached its conclusion. *See* The Corvus Group, Inc., SBA No. BDP-184, SRS Technologies v. United States, 894 F.Supp. 8 (D.D.C. 1995; Matter of Pride Technologies, Inc., SBA No. 557 (1996 < <http://www.sba.gov/oha/>>). (*See* IRS website at <http://www.irs.gov/pub/irs-soi/01inprel.pdf> ).

- (2) Exclusions from AGI. SBA excludes any portion of an individual's income used to pay S Corporation taxes from his or her adjusted gross income in determining economic disadvantage. Also, SBA excludes any portion of an individual's S Corporate income reinvested into the corporation by the individual from his or her adjusted gross income so that tax laws requiring S Corporations to pass income through to its owners do not penalize owners of these entities as compared to C Corporations that may accumulate income in retained earnings.

c. Total assets of the individual.

- (1) The 8(a) BD program is not intended to assist concerns owned and controlled by socially disadvantaged individuals who have accumulated substantial wealth, who have unlimited growth potential or who have not experienced or have overcome impediments to obtaining access to financing, markets and resources. The analyst will review the individual(s) total fair market value of assets and determine if that level appears to be substantial and indicate an ability to accumulate wealth. The analyst will use the most recent OHA decisions in determining the threshold amount for considering excessive assets. The excessive assets issue is determined on a case-by-case basis.
- (2) If the individual has total assets that exceed the amount identified in current OHA case law, the SBA may find the individual not economically disadvantaged. In any case in which the assets of an individual exceed the amount upheld by OHA case law for an individual to be deemed not economically disadvantaged, the BOS must adequately explain and justify any recommendation to find the individual economically disadvantaged. Upon review of such a finding, the BOSs' supervisor must specifically approve that

finding of economic disadvantage. If the individual has total assets that do not exceed the amount identified in current case law, the SBA may find the individual not economically disadvantaged, as long as the SBA explains how it reached its conclusion. For example, the BOS can compare total assets with other entrepreneurs or other American taxpayers. *See* Tower Communications, SBA No. 587 (1997), Aim Construction and Contracting Corporation, SBA No. 593 (1997), Matter of The Corvus Group, Inc., No. BDP-184 (2002), and Pride Technologies, Inc, SBA No. 557 (1996).

- d. Financial profile of the applicant or participant concern. In determining whether an individual is economically disadvantaged, the BOS must evaluate the financial condition of the applicant or participant concern compared to financial profiles of small businesses in the same primary industry classification or, if not available, in similar lines of business, which are not owned and controlled by disadvantaged individuals. The financial condition of the applicant or participant concern is considered only in evaluating the individual's access to credit and capital. When determining the degree of access to credit and capital, SBA will compare the applicant or participant concern to others in the same or similar line of business which are not owned by socially disadvantaged individuals, and consider whether diminished opportunities have precluded or are likely to preclude the individuals claiming disadvantage from successfully competing in the open market. If the applicant's or participant's financial profile indicates that an individual claiming disadvantage does not have diminished access to credit and capital, the SBA will find that the individual is not economically disadvantaged, unless the BOS makes a specific, analytically-supported determination that the individual is economically disadvantaged.
- e. Evaluation of financial profile. Compare the following figures/ratios with the same or similar business industry averages using a business evaluation tool (such as Risk Management Association (RMA)) to determine an individual's access to credit and capital. *See* 13 CFR 124.104. If the firm exceeds the industry mean in 4 of the following 7 categories, the individual claiming disadvantaged status will be determined to have access to capital and credit to a degree that his or her ability to compete in the free enterprise system has not been impaired, unless the BOS makes a specific, analytically-supported determination that the individual is economically disadvantaged. Upon review of such a finding, the BOSs' supervisor must specifically approve that finding of economic disadvantage. The SBA must use the most recent industry information available.

- (1) Total Assets;

- (2) Current Ratio;
- (3) Debt/Net Worth Ratio
- (4) Net Worth;
- (5) Net Sales;
- (6) Pre-Tax Profit;
- (7) Sales/Working Capital Ratio.

NOTE: The BOS must evaluate an individual's claim of economic disadvantage even if it has been determined that the individual is not socially disadvantaged. This is necessary because the AA/BD may disagree with the CODS' report and conclude that the individual has successfully established a claim of social disadvantage.

#### **6. How Does the BOS Determine If an Applicant Concern Satisfies the Ownership Criteria?**

In order to be eligible for participation in the 8(a) BD Program, at least 51 percent of an applicant concern must be directly and unconditionally owned by one or more socially and economically disadvantaged individuals. *See* 13 CFR 124.105.

- a. Direct ownership.
  - (1) In analyzing the ownership structure of an applicant firm (regardless of the form it assumes), the BOS must verify that the company is unconditionally owned directly by a disadvantaged individual, unless it is owned by an ANC, Tribal entity, Native Hawaiian Organization (NHO) or Community Development Corporation (CDC). This direct ownership requirement means that the applicant firm cannot be a subsidiary of another business owned by the disadvantaged individual.
  - (2) The direct ownership requirement also prohibits the applicant firm from being owned by a trust. However, ownership by a trust, such as a living trust, may be treated as direct ownership if the trust is revocable, and the disadvantaged individual is the grantor, the sole trustee, and the sole current beneficiary of the trust.
- b. Unconditional ownership.
  - (1) In reviewing the ownership structure of an applicant firm, the BOS must verify that there are no conditions on the interests held by the firm's disadvantaged owners. The interests of the disadvantaged owners cannot be subject to any executory agreements, voting

trusts, restrictions on or assignments of voting rights, or any other arrangements or conditions that could result in the transfer of their interests to other parties. This restriction does not include arrangements for the transfer of ownership interests in the event of the holder's death or incapacity.

- (2) If an applicant has pledged or encumbered his or her stock or other ownership interest as collateral on a loan or other obligation, this does not violate the requirement of unconditional ownership. However, the terms of the loan or obligation must follow normal commercial practices and the disadvantaged owner must retain control over the firm unless and until there is a default on the loan or obligation.
- (3) The BOS must also determine whether any of the firm's disadvantaged owners are married and are residents of a community property state. Under community property laws, one half of all community property (that is, property accumulated by both parties during the marriage) belongs to each person's spouse's assets belong to his or her spouse. Thus for example, if an applicant sole proprietorship were entirely community property and only one spouse claimed disadvantage, the disadvantaged spouse could not own more than 50 percent and thus could not satisfy the requirement that 51 percent of the applicant be unconditionally owned by a disadvantaged individual. Therefore, married disadvantaged owners who are residents of community property states may only count half of their ownership interests toward the 51 percent ownership requirement. For example, if a disadvantaged sole proprietor lived in a community property state, he or she would own 50 percent of the sole proprietorship and his or her spouse would own the other 50 percent. In such a situation, if the disadvantaged sole proprietor's spouse is not a disadvantaged individual, the 51 percent ownership requirement would not be satisfied. In order for this sole proprietorship to be eligible for the 8(a) BD Program, the non-disadvantaged spouse would have to transfer back to the disadvantaged sole proprietor whatever percentage interest in the firm is necessary to give him or her 51 percent ownership. If only one spouse residing in a community property state claims disadvantage, the applicant must file (1) evidence of how much of the applicant concern is community property and how much is the disadvantaged spouse's separate property; and (2) if the nondisadvantaged spouse's community property interest in the applicant concern is 50%, evidence that the nondisadvantaged spouse has waived enough of his or her interest in the community property (that is, through a transmutation

agreement) that the disadvantaged spouse unconditionally owns 51% or more of the applicant concern. *See Matter of Philip Hawkins Architect, Inc. + Associates*, SBA No. BDP-197, at 3-5 (2003) (transmutation agreement not required to prove disadvantaged husband's 51% ownership of applicant concern if his combined separate and community property interest in applicant concern totaled at least 51%); excerpt from 13 CFR 124.105(k) ("If only one spouse claims disadvantaged status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws.").

- c. Stock options' impact on ownership. In determining whether an applicant firm meets the 51 percent ownership requirement, the BOS must ignore any unexercised stock options or similar rights held by the disadvantaged owners. This includes their right to convert non-voting stock or debentures into voting stock. However, the BOS must treat any unexercised stock options held by non-disadvantaged individuals as though they had already been exercised. This rule may be waived under extraordinary circumstances, such as where an option is exercisable only after the death of the disadvantaged individual.
- d. Documentation concerning ownership structure. In assessing the ownership structure of an applicant concern, the BOS must examine the Partnership Agreement, Articles of Incorporation, Articles of Organization, Operating Agreement, bylaws, stock certificates, stock register, purchase agreements, ownership transfer documents, and any and all other documents that have some bearing upon the ownership of the firm. Further, the BOS must verify ownership in specific business structures as follows:
  - (1) Sole Proprietorships – Typically a sole proprietorship is 100 percent owned by a single individual. However, in a community property state, the BOS must verify that the sole proprietor owns at least 51 percent of the applicant firm. In either case, the sole proprietor must be a disadvantaged individual. Schedule C identifies the owner as well as the social security number. This should be verified during the review.
  - (2) Partnerships – Where the applicant firm is a partnership, the BOS must verify that disadvantaged individuals own at least 51 percent of each voting class of partnership interest and 51 percent of aggregate interests. This ownership arrangement must be formally expressed in the partnership agreement.

- (3) Limited Liability Companies – Where the applicant firm is a limited liability company, the BOS must verify that disadvantaged individuals own at least 51 percent of each voting class of membership interest and 51 percent of aggregate interests.
  - (4) Corporations – Where the applicant firm is a corporation, the BOS must verify that disadvantaged individuals own at least 51 percent of each class of voting stock outstanding. The BOS must also verify that disadvantaged individuals own at least 51 percent of the aggregate of all of the corporation’s outstanding stock (including non-voting stock). The BOS must further verify that disadvantaged individuals are entitled to receive the following:
    - (a) At least 51 percent of the annual dividends paid to stockholders;
    - (b) 100 percent of the value of each share of stock they own in the event their stock is sold or the corporation is dissolved; and
    - (c) At least 51 percent of the corporation’s retained earnings in the event the corporation is dissolved.
- e. Ownership restrictions.
- (1) Ownership restrictions for disadvantaged individuals and the applicant concern. The BOS must verify that neither the individuals claiming disadvantaged status or their immediate family members, in the aggregate, nor the applicant firm owns more than 20 percent of any other single 8(a) BD participant.
  - (2) Ownership restrictions for non-disadvantaged individuals and concerns other than the applicant concern.
    - (a) If a non-disadvantaged individual (in the aggregate with members of his or her immediate family) or a firm that is not a program participant owns 10 percent or more of the applicant concern, the BOS must verify that this individual (and immediate family) or firm does not also own 10 percent or more of a current program participant in the developmental stage or 20 percent or more of a current program participant in the transitional stage. This requirement does not apply where the non-participant firm in question is a financial institution.
    - (b) If a non-disadvantaged individual or a firm that is not a program participant operates in the same or similar line of business as the applicant concern, the BOS must verify that

this individual or firm does not own 10 percent or more of the applicant concern. (This percentage increases to 20 percent after the applicant enters the program and reaches the transitional stage). However, a former program participant or the principals of a former program participant (unless terminated) in the same or similar line of business may own up to 20 percent of an applicant concern. (This percentage increases to 30 percent after the applicant enters the program and reaches the transitional stage.)

**7. How Does the BOS Determine Whether the Applicant Concern Satisfies the Control and Management Requirements?**

The BOS must examine the information contained in the applicant's partnership agreement, articles of incorporation, corporate bylaws, shareholder and board meeting minutes, and/or operating agreement (as applicable) as well as the applicant firm's tax returns, the terms and conditions of its notes or loan agreements, any management, teaming, or joint venture agreements, and the licenses and resumes of its employees, partners, directors and officers (as applicable). This examination enables the BOS to review the applicant's compliance with eligibility requirements concerning disadvantaged control and management of the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations by disadvantaged individuals. It also enables the BOS to review other aspects of control and management such as the full-time commitment and skills of its managers, compensation, and relationships with former employers. *See* 13 CFR 124.106.

- a. Control of strategic planning.
  - (1) Corporations. The Board of Directors controls strategic planning for a corporation. There are six situations where the BOS may find disadvantaged individuals control a Board of Directors:
    - (a) If a single disadvantaged individual owns 100 percent of all issued and outstanding voting stock of an applicant firm, regardless of the composition of the Board of Directors.
    - (b) If a single disadvantaged individual owns at least 51 percent of all issued and outstanding voting stock of the applicant firm, is legally elected a voting member of the Board of Directors, and no super majority voting requirements exist for shareholders to approve corporate actions.



- (c) If a single disadvantaged individual owns at least 51 percent of all issued and outstanding voting stock of the applicant firm, is legally elected a voting member of the Board of Directors, and owns at least the percentage of voting stock needed to overcome any super majority voting requirements that exist for shareholders to approve corporate actions.
- (d) If more than one disadvantaged individual owns at least 51 percent of all issued and outstanding voting stock of the applicant firm, all are legally elected voting members of the Board of Directors, no super majority voting requirements exist for shareholders to approve corporate actions, and the disadvantaged shareholders can demonstrate they have made enforceable arrangements to permit one of them to vote the stock of all as a block without holding a shareholder meeting.
- (e) If more than one disadvantaged individual owns at least 51 percent of all issued and outstanding voting stock of the applicant firm, all are legally elected voting members of the Board of Directors, and all together own at least the percentage of voting stock needed to overcome the super majority voting requirements which exist for shareholders to approve corporate actions, and the disadvantaged individuals can demonstrate they have made enforceable arrangements to permit one of them to vote the stock of all as a block without holding a shareholder meeting.
- (f) If the disadvantaged individuals can control the formation of a quorum for the purpose of holding a board meeting and have a majority vote at board meetings either through actual number of voting directors or through weighted voting, where permitted by state law. For example, if a firm had two directors, one disadvantaged and one not, the disadvantaged director's vote could count as two votes and the non-disadvantaged director's vote could count as one. Such an arrangement must be spelled out in a corporation's articles of incorporation or by-laws. However, if this approach is used to satisfy the control requirement, the firm must not be subject to any quorum requirements that would prevent the disadvantaged directors from exercising control. Quorum requirements state that a certain number of directors must be present at a board meeting in order for the actions taken at that meeting to be valid. In the two director example above, if that corporation required a

quorum of two directors to be present, then the non-disadvantaged director could effectively veto a proposed action by simply not attending the meeting. In such a situation, the disadvantaged director would not control the board. Further, if this approach is utilized, then all executive committees composed of directors must be controlled by disadvantaged directors. This requirement does not apply where an executive committee can only make recommendations and cannot independently exercise the authority of the firm's board of directors.

- (2) Limited Liability Companies. A Managing Member(s) controls the strategic planning for Limited Liability Companies. The BOS must determine that one or more disadvantaged Managing Members have control of the decisions of the Limited Liability Company under the specific terms of its Articles of Organization and Operating Agreement, especially considering any super majority requirements (including unanimous voting and quorum requirements) for management member decisions.
  - (3) Partnerships. General partners control the strategic planning for a Partnership. The BOS must determine that a disadvantaged general partner(s) has control of the decisions of the Partnership under the specific terms of the Partnership Agreement, especially considering any super majority requirements (including unanimous voting and quorum requirements) for partner decisions.
- b. Control of day-to-day management and administration of business operations.
- (1) Management experience. One or more disadvantaged individuals must possess the degree and type of management experience necessary for running the applicant concern.
  - (2) Technical expertise. If the firm's business operations require technical expertise or are subject to licensing requirements, the disadvantaged managers do not need to possess either the technical knowledge or required licenses provided they can demonstrate that they have ultimate managerial and supervisory authority over those employees of the firm who do hold the essential expertise or licenses. However, if a non-disadvantaged individual with an ownership interest in the applicant firm holds a critical license, then that individual may be viewed as controlling the firm. In addition, if there is a question as to managerial authority, the BOS may require the disadvantaged individual to show that he or she has a strong enough background and a successful enough business

that, if the individual with the technical expertise or critical license were to leave the firm, the disadvantaged individual would be able to continue to successfully operate the firm. The inability of the disadvantaged individual to show that he or she is not dependent on the non-disadvantaged individual's technical expertise or license and that the firm can attract someone else to replace this individual indicates that the non-disadvantaged individual possesses negative control.

- (3) Full time devotion. The highest ranking officer must work for the applicant on a full-time basis during the normal working hours of firms in the same or similar line of business. However, work performed in a wholly owned subsidiary of the applicant firm may, under certain circumstances, be considered in fulfilling this requirement. The manager must show that his or her devotion to the subsidiary firm is complementary and beneficial to the 8(a) applicant firm and that the time spent in the subsidiary firm will help the 8(a) applicant firm meet the business development objectives of the 8(a) BD Program after approval. If the individual upon whom eligibility is based has outside employment they must provide a work schedule for the outside employment as well as the work schedule for the applicant firm to ensure that their outside employment will not conflict with their ability to meet the objectives of the 8(a) program. Any disadvantaged manager who wishes to engage in outside employment must notify SBA of the nature and anticipated duration of the outside employment and obtain the prior written approval of SBA. SBA will deny a request for outside employment which could conflict with the management of the firm or could hinder it in achieving the objects of its business development plan.
- (4) Highest officer position. A disadvantaged full-time manager must hold the highest officer position in the applicant firm (*e.g.* President or CEO). The BOS must review the business organization documentation to ensure that the officer position held by the disadvantaged full-time manager is authorized and is charged with the day-to-day management of the firm.
- (5) Participation by non-disadvantaged individuals. The BOS must assess the impact of participation by non-disadvantaged individuals on control and management by disadvantaged individuals as follows:
  - (a) The BOS must verify that no non-disadvantaged owner or manager of the firm is a former employer of the applicant, or a principal of one of the applicant's former employers.

However, such circumstances do not automatically disqualify a firm where the relationship does not give the former employer or principal actual or potential control of the firm and the relationship is in the best interest of the firm.

- (b) The BOS must verify that no non-disadvantaged officer or other employee is paid more than the firm's highest-ranking officer. This compensation may be in any form, including dividends. The firm's highest-ranking officer may only be paid less than a non-disadvantaged officer or employee where doing so benefits the applicant in some way and is in the best interest of the firm.
  - (i) The BOS will use the following questions to guide this analysis: Who is the individual that is higher compensated and what is his/her function in the firm? What is the compensation differential? Why isn't the disadvantaged applicant the highest compensated? How is this arrangement beneficial to the applicant?
  - (ii) The analysis and decision is done on a case-by-case basis. The BOS will determine whether this should be allowed. If it is not allowed, this may be cause to recommend decline of the application.
- (c) The BOS must verify that no non-disadvantaged individual transferred majority ownership or control of the firm to an immediate family member within the last two years and still remains involved with the firm as a stockholder, officer, director, or key employee. Such a circumstance does not automatically disqualify a firm, however, where the family member to whom the interest was transferred has the independent management experience needed to control the firm's operations. This situation will disqualify the applicant firm unless there is a showing that the transferee (the disadvantaged individual) has the independent management experience necessary to control the firm's operation. *See* 13 CFR 124.106(f).
- (d) The BOS must verify that no non-disadvantaged owner of the firm provides the firm with critical financing, bonding, or licensing support that directly or indirectly permits him or her to significantly influence the firm's business decisions.

- (e) The BOS must verify that the firm has not entered into a loan arrangement with a non-disadvantaged individual or entity that gives the lender an undue amount of control over the firm's actions. Merely providing a loan guaranty to a non-disadvantaged individual or entity on standard or reasonable terms does not, by itself, disqualify an applicant firm.
- (f) The BOS must verify that the firm is not so dependent upon a business relationship with a non-disadvantaged individual or entity that it is not free to exercise independent business judgment without exposing itself to great economic risk.

## **8. How Does the BOS Establish That the Applicant Is a Small Business?**

- a. The BOS must identify the applicant's primary North American Industry Classification System (NAICS) code as listed in its application. The BOS must then look up the corresponding size standard for this NAICS code in the size regulations (13 CFR 121.101 *et seq.*). Information on size standards and NAICS codes may also be found at SBA's website (<http://www.sba.gov/size/sizetable.html>), and OHA website. The BOS must examine the applicant firm's annual receipts or number of employees in order to determine if the firm fits within the size standard. If the firm meets the size standard, it qualifies as small.
- b. When examining the size of the applicant firm, the BOS must look to see if there are any potential issues involving affiliation. The issue of affiliation arises where the applicant firm controls another firm or is controlled by another firm (*e.g.*, one firm is a subsidiary of the other). Affiliation also arises where one individual has the power to control both the applicant firm and another firm (*e.g.*, the same individual owns and operates two businesses, one of which is seeking to participate in the 8(a) BD Program) or there are identical or substantially identical business or economic interests, such as family members, persons with common investments or firms that are economically dependent through contractual or other relationships. SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships in determining whether affiliation exists. *See* 13 CFR 121.103.
- c. If the applicant has a predecessor firm, this firm will not be treated as a separate business concern if a substantial portion of its assets and/or liabilities are the same as those of a predecessor entity. The annual receipts or employees of the predecessor will be taken into account in determining size.

- d. An 8(a) applicant must be small for its primary industry at the time SBA certifies it for admission into the program.
- e. If 8(a) BD Program officials determine that a concern may not qualify as small, they may deny an application for 8(a) certification or may request a formal size determination under part 121, title 13.
- f. A concern whose application is denied due to size by 8(a) BD Program officials may request a formal size determination under part 121 of this title. A favorable determination will enable the firm to immediately submit a new 8(a) BD application without waiting one year.
- g. If the AA/OCE concludes that an application may involve affiliation problems, or if he or she is otherwise unable to determine whether or not the applicant firm meets the applicable size standard, the AA/OCE must refer the matter to the appropriate Area Office of the Office of Government Contracting for a formal size determination. The appropriate Area Office is that office which is responsible for performing size determinations for firms in the state where the applicant's principal office is located. The BOS must then enter the request for a formal size determination in the Certification Tracking System. This action freezes the 90-day eligibility review clock.

**9. How Does the BOS Determine If the Applicant Concern and Its Principals Are of Good Character?**

The 8(a) BD regulations state that an applicant and all its principals (including proprietors, partners, limited liability members, directors, officers, holders of 10 percent or more of stock, and key employees) must possess good character. In assessing character, the BOS must review SBA Form 912 (especially Questions 7, 8 and 9); reports from the Office of the Inspector General (IG) in response to referrals by the BOS resulting from positive responses to questions 7 through 9 on the SBA Form 912; GSA's list of debarred and suspended parties ([www.epls.arnet.gov](http://www.epls.arnet.gov)); business credit reports for unpaid federal obligations and civil judgments impacting integrity (*i.e.*, fraud, breaches of trust, embezzlement, false claims, and false statements); tax transcripts from IRS compared to business and personal tax returns; financial statements; and any other materials from the applicant or third parties impacting character. Certain circumstances result in automatic ineligibility due to lack of good character while other circumstances require a character analysis.

- a. Circumstances automatically resulting in lack of good character.
  - (1) Debarment and suspension. If an applicant or one of its principals is on the General Services Administration (GSA) list of debarred

and suspended bidders, the firm is ineligible for the 8(a) BD Program.

- (2) Incarceration, parole, or probation. If an applicant concern or one of its principals is currently incarcerated, on parole, or on probation pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity, the firm is ineligible for the program.
  - (3) Unpaid federal financial obligations. If an applicant concern or one of its principals fails to pay significant financial obligations owed to the federal government (including taxes, Federal student loans and any other Federally backed loans), the firm is ineligible for the program. Note: Although closely linked with character, the failure to pay federal obligations is technically not treated as an element of good character under SBA regulations and must be cited independently of good character as a basis for decline of an application.
  - (4) False statements. If an applicant concern or one of its principals submits a false statement to SBA for the purpose of influencing SBA's decision, the firm is ineligible for the 8(a) BD Program. The BOS must report such false statements to the IG.
  - (5) Falsification of personal and business tax returns. Before the eligibility review process begins, the BOS must submit the applicant's completed Request for Copy or Transcript of Tax Form (IRS Form 4506) to the appropriate IRS Processing Center. This form authorizes the CODS to receive copies of an applicant firm's business tax return transcript or individual's personal or business tax return transcripts from the IRS. Upon receipt of these transcripts, the BOS must compare the data they contain with that listed on the tax return documents in the case file. If there are any discrepancies between the transcripts and the tax returns in the case file, the BOS must note them on the evaluation form. The BOS must also request that the relevant individual or firm submit an explanation of these discrepancies. Discrepancies that are serious in nature, such as falsification of returns, will result in a decline of the application due to lack of business or personal integrity, and a referral to the Inspector General.
- b. Circumstances requiring a character analysis.
- (1) General guidelines for review. Although many factors may enter into a character assessment, in reviewing the conduct of an applicant concern and its principals, the BOS must consider the conduct in light of its magnitude (severity), harm caused,

repetition, and remoteness in time. Considering rehabilitation is a major thrust of our penal system, an isolated incident occurring over 10 years ago is typically considered too remote to adversely impact character.

- (2) Specific circumstances.
  - (a) Criminal convictions or guilty pleas. If the IG report does not reflect the disposition of arrests, the BOS must obtain court records reflecting the disposition from the individual since arrests not resulting in a guilty plea or conviction do not adversely affect the character analysis. Further, the BOS must obtain from the applicant concern or individual all details concerning the guilty plea or conviction such as fines paid, dates of the conviction or plea, dates of incarceration (including release date), and dates of probation or parole. Each incident must be evaluated under the above guidelines and the character analysis must consider the totality of all of the information concerning guilty pleas and convictions. If the crime is a felony and of significant moral turpitude, even if it does not involve business integrity, the firm may be declined.
  - (b) Failure to disclose criminal arrests or convictions on SBA Form 912. If an applicant concern or one of its principals fails to disclose a criminal arrest or conviction contained on the FBI identification records obtained by the IG, the BOS must provide the applicant with the opportunity to explain the reason for the lack of disclosure under Department of Justice regulations concerning use of FBI identification records. See 28 CFR 50.12. The explanation must be evaluated on a case-by-case basis. A determination that the explanation is not adequate provides a basis for finding lack of good character for submitting a false statement to SBA as discussed above, and a referral to the Inspector General.
  - (c) Civil judgments. If a business credit report or other source reflects a civil judgment impacting integrity (i.e. fraud, breaches of trust, embezzlement, false claims, and false statements), the BOS must obtain the same information from the applicant concern or individual required for criminal convictions and this information must be evaluated under the same general guidelines.



- (d) Indictments. If an applicant concern or a principal of an applicant is under indictment, this fact may serve as partial evidence of lack of character. An indictment by itself is not a reason for denial. However, an indictment along with other information may show that an applicant or principal has engaged in a pattern of improper behavior. The BOS must review indictments of a principal on a case-by-case basis in order to evaluate their bearing on the firm's responsibility to perform government contracts. The BOS must be careful to distinguish between felony indictments and those involving misdemeanors. The BOS must attempt to obtain a copy of the indictment from the applicant concern or individual. If this is not feasible, the applicant must provide SBA with the details of the indictment (*i.e.* the indictment number, court, persons and entities named, and offenses charged) along with a statement of the factual allegations of the indictment.
- (e) Investigations. The mere fact that an applicant concern or a principal is under investigation does not mean that it lacks character. However, depending upon the stage of the investigation, facts tending to show that the concern or one of its principals committed fraud or another wrongful act along with other information may serve as a basis for finding that the applicant or principal has engaged in a pattern of improper behavior. NOTE: Approval must be obtained from the Office of Inspector General, Investigations Division, prior to discussing any investigative issues with an applicant or any of the principals or representatives of the applicant concern.
- (f) Violations of SBA regulations. The nature and severity of any violation of SBA's regulations must be considered in evaluating character.

**10. How Does the BOS Determine If an Applicant Satisfies the Potential for Success Requirement?**

The 8(a) BD regulations state that an applicant concern must possess reasonable prospects for success in competing in the private sector before it will be admitted to the program. In order to demonstrate that it possesses the required potential for success, an applicant firm must meet several criteria.

- a. Length of time in business. SBA uses an applicant's time in business as one means of measuring its potential for success.

- (1) Two-year rule. A firm must show it has been conducting business in its primary industry for at least two full years. An applicant firm can satisfy this requirement by submitting copies of tax returns that show it generated revenues in its primary industry during the two most recent years prior to the date of its application.
- (2) Waiver criteria for the two-year rule. If a firm has not been in business for two years, it can still satisfy the length of time in business requirement if it qualifies for a waiver of the two year rule. The waiver criteria are as follows:
  - (a) The individual or individuals upon whom eligibility is based have demonstrated that they possess substantial business management experience;
  - (b) The applicant has demonstrated that it has the technical expertise it will need to carry out its business plan with a substantial likelihood for success;
  - (c) The applicant has adequate capital to sustain its operations and carry out its business plan;
  - (d) The applicant has a record of successful performance on contracts in its primary industry; and
  - (e) The applicant has (or can quickly obtain) the personnel, facilities, equipment, and other resources it needs to perform any 8(a) contracts it might be awarded.

Note: If the firm has not generated revenues, it will be unable to waive the two-year rule.

- b. Financial Capacity. Although the 8(a) BD Program is intended to assist disadvantaged individuals who have diminished financial resources, an applicant firm must nonetheless demonstrate that it has sufficient access to capital and credit to maintain its business operations. In analyzing a firm's financial capacity, the BOS must:
  - (1) Review the applicant's financial statements, paying particular attention to its net worth, working capital and revenues and looking out for any disturbing trends or patterns the statements may reveal (*e.g.* sustained losses or decreasing revenues);
  - (2) Determine the extent to which additional financing may be necessary or advisable, and identify potential sources of financing (including long-term financing, working capital financing, equipment trade credit, supplier trade credit, access to raw materials, and bonding capacity);

- (3) Analyze the firm's credit position as revealed by its loan repayment history (including any SBA loans it may have obtained), business credit reports, and the pool of assets it has available for use as collateral;
  - (4) Evaluate the firm's financial capacity to perform contracts by using standard industrial ratios to compare the firm's financial performance with firms of a similar size in the same NAICS code. (Note: the data used for this comparison must come from the most recent edition of comparative business data.)
  - (5) Review of the firm's assets to ensure they are not over inflated for example a note receivable from a shareholder; and
  - (6) Ensure items listed on the financial statements and the profit and loss statements correspond with Generally Accepted Accounting Principals, for example, "goodwill".
- c. Managerial and technical expertise. An applicant concern as a whole (taking into account all of its owners, officers, managers, and employees) must possess sufficient technical knowledge to operate in its primary industry and have adequate management experience to run its day-to-day operations. This required knowledge and experience does not need to be held by a single individual, but may instead be shared or divided among several persons. The applicant concern or its employees must also hold all licenses that are required for firms conducting business in its industry area (*e.g.*, public accountancy, law, professional, engineering, construction, *etc.*).
  - d. Record of performance. The applicant concern must demonstrate that it has a satisfactory record of performance on previous federal or private contracts in the primary industry in which it is seeking 8(a) certification. Evidence of the firm's record of performance may take the form of business tax returns, copies of contracts, letters of referral or recommendation, financial data, or other relevant documentation.
  - e. Level of contract support. The applicant concern must operate in an industry having sufficient 8(a) contract opportunities available. In determining the level of available contract support in a given industry, the BOS must consult the report of 8(a) BD contracting activities presented to Congress. This report lists all 8(a) BD contracts and modifications by NAICS code for the most recent fiscal year. If the applicant firm's primary NAICS code is in the construction industry, the BOS must contact the District Office servicing the applicant firm's area and request it to make the contract support determination. However, if the DO does not respond, the MED Report may be used.

Note: An inadequate level of contract support cannot serve as the sole basis for denying an applicant admission to the 8(a) BD Program except where: (1) the federal government has not contracted for the types of products or services offered by the applicant in the past and is unlikely to do so in the future; or (2) the federal government's need for the types of products and services offered by the applicant is already being adequately met by existing program participants. In such instances, the level of demand is simply not high enough to support both the business development needs of the applicant firm and those of firms already participating in the program.

**11. Must an Individual Upon Whom Eligibility Is Based Be a U.S. Citizen?**

All individuals upon whom eligibility is based must be citizens of the United States. Individuals who were born outside of the United States must provide proof of citizenship. Proof of citizenship may take the form of a U.S. Passport or Naturalization Papers.

**12. Are Brokers Eligible for Participation in the 8(a) BD Program?**

Brokers are not eligible for participation in the 8(a) BD Program. An 8(a) company shall not broker a Federal contract. A broker is a firm that acts as an intermediary between a procuring agency and a supplier. Brokers do not add any value to the items they arrange for others to supply to a procuring agency. They also do not take ownership or possession of the items and do not handle the items with their own equipment or facilities.

**13. Are Wholesalers Eligible for Participation in the 8(a) BD Program?**

Wholesalers are eligible for participation in the 8(a) BD Program. A wholesaler is a firm that purchases goods from a manufacturer and then sells them to a customer. Although wholesalers are similar to brokers in that they do not actually produce the goods they provide, wholesalers do take ownership of the goods or handle them with their own equipment or facilities. Wholesalers applying for participation in the program do not need to demonstrate that they can satisfy the requirements of the nonmanufacturer rule for their primary industry classification. Wholesalers need not sell to the general public to be eligible for program admission or program services. However, to be considered a wholesaler, the firm should sell to someone on a regular basis. For example, the firm must sell to someone independent of the firm on a regular basis.

**14. Are Businesses Owned by Indian Tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), and Community Development Corporations (CDCs) Eligible for Participation in the 8(a) BD Program?**

Although the 8(a) BD regulations require that a firm be directly owned by disadvantaged individuals in order to qualify for the program, small businesses owned by the types of special organizations listed above may nonetheless be certified as program participants. SBA does not consider an individual involved in the management of a concern owned by a special organization to have used his or her one-time individual eligibility. In addition, a variety of other special eligibility rules apply in cases involving applicant concerns that are owned by these types of organizations. *See* 13 CFR 124.109 (Indian Tribes and ANCs), 124.110 (NHOs) and 124.111 (CDCs).

**15. What Special Eligibility Rules Apply to Concerns Owned by Indian Tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations?**

Concerns owned by Indian Tribes, ANCs, NHOs, and CDCs are subject to the same eligibility requirements as other concerns except to the extent that those requirements are inconsistent with 13 CFR 124.109 (Indian Tribes and ANCs), 124.110 (NHOs) and 124.111 (CDCs). Further, in several instances, concerns owned by these special entities are subject to additional eligibility requirements. The main areas of difference in the eligibility requirements for concerns owned by these special entities are as follows:

- a. Social disadvantage. Indian Tribes, ANCs, NHOs and CDCs, as defined at 13 CFR 124.3, are socially disadvantaged and concerns at least 51 percent owned by them do not have to submit documentation of social disadvantage.
- b. Economic disadvantage. ANCs, NHOs and CDCs as defined at 13 CFR 124.3 are economically disadvantaged. Therefore, concerns owned by them do not have to submit documentation of economic disadvantage, including SBA Form 413 by individuals responsible for their management and control. However, Indian Tribes themselves must submit documentation of economic disadvantage as detailed at 13 CFR 124.109(b)(2). Concerns owned by economically disadvantaged Indian Tribes are considered economically disadvantaged.
- c. Ownership restrictions. These special entities may not own 51 percent or more of another concern which, either at the time of application or within the previous two years, operates or operated in the 8(a) BD Program under the same primary NAICS code as the applicant.

- d. **Affiliation.** The general affiliation rules do not apply to concerns owned by these special entities. SBA determines the size of concerns owned by these special entities without regard to their affiliation with the special entities or any other business enterprise owned by these special entities unless the Administrator determines that one or more concerns owned by the special entities has obtained a substantial unfair competitive advantage within an industry category. (*See* 13 CFR 124.109(c)(2), 124.110(b) and 124.111(c).)
- e. **Other special eligibility rules for Indian Tribes and ANCs.**
  - (1) **Control and management.** Indian Tribes and ANCs may manage and control a concern owned by them through non-tribal members if SBA determines that such management is required to assist the concern's development, these special entities will retain control of all management decisions, and a written management development plan exists showing how disadvantaged tribal members will develop managerial skills sufficient to manage the concern or similar tribally-owned concern in the future.
  - (2) **Tribal existence.** An Indian Tribe must submit all governing documents such as its constitution or business charter as well as evidence of its recognition as a tribe eligible for the special programs and services provided by the United States or its state of residence.
  - (3) **Sue and be sued clause.** The concern owned by an Indian Tribe must have a "sue and be sued" clause in its Articles of Incorporation, Articles of Organization, or Partnership Agreement. There may not be any conditions or limitations on the "sue and be sued" clause.

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

In general, SBA determines an applicant firm's program eligibility by examining its status as of the date it submitted its application. SBA, in effect, takes a snapshot of the firm as it existed on the date of its application and uses that information to determine whether the firm is eligible for the program. However, SBA may take into account changes in circumstances or an applicant's status occurring after the firm submits its application when these changes adversely affect the firm's program eligibility. *See* 13 CFR 124.204(d).

## **CHAPTER 2E: RECONSIDERATION AND APPEAL OF PROGRAM ELIGIBILITY DECISIONS**

### **1. What Is Reconsideration?**

Every applicant that is denied admission to the 8(a) Business Development (8(a) BD) Program has the right to request that the Associate Administrator for Business Development (AA/BD) reconsider his or her initial decline decision. If an applicant chooses to exercise this right, it must submit a written request for reconsideration within 45 calendar days of receiving the decline letter. As part of the reconsideration request, the applicant must include all additional information and documentation necessary to overcome the reason(s) for the initial decline decision. *See* 13 CFR 124.205.

### **2. Who Is Responsible for Processing Requests for Reconsideration?**

- a. Reconsideration requests excluding ones from concerns owned by Alaska Native Corporations (ANCs). The BOS in the Office of Certification and Eligibility (OCE)/ Central Office Duty Station (CODS) serving the territory where the applicant's principal place of business is located reviews (processes) a request for reconsideration.
- b. Reconsideration requests from concerns owned by ANCs. The Alaska District Office reviews all requests for reconsideration by ANC-owned concerns regardless of where the concern is located. NOTE: Unless otherwise specified, all references to CODS in this chapter include the Alaska District Office.

### **3. How Long Does SBA Have to Review (Process) a Request for Reconsideration?**

The SBA has 45 calendar days after receiving a request for reconsideration to process the request and issue a decision letter either reversing or sustaining the initial decline decision.

### **4. How Much of the 45 Day Processing Period Does the CODS Have to Review a Reconsideration Request?**

The CODS must review the request for reconsideration within 35 calendar days of receiving the reconsideration request. It must recommend approval or denial and clearly show the rationale for the recommendation. This 35 calendar day period includes 5 days allowed for review by the CODS chief and also takes into consideration review by counsel to the CODS, if applicable.

**5. What Role Does the CODS Play in the Reconsideration Process?**

- a. When the CODS receives a request for reconsideration, a BOS is assigned to review the additional information and documentation submitted by the applicant. The BOS, in consultation with the CODS Chief or Team Leader, must then draft a memorandum recommending that the initial decline decision be reversed or upheld, obtain a legal review from its counsel, if applicable, and e-mail its recommendation to the OCE in Headquarters along with a draft decision letter.
- b. The BOS must enter the date the CODS transmitted the reconsideration request to the OCE into the CTS.

**6. When Are the CODS and the OCE Required to Obtain a Legal Review for a Reconsideration Request?**

- a. The CODs must obtain a legal review for all proposed declines of reconsideration requests, except declines based solely on the two year rule and/or potential for success. Legal review is also required for all proposed decisions on reconsideration requests involving non-designated group members and all requests for reconsideration involving concerns owned by Indian tribes, NHOs, and CDCs. Counsel assigned to the processing office performs this legal review and issues an opinion regarding the legal sufficiency of the proposed decision.
- b. The Alaska District Office must obtain a legal review for all applications involving concerns owned by ANCs. Counsel performs this legal review and issues an opinion regarding the legal sufficiency of the proposed decision.
- c. In all other cases, the CODS and OCE have the discretion to seek legal review of proposed decisions on reconsideration requests or related documentation from Senior Counsel and General Counsel staff, respectively.
- d. The request for a legal review does not extend the time frames for review by the CODS, Alaska District Office or the OCE.

**7. What Does the OCE Do After It Receives a Reconsideration Request From the CODS?**

- a. Upon receiving a reconsideration request from the CODS, the OCE must enter the date of receipt into the CTS. The OCE then has 5 calendar days to recommend final action to the AA/BD.



- b. If legal review of the case is required or desired, the CODS will submit the application file, if necessary, and copies of all relevant documents (including its recommendations and comments) to the Office of General Counsel. NOTE: The transmission of an application package to the Office of General Counsel for legal review does not stop the 5 day OCE processing clock.
- c. Where legal review is unnecessary, the OCE will send a copy of the analysis and decision letter to the AA/BD for decision.

**8. Who Is Responsible for Making the Final Determination as to Whether an Applicant Submitting a Reconsideration Request Is Eligible for Participation in the 8(a) BD Program?**

- a. The ultimate responsibility and authority for deciding whether to accept or decline a reconsideration request rest with the AA/BD. Although the AA/BD may draw upon the policy recommendations and legal opinions presented by other SBA personnel when making his or her decision, decision-making authority over 8(a) reconsideration requests is vested solely in the AA/BD.
- b. The AA/BD must make his or her decision within 3 working days of receiving the OCE's recommendation. On reconsideration, the AA/BD may either approve the application, deny it on the same grounds as the original decision, or deny it on new grounds. However, if the AA/BD declines the application based solely on new grounds that were not raised in the initial decision, the applicant has the right to submit a second request for reconsideration. Once the AA/BD has made his or her decision regarding the reconsideration request, he or she signs the decision letter and returns it to the OCE.

**9. What Does the OCE Do After Receiving the AA/BD's Decision?**

- a. If the reconsideration request has been approved, the OCE must send the approval letter to the applicant, along with two copies of the Participation Agreement. The letter must instruct the applicant to immediately sign and return one copy of the Participation Agreement to the District Office where the applicant's principal place of business is located since its ability to obtain 8(a) BD contracts is contingent upon execution of the Agreement. The OCE will notify the CODS of the approval by faxing a copy of the signed approval letter. After receipt of the faxed approval letter, the CODS will attach the letter to the Business File and forward the file to the appropriate servicing District Office.

- b. If the reconsideration request has been rejected and the applicant has a right to appeal the decline to the Office of Hearings and Appeals, the OCE must send the decline letter to the applicant by overnight courier unless it is in an area not served by courier services in which case the OCE must send the decline letter by Federal Express, certified mail return receipt requested (or other accepted method of courier service that can be traced or tracked). If the reconsideration request is rejected and the applicant has no appeal right, the final decline letter may be sent by first class mail, Federal Express or fax. The decline letter must clearly explain the reason(s) for decline, including a direct reference to those provisions of the regulations that the applicant has failed to satisfy. If the applicant has appeal rights, the letter must also inform the applicant of its right to appeal the AA/BD's decision to the Office of Hearings and Appeals and briefly, but concisely, describe the procedures the applicant must follow in order to exercise this right.
- c. The OCE must enter the AA/BD's decision into the CTS and fax a copy of the final decision letter to the processing CODS.
- d. The OCE must send the letter of decline or approval to the applicant within 2 calendar days after the AA/BD signs the letter.

**10. Can an Applicant That Has Been Denied Admission to the 8(a) BD Program on Reconsideration Appeal That Decline Decision?**

If an applicant concern has been declined admission to the 8(a) BD Program on reconsideration due to its failure to meet the social disadvantage, economic disadvantage, ownership, or control eligibility criteria, it may appeal the AA/BD's decision to SBA's Office of Hearings and Appeals (OHA). If the firm's reconsideration request has been declined (either in whole or in part) on the basis of its failure to satisfy any other eligibility requirement, it does not have the right to appeal that decision to OHA. (See 13 CFR 124.206, 134.101-134.103, 134.201-134.229, and 134.401-134.409).

**11. Must an Applicant Request Reconsideration Before it Files an Appeal?**

- a. An applicant may appeal a decision of the AA/BD declining its application immediately after being notified of that decision. An applicant is not required to first request reconsideration before filing an appeal petition with OHA. If an applicant does choose to request reconsideration following an initial decline decision and is declined a second time, it may appeal that decision (See Question 10 above for an exception). However, an applicant cannot simultaneously request reconsideration and file an OHA appeal and cannot request reconsideration after OHA has ruled on its appeal petition.

- b. If an applicant has the right to file an appeal petition but chooses not to do so, then the AA/BD's decision is the final Agency decision on the matter. If an applicant does appeal the AA/BD's decline decision to OHA, OHA's ruling is the final Agency decision on the matter.

**12. How Long Does an Applicant Have to Appeal a Decline Decision?**

If an applicant chooses to appeal a decline decision of the AA/8(a) BD, it must submit its appeal petition within 45 calendar days after the date it receives the initial or reconsideration decline letter.

**13. Can an Applicant Who Has Been Denied Admission to the 8(a) BD Program Resubmit Its Application?**

If a firm has had its application or reconsideration request for participation in the 8(a) BD Program declined, it may submit a new application. However, a declined firm must wait at least 12 months from the date of the final Agency decision before reapplying.

## CHAPTER 3: SERVICING THE PARTICIPANT

### 1. What Happens After a Firm is Approved for Participation in the 8(a) BD Program?

- a. Once the Associate Administrator for Business Development (AA/BD) approves an application, the Office of Certification and Eligibility (OCE) will assign a case number to the applicant's file through the Certification Tracking System (CTS), forward the file to the servicing District Office (DO), and send a copy of the CTS memorandum to the processing Central Office Duty Station (CODS).
- b. Upon receipt of a firm's file, the Assistant District Director for 8(a) Business Development (ADD/8(a)BD) will:
  - (1) Assign a Business Opportunity Specialist (BOS) to the firm;
  - (2) Ensure that application and approval information is correctly entered into the Servicing and Contracting Subsystem (SACS); and
  - (3) Send the firm a letter congratulating it on its approval along with SBA Form 1010C (minimum requirements for business plan submission).

### 2. What Assistance Does SBA Provide to Participants?

- a. Participants receive primary assistance in:
  - (1) Developing and maintaining business plans. The BOS will inform that firm that the business plan will comply with paragraphs 7 and 8 of this chapter. The BOS will refer the firm to <http://www.sba.gov> for guidance on developing and maintaining business plans. For additional guidance, the BOS will refer the firm to the local SCORE, Small Business Development Center (SBDC) or other training/counseling organization;
  - (2) Seeking loans. The BOS will refer the firm to <http://www.sba.gov> for guidance on seeking loans. For additional guidance, the BOS will refer the firm to the local SCORE, SBDC or other training/counseling organization;
  - (3) Financial counseling. The BOS will refer the firm to <http://www.sba.gov> for counseling on finances. For additional guidance, the BOS will refer the firm to the local SCORE, SBDC or other training/counseling organization;

- (4) Accounting and bookkeeping. The BOS will refer the firm to <http://www.sba.gov/> for counseling on accounting and bookkeeping. For additional guidance, the BOS will refer the firm to the local SCORE, SBDC or other training/counseling organization;
  - (5) Marketing. The BOS will refer the firm to <http://www.sba.gov/> for counseling on marketing. For additional guidance, the BOS will refer the firm to the local SCORE, SBDC or other training/counseling organization;
  - (6) Management practices. The BOS will refer the firm to <http://www.sba.gov/> for counseling on management practices. For additional guidance, the BOS will refer the firm to the local SCORE, SBDC or other training/counseling organization;
  - (7) Equity and debt financing. The BOS will refer the firm to <http://www.sba.gov/> for counseling on equity and debt financing. For additional guidance, the BOS will refer the firm to the local SCORE, SBDC or other training/counseling organization; and
  - (8) Obtaining surety bonds. The BOS will refer the firm to <http://www.sba.gov/> for counseling on surety bonds. For additional guidance, the BOS will refer the firm to the local SCORE, SBDC or other training/counseling organization.
- b. Additionally, SBA performs analysis and reports on the general causes of success and/or failure of participants.

### **3. What are the BOS's Responsibilities in Servicing the Participant?**

- a. The BOS's on-going responsibility is to assist the participant in developing its business to the fullest extent possible so that it attains competitive viability during its program participation term, and maintains viability thereafter. To do this, the BOS must:
  - (1) Identify the firm's strengths and weaknesses;
  - (2) Provide basic advice, counsel and guidance in the areas of marketing to the federal government and contract administration;
  - (3) Refer the firm to appropriate internal and external resources for assistance in technical, management and financial matters; and
  - (4) Monitor the firm's progress in the program and its compliance with program requirements.
- b. Specifically, the BOS will:

- (1) Schedule and conduct an orientation session as soon as possible after certification, preferably before the firm prepares and submits its business plan;
- (2) Request any financial statements, income tax returns and other documents needed to make the file current;
- (3) Advise the firm that it will not be eligible for 8(a) BD Program services until SBA approves its business plan;
- (4) Notify the firm of the requirement to keep its CCR profile information current;
- (5) Review whether the firm has developed realistic and attainable objectives in its business plan;
- (6) Provide assistance and support in the firm's self-marketing efforts;
- (7) Assess the firm's progress in achieving business plan objectives through periodic independent reviews, discussions and site visits;
- (8) Monitor the firm's success in securing non-8(a) contract opportunities;
- (9) Assess the firm's need for management and technical assistance. If the firm needs this type of assistance, the BOS will recommend the firm receive such assistance, when the assistance is scheduled to be provided. Assistance is normally available on an annual basis through the 7(j) Management and Technical Assistance (MTA) program. Please see Chapter 15 for details on the 7(j) MTA program;
- (10) Initiate search letters and/or requirements letters, as appropriate;
- (11) Conduct the initial site visit and follow up with annual field visits, when appropriate; and
- (12) Facilitate delivery of management and technical assistance by internal and external resources including, but not limited to, 7(j) support.

#### **4. What is Involved in Providing an Orientation to a New Participant?**

- a. The DO will provide an overview of responsibilities and requirements under the 8(a) BD Program for the new participant. Although the orientation may be conducted in a group setting, it should be conducted on an individual basis whenever possible. A completed copy of the

checklist, SBA Form 1746, will be provided to the participant and a copy placed in the participant's file.

- b. The DO should invite other DO divisions to attend the orientation meeting and answer questions relative to their divisions.

## **5. What are the Requirements for Business Plan Submission and Approval?**

The participant must prepare, submit, and obtain SBA's approval of its final business plan before it will be eligible to receive 8(a) contracts. This plan must be submitted within 30 days of the firm's orientation session. The BOS may grant the firm one 15-day extension. The firm may submit its business plan using SBA Form 1010C (8(a) Business Plan) or it may use any business plan format it wishes, as long as it contains all of the information required by SBA. Thereafter, the firm must submit any modifications to the plan to its BOS within 30 days after the close of each program year.

## **6. What if a Firm Does Not Submit its Business Plan On a Timely Basis?**

A firm may not be awarded any 8(a) contracts until its business plan is submitted and approved. If the business plan is not submitted within the 30-day time period, or any extension granted, the BOS should initiate termination proceedings.

## **7. What Information Must the Firm's Business Plan Include?**

- a. To enable SBA to determine the firm's business development needs, the business plan must be comprehensive, setting forth business targets and objectives. Whether the participant uses the SBA form or its own format, at a minimum, the business plan must contain:
  - (1) A detailed description of any products currently being produced and any services currently being performed by the concern, as well as any future plans to enter into one or more new markets;
  - (2) The participant's primary NAICS code and all related NAICS codes;
  - (3) Business targets and objectives including, as necessary, revenues, technical capabilities, etc.;
  - (4) An analysis of market potential, competitive environment, and the concern's prospects for profitable operations during and after its participation in the program;
  - (5) An analysis of the concern's strengths and weaknesses, with particular attention to ways to correct any financial, managerial,

technical, or work force conditions that could impede the concern from receiving and performing non-8(a) contracts;

- (6) Specific targets, objectives, and goals for the business development of the concern during the next two years;
  - (7) Estimates of both 8(a) and non-8(a) contract awards that will be needed to meet its targets, objectives and goals; and
  - (8) Such other information as SBA may require.
- b. The firm will be eligible to perform any 8(a) contract opportunity regardless of whether the NAICS code assigned to the requirement is contained in its approved business plan, so long as it demonstrates the capability and responsibility to perform the contract in question to the procuring agency's contracting officer and so long as it qualifies as a small business under the size standard attached to that NAICS code.

## **8. How Does the District Office Process the Business Plan?**

- a. Within ten calendar days after receipt, the assigned BOS will screen the business plan for completeness. If the business plan is not sufficiently complete to allow a thorough evaluation, it must be returned to the program participant, citing the reasons for its return.
- b. Within 30 working days after receipt of a complete business plan, the BOS will evaluate it and advise the participant in writing of the following:
  - (1) Results of the evaluation;
  - (2) Recommendations regarding the improvement and/or implementation of the business plan; and
  - (3) Recommendations regarding program support levels for the current and succeeding program years. Support levels are not to be used as a bar to accepting contract support.
- c. The BOS will use the 8(a) Business Plan Evaluation Form (SBA Form 1714) to evaluate the business plan, identify firm strengths and weaknesses, and analyze plans to improve the firm's management, marketing and financial condition. The form should be completed based on information provided in the business plan. The BOS can help to ensure that an acceptable business plan is submitted by explaining to the participant what is required in the plan.
- d. Each participant and each business plan is unique; therefore, evaluation of the business plan involves a degree of subjectivity. The form is



designed to provide information regarding growth and development of the firm. At one level, the BOS must evaluate the adequacy and clarity of the information provided. At another level, the BOS must evaluate how realistically the business plan reflects where the firm wants to go, and how it expects to get there in terms of marketing, management, and finance. In making this evaluation, the BOS should consider the internal resources of the firm, and assistance that is available from SBA and other resources. Based on the evaluation of the business plan, the BOS should be able to provide guidance to the firm, and, if necessary, arrange for the provision of management and technical assistance.

- e. Inherent in formulating a business plan is the identification of the firm's strengths and weaknesses. The evaluation questions and summary provide a mechanism for assessing strengths and weaknesses. The questions are stated so that the desired answer is "yes." However, "no" answers do not mean that the business plan should not be approved. "No" answers may mean that these are items of concern or indicate weaknesses in one or more of the areas of finance, management and marketing that should be addressed in the summary section. A "no" answer in some cases could indicate that information in a particular section of the business plan is inadequate or unrealistic. In such cases, the BOS should provide feedback to the participant for revising a part of the plan.
- f. The BOS will submit his or her findings and recommendations to the ADD/8(a)BD or Supervisory BOS for approval.

## **9. How Does the BOS Counsel 8(a) Firms?**

- a. The BOS must provide counseling assistance to all 8(a) firms seeking information or help in doing business with the federal government. The BOS will maintain a list of 8(a) firms counseled, which should include the date the assistance was provided, the name of the person counseled and company represented, and a brief description of the counseling session.
- b. Possible topics for the counseling session include:
  - (1) Information on how and where to sell items/services to the Government.
  - (2) Advice and information on arranging meetings with small business specialists, contracting officials, technical personnel, Procurement Center Representatives (PCRs), Commercial Market Representatives (CMRs), and other BOSs.

- (3) 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.
  - (4) Information concerning the DoD’s CCR, such as how to register through the Internet, using the network as a marketing tool and as a link to procurement opportunities, and registering firms that do not have access to the Internet.
  - (5) Information on subcontracting opportunities, including providing a list of contacts.
  - (6) Counseling on all Government contracting assistance, including the Certificate of Competency (COC) program, size determinations, and Property Sales Assistance.
  - (7) Information on other available SBA assistance; i.e., counseling sources - Small Business Development Centers (SBDCs) and SCORE; financial assistance; the Small Business Innovative Research (SBIR) program; international trade opportunities; Women-Owned Business initiatives; and the Veterans and Advocacy programs.
  - (8) Advice on how to report cases of contract bundling on the 8(a) BD Internet home page.
- c. Counseling sessions may be held with individual firms or with 8(a) groups. They may be held through joint training activities with the contracting activity, SCORE or SBDCs, or at procurement conferences. They may be held together with prime contractors, or may take place at district, city, county, or state offices.

#### **10. How Does the District Office Perform a Site Visit of a Participant?**

- a. A DO representative, usually the participant’s BOS, will visit each firm in the active portfolio once per fiscal year.
- b. The BOS will discuss with the owner upon whom eligibility is based:
  - (1) The goals in the business plan;
  - (2) The progress made to accomplish the goals in the business plan; and
  - (3) What the SBA can do to help the firm accomplish the goals in the business plan.

- c. The BOS will follow up each meeting with a letter to the firm summarizing the meeting.

**11. What Will a District Office Do if it Receives Evidence that an 8(a) Firm Has Relocated its Principal Place of Business?**

Upon receipt of evidence of an 8(a) firm's relocation of its principal place of business, the BOS, through the ADD/8(a)BD, will send a memorandum with supporting documents to the ADD/8(a)BD serving the geographical area of the firm's new location. The memorandum will request that a field visit be conducted to determine that the firm has in fact relocated its principal place of business to the new location.

**12. What are the Receiving District Office's Responsibilities?**

- a. Upon receipt of the request and supporting documents, the receiving DO will arrange a field visit.
- b. If DO staff is unable to make the visit, they may use other resources, such as SBDC, SCORE, PCR, etc.
- c. If the receiving DO verifies that the firm has relocated to that District, the receiving DO will send notification to the initiating DO and all files (business development and contract) will be forwarded to the receiving DO.
- d. If relocation is not verified, the receiving DO will notify the initiating DO, which then retains servicing responsibility.

**13. What Steps are Involved in the Final Transfer?**

In order to complete the transfer of an 8(a) BD participant from one DO to another, the following actions must be completed:

- a. The files must be forwarded to the receiving DO;
- b. Data in SACS must be transferred to the receiving DO; and
- c. Any pending program actions must be highlighted for the receiving DO.

## **CHAPTER 4A: CONTRACTS--GENERAL, PROCESSING REQUIREMENTS**

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

SBA uses sole source and competitive 8(a) requirements as a means of supporting the business development and growth of participants during their nine year program terms.

### **2. Can 8(a) Contracting Authority Be Delegated to a Procuring Agency?**

SBA is authorized to delegate its 8(a) contracting authority to procuring agencies. This delegation is accomplished by negotiating a Partnership Agreement between SBA and the procuring agency. Partnership Agreements are negotiated at the national level, through the Office of Business Development (BD). Procedures for processing requirements under a Partnership Agreement are in Chapter 4C Partnership Agreements.

### **3. Does Participation in the 8(a) BD Program Guarantee that a Participant Will Receive Contract Opportunities Through the Program?**

Admission into the 8(a) BD Program does not guarantee that a participant will receive 8(a) contracts, nor does it guarantee any particular level of contract support. Participants should market their capabilities to the appropriate procuring activities to increase their prospects of receiving sole source 8(a) contracts.

### **4. How Are Support Levels Used in the 8(a) BD Program?**

- a. Participants project levels of 8(a) contract support as part of their business plans. SBA uses support levels as a planning and development tool to help the firm determine the optimal number and dollar amount of 8(a) contracts to maximize the firm's growth and development, without becoming unduly dependent on 8(a) awards.
- b. A firm should be realistic in its annual forecasts of types and dollar amounts of contract support. However, these forecasts are only estimates and will not, by themselves, be used to deny or prevent the award of an 8(a) contract to the firm. Contract support is neither a minimum nor a maximum; it is merely an estimate.

## 5. What Are the District Office's Responsibilities for 8(a) Contracting?

The District Office is responsible for assisting participants in seeking, identifying, and accepting or rejecting 8(a) requirements. Accordingly, the District Office should do the following:

- a. Maintain on-going contact with appropriate local procuring activity officials to inform them of program goals, policies, and procedures;
- b. Compile and analyze internal statistical data; *e.g.*, percentages of participants with/without contracts, agency patterns of contracting, percentages of contracts under particular NAICS codes, etc. to assist it in requirements management and planning;
- c. Notify the procuring activity of new types of firms in the portfolio to assist in marketing those firms to the activity;
- d. Contact procuring activities to identify and reserve requirements;
- e. Match requirements to specific 8(a) concerns in the District portfolio considering equitable distribution where appropriate;
- f. Obtain capability statements for 8(a) participants from their Central Contractor Registration (CCR) profiles and forward to the appropriate procuring activities;
- g. Arrange for technical assessments of the capability and capacity of client firms to perform on specific requirements;
- h. Prepare necessary correspondence, such as search letters, requirement letters, and acceptance letters to procuring activities;
- i. Prepare, review, and approve Impact Determination, Suitability for 8(a) Contracting, and Contractor Selection Statements, and Requirement and Acceptance Forms; and
- j. Regularly verify participants' compliance with 8(a) BD Program regulations.

## 6. How Are Requirements Identified?

A requirement may be identified by the BOS, a Procurement Center Representative (PCR), an 8(a) BD participant, or the procuring activity itself. A PCR residing at or performing liaison responsibilities for a procuring activity is responsible for screening proposed procurements for possible 8(a) contracts in accordance with 13 CFR 125.2.

**7. What Is a Search Letter?**

A search letter is a general request from SBA to a procuring activity requesting the activity to identify and reserve requirements to support a particular firm's business plan. The letter outlines the participant's capabilities and references its CCR profile.

**8. What Is a Requirement Letter?**

- a. A requirement letter identifies a specific requirement and requests the procuring activity to offer it to the 8(a) BD Program. The letter must clearly identify the requirement sought by project name and/or number.
- b. Before sending a requirement letter on behalf of a particular participant, the BOS should ascertain where and how the firm learned of the requirement, the firm's suitability for the requirement, and its efforts to market the requirement.
- c. If the letter is written on behalf of a specific participant, it should explain why the firm is suitable for the requirement (*e.g.*, previous contracts for the same or similar supply or service). It should also include a statement that the firm is eligible for the contract and qualified to perform the requirement. If the requirement is for construction, the letter should provide bonding capacity.
- d. If the requirement is to be awarded competitively, the letter should include a statement that at least two 8(a) firms are considered eligible for and qualified to perform the contract.

**9. What Is an Offering Letter?**

A procuring activity indicates its intent to award a requirement under the 8(a) BD Program by submitting an offering letter to SBA.

**10. What Information Must Be Included in an Offering Letter?**

Information that must be included in an activity's offering letter is found in 13 CFR 124.502(c) and the Federal Acquisition Regulations (FAR) 19.804-2.

**11. To Which SBA Office Does a Procuring Activity Submit an Offering Letter?**

- a. Sole source requirements offered on behalf of a specific participant ("matched" requirements) must be submitted to the District Office servicing that concern.

- b. Competitive requirements and open sole source requirements, except for construction, must be submitted to the District Office serving the geographical area in which the procuring activity is located.
- c. Competitive and open sole source construction requirements must be submitted to the District Office serving the geographical area in which the work is to be performed, except for contracts to be performed overseas.
- d. Competitive and open sole source construction requirements to be performed overseas must be submitted to the Headquarters Office of 8(a) BD.

**12. How May a Procuring Activity Submit Its Offering Letter to SBA?**

The procuring activity may submit its offering letter by electronic mail, facsimile transmission, U.S. Mail, or commercial delivery service.

**13. What Is an Acceptance Letter?**

An acceptance letter is SBA's formal notification that it accepts a requirement into the 8(a) BD Program for sole source or competitive award. *See* 13 CFR 124.503 and the Federal Acquisition Regulations (FAR) 19.804-3. The acceptance letter may be submitted by electronic mail, facsimile transmission, U.S. Mail, or commercial delivery service.

**14. What Are the Time Frames for SBA's Acceptance or Rejection of a Requirement Offered By a Procuring Activity Under a Delegation of 8(a) Contracting Authority?**

- a. If the requirement is greater than the simplified acquisition threshold, the District Office must accept or reject it within 5 working days of receipt, or the procuring activity may assume that SBA has accepted it and proceed with the procurement.
- b. SBA may also authorize the procuring activity to award requirements that are less than or equal to the simplified acquisition threshold without offering the requirement to SBA. In this case, the procuring activity must provide a file copy of the purchase order to the SBA District Office.
- c. If time frames cannot be met, SBA may request an extension.

**15. What Are the Time Frames for SBA's Acceptance or Rejection of Requirements Offered That Are Not Under a Delegation of 8(a) Contracting Authority?**

- a. If the requirement is greater than the simplified acquisition threshold, the District Office must accept or reject it within 10 working days of receipt. When SBA fails to respond to an offering letter within the 10-day time period, the procuring activity may seek SBA's acceptance through the Assistant Administrator for Business Development (AA/BD). The procuring activity may assume that SBA accepts its offer for the 8(a) Program if it does not receive a reply from the AA/BD within 5 working days of receipt of the procuring activity's request.
- b. If the requirement is less than or equal to the simplified acquisition threshold, the District Office must accept or reject it within 2 working days of receipt, or the procuring activity may assume that SBA has accepted it and proceed with the procurement.
- c. If time frames cannot be met, SBA may request an extension of time.

**16. How Will the Headquarters Office of 8(a) BD Process Open Sole Source and Competitive Construction Requirements to be Performed Overseas?**

- a. Open sole source and competitive construction requirements to be performed overseas will be processed by the Office of Management and Technical Assistance (MTA).
- b. MTA will accept or reject the requirement within 5 working days of receipt, if it is being offered by a procuring activity that has a valid Partnership Agreement with SBA delegating contracting authority, and within 10 working days if the requirement is being offered by a procuring activity not having delegated contract execution authority.
- c. If the requirement is competitive, MTA will also post a notice of acceptance on the 8(a) BD web site. If the requirement is open sole source, MTA will canvass District Offices to identify potential qualified participants.
- d. Based on information submitted by District Offices, MTA will match the requirement with a participant.

**17. On Whose Behalf Does SBA Accept a Requirement?**

For competitive awards, SBA will accept the requirement on behalf of the 8(a) BD Program. For sole source awards, SBA will accept a requirement on behalf of



a specific participant. SBA is not required to accept any particular procurement offered to the 8(a) BD Program.

**18. How Does SBA Verify a North American Industrial Classification System (NAICS) code Assigned to the Requirement?**

As part of the acceptance process, SBA will verify the appropriateness of the NAICS code assigned by the procuring activity. In general, SBA will accept the NAICS code assigned as long as it is reasonable, even though other NAICS codes may also be reasonable. If SBA and the procuring activity disagree over the NAICS code assigned, the District Office should make every effort to resolve the matter through discussion with the procuring activity. If negotiations fail, SBA may reject the requirement, appeal the designation to the head of the procuring agency pursuant to 13 CFR 124.505, or appeal the NAICS code assigned to the Office of Hearings and Appeals (OHA). *See* 13 CFR 124.503(b).

**19. How Does SBA Process a Sole Source Requirement for Which the Procuring Activity Nominates a Specific Participant?**

- a. Once SBA determines that a particular requirement is suitable for the 8(a) BD program, SBA will normally accept the requirement on behalf of the nominated participant if:
  - (1) The requirement is consistent with the participant's business plan;
  - (2) The participant is in compliance with its business activity target (if applicable);
  - (3) The firm is small under the size standard corresponding to the NAICS code assigned to the requirement;
  - (4) The firm meets and is current with all program requirements, including submission of the required financial statements to SBA;
  - (5) The firm has not exceeded its 8(a) contracts limits under 13 CFR 124.519, and
  - (6) The firm is a current participant on the date of award.
- b. If any of these conditions are not met, SBA will notify the procuring activity and the participant. The procuring activity may then nominate a different participant. If the procuring activity does not nominate another participant, the District Office should offer one or more alternative participants to the activity.

**20. Which Participants Can SBA Nominate for Open Construction Requirements?**

For open requirements, SBA may nominate any participant that is qualified and has a bona fide place of business located in the geographical area serviced by the District Office in which all or the majority of the construction is to be performed. *See* Chapter 4D of this SOP. If no qualified and eligible firm exists in its portfolio, the District Office should forward the requirement to the AA/BD. The AA/BD will attempt to locate a qualified and eligible participant with a bona fide place of business in a nearby District, within a state or within an adjoining state.

**21. Which Participants Can SBA Nominate For Open Non-construction Requirements?**

The District Office may nominate any qualified participant from its portfolio for an open non-construction requirement. If no qualified and eligible firm exists within the portfolio of the District Office that received the requirement, the office should review the CCR database.

**22. What Information Does the District Office Provide In Response to a Request From Another District Office to Identify Potentially Qualified Participants for Open Requirements?**

The responding District Office should provide a list of qualified firms and other information, as needed. For each firm this information should include, but not be limited to, business development needs of the firm, compliance with program requirements, including competitive business mix requirements if the firm is in the transitional stage, financial condition, management ability, technical capability, and the effect of the award on equitable distribution of contract opportunities.

**23. What are Formal and Informal Evaluations for Purposes of the 8(a) BD Program?**

In a formal evaluation, the procuring activity releases a statement of work to one or more participants. SBA will not authorize formal technical evaluations for sole source 8(a) requirements except for architectural and engineering (A/E) requirements. If a procuring activity wishes to conduct a formal evaluation of more than one firm (other than A/E), for a requirement that is below the competitive threshold, it must request that the requirement be accepted competitively. However, approval must be obtained for competition below the threshold prior to acceptance of the requirement. In an informal evaluation, the procuring activity requests information from several participants to determine their capability to perform a specific requirement. Statements of work may not be released to participants in conjunction with informal evaluations.

**24. How Are Requests for Competition Below the Competitive Threshold Processed?**

Requests for competition below the competitive threshold must be approved by the AA/BD. The District Office should forward its review and recommendation to the AA/BD, attention AA/MTA, via fax or e-mail. The AA/BD will acknowledge receipt of the request within one working day and issue a decision to approve or deny the request within 3 working days. *See* 13 CFR 124.506(c).

**25. Must a Procuring Activity Offer a Follow-On or Repetitive Requirement to SBA If It Wishes to Award the Successor Contract Under 8(a) BD?**

A procuring activity must submit a new offering letter to SBA if it intends to award a follow-on or repetitive contract as an 8(a) award. This allows SBA to consider the appropriateness of the requirement for the program, whether it should be accepted for sole source or competitive award, eligibility of any nominated concern, and the effect of the award on equitable distribution of contract opportunities. The procuring activity should notify SBA if it does not plan to reoffer the requirement. *See* 13 CFR 124.503(f).

**26. How Are Basic Ordering Agreements Treated?**

Basic ordering agreements (BOAs) are not contracts. Each task or delivery order issued under a BOA is a separate contract, and is treated as such in the 8(a) BD Program. Therefore, for an award to be made under a BOA, SBA must first accept the BOA, and then accept each task or delivery order there under. If a BOA was awarded on a sole source basis, SBA will not accept any task or delivery order under it if the cumulative value of all the tasks or delivery orders awarded under the BOA, including the order under consideration, would exceed the competitive threshold. *See* 13 CFR 124.503(g).

**27. What Must a Procuring Activity Do If It Anticipates That the Total Value of Task or Delivery Orders to be Awarded Under a BOA Will Exceed the Competitive Threshold?**

If it anticipates that the total value of task or delivery orders to be awarded under a BOA will exceed the competitive threshold, the procuring activity must offer the BOA to SBA for competitive award. However, even if the BOA was accepted for competition, each task or delivery order awarded under it must be accepted separately by SBA.

**28. Can a Firm Continue to Receive Task or Delivery Orders Under a BOA After It Has Exited the 8(a) BD Program?**

Because each task or delivery order issued under a BOA is a separate contract, the firm may not receive a task order or delivery order after it has exited the program. This is true whether the BOA was awarded on a sole source or a competitive basis.

**29. How Are Task and Delivery Orders Treated under Federal Supply Schedule (FSS) and Multiple Award Contracts?**

Both multiple award contracts and FSS contracts, unlike BOAs, are contracts. Task orders and delivery orders issued under multiple award contracts and FSS contracts are not treated as separate contracts. *See* 13 CFR 124.503(h).

**30. Can a Firm Continue to Receive Task or Delivery Orders Under a Multiple Award Contract or FSS Contract After It Has Exited the 8(a) Program?**

Because task or delivery orders issued under a multiple award contract or FSS contract are not considered separate contracts, the firm may receive a task order or delivery order after it has exited the program. *See* 13 CFR 124.503(h)(2).

**31. What Circumstances Limit SBA's Ability to Accept a Procurement for Award as an 8(a) Contract? (*See* 13 CFR 124.504).**

SBA will not accept a procurement for award under the 8(a) BD Program if the following circumstances exist:

- a. The procuring activity issued a solicitation or otherwise expressed publicly a clear intent to reserve the requirement as a small business set-aside or Small Disadvantaged Business (SDB) set-aside before offering it to SBA as an 8(a) contract;
- b. Competition occurred prior to acceptance of the requirement into the program; or
- c. Adverse impact will result from acceptance of the requirement.

**32. What Does Competition Prior to Offer and Acceptance Mean, and How Does It Affect Acceptance of a Requirement Into the 8(a) BD Program?**

Any competition conducted without first obtaining SBA's formal acceptance of a procurement for the 8(a) BD Program will not be considered an 8(a) requirement. Should the procuring activity wish to award the requirement under the 8(a) BD Program, SBA may accept the requirement for competitive award if the procuring

activity agrees to re-solicit the requirement using appropriate competitive 8(a) procedures. *See* 13 CFR 124.504(b).

**33. What Does Prior Reservation As a Small Business Set-Aside Mean, and How Does It Affect Acceptance into the 8(a) BD Program?**

For purposes of the 8(a) BD Program, prior reservation as a small business set-aside means that the procuring activity issued a solicitation for, or otherwise expressed publicly a clear intent to reserve, a procurement as a small business set-aside prior to offering the requirement to SBA for award as an 8(a) contract. The AA/BD may permit the acceptance of the requirement, however, under extraordinary circumstances. *See* 13 CFR 124. 504(a).

**34. What Does Adverse Impact Mean, and How Does It Affect Acceptance Into the 8(a) BD Program?**

Adverse impact means that SBA has determined that acceptance of the procurement for an 8(a) award would have a detrimental effect on an individual small business, a group of small businesses located in a specific geographical location, or other small business programs. The adverse impact concept is designed to protect small business concerns that are performing contracts awarded outside the 8(a) BD Program, and does not apply to follow-on or renewal 8(a) acquisitions. SBA will not consider adverse impact with respect to any requirement offered to the 8(a) BD Program under Simplified Acquisition Procedures. *See* 13 CFR 124.504(c).

**35. When Will SBA Determine Adverse Impact With Respect to a Specific Small Business?**

- a. Adverse impact will be presumed if the following conditions are met:
  - (1) The small business has performed the previous requirement for a period of at least 24 months;
  - (2) The small business is performing the previous requirement at the time it is offered to the 8(a) BD Program or the performance period for the previous contract ended within 30 calendar days of the date the requirement was offered to the 8(a) BD Program; and
  - (3) For a requirement of one year or less, the dollar value of the previous contract was 25 percent or more of its most recent annual gross sales, including those of its affiliates, if any; or for multi-year contracts, the dollar value of the previous contract for the last twelve month period was 25 percent or more of its gross sales, including those of its affiliates.

- b. If adverse impact is found, the requirement will not be accepted into the 8(a) BD Program. SBA will make its determination within 15 calendar days of receipt of the offer letter.

**36. How Will SBA Determine Adverse Impact With Respect to a Specific Small Business?**

To make an impact determination, SBA should obtain a business credit report (BCR) on the incumbent firm. If a BCR is not available, or if there is a question about the accuracy of the BCR data, the District Office will instruct the firm to submit SBA Form 355, "Application for Small Business Size Determination." Additionally, SBA may require the incumbent to provide financial statements, employment records, tax returns and any other documentation required to perform an objective review and analysis of the facts. The firm should be advised of the information and documentation required and the date they must be received by SBA. If the incumbent fails to submit the requested data, SBA may find no adverse impact on the small business incumbent. Care must be taken to examine all relevant factors before reaching a determination of adverse impact. The District Office may need to request the procuring activity to grant it an extension of its time to respond to allow an adverse impact analysis. *See* 13 CFR 124.504(c).

**37. When Will SBA Determine Adverse Impact With Respect to a Group of Small Businesses?**

SBA will determine that a combination or consolidation of requirements, performed by two or more small business concerns under previous requirements, into a "new" requirement will have an adverse impact on a group of small businesses if the following conditions are met for at least one of the small firms:

- a. A small business has performed the previous requirement for a period of at least 24 months;
- b. A small business is performing the previous requirement at the time it is offered to the 8(a) BD Program or the performance period for the previous contract ended within 30 days of the date the requirement was offered to the 8(a) BD Program; and
- c. For a requirement of one year or less, the dollar value of the previous contract was 25 percent or more of its most recent annual gross sales, including those of its affiliates, if any; or for multi-year contracts, the dollar value of the previous contract for the last twelve-month period was 25 percent or more of its gross sales, including those of its affiliates. If adverse impact is found, the requirement will not be accepted into the 8(a) BD Program.

**38. When Will SBA Make an Adverse Impact Determination for Purposes of Small Business Programs?**

SBA will determine that a small business program would suffer adverse impact as a result of acceptance of a requirement into the 8(a) BD Program if the number and/or value of contracts in the subject industry reserved for 8(a) BD is disproportionate to the number and/or dollar value of contracts in the subject industry in small business programs. If adverse impact is found, the requirement will not be accepted into the 8(a) BD Program.

**39. Can Acceptance of a New Requirement Into the 8(a) BD Program Result in Adverse Impact?**

Acceptance of a new requirement into the 8(a) BD Program cannot result in adverse impact. A "new requirement" is one which has not been previously acquired by the procuring activity.

**40. Can Acceptance of a Construction Requirement Into the 8(a) BD Program Result in Adverse Impact?**

Generally, acceptance of a construction requirement cannot result in adverse impact since construction requirements are generally new requirements; however, adverse impact may occur on construction maintenance contracts. *See* 13 CFR 124.504(c)(1)(ii).

**41. Can Expansion or Modification of an Existing Requirement Result in Adverse Impact?**

Expansion or modification of an existing requirement will be considered a new requirement, and thus will not result in adverse impact, if the magnitude of the change is sufficient to result in a price adjustment of at least 25 percent (adjusted for inflation), or requires a different type of capability or work. In determining whether the requirement requires additional or different types of capabilities, SBA will consider all relevant factors, including whether the substance of the work to be performed is sufficiently different from the previous contract to engender a legitimate change of NAICS code. If the NAICS code on the previous contract and the requirement at hand are the same, SBA may consider the relative magnitude of different types of work required under each. If there is significant variance in relative magnitudes, then SBA may find that the requirement is new and will not result in adverse impact. In making this determination, SBA should compare and analyze statements of work (SOWs) for both the previous contract with the requirement at hand, and consult with the procuring activity regarding its analysis in assigning NAICS codes to both. *See* 13 CFR 124.504(c)(1)(ii).

**42. How Will “Benchmark Achievement” Affect Acceptance of Requirements Into the 8(a) BD Program?**

Where actual participation by disadvantaged businesses in a particular industry exceeds the benchmark limitations established by the Department of Commerce, in consultation with the General Services Administration and the SBA and at the Administrator’s discretion, SBA may elect to cease accepting requirements in that industry. Such determinations will be made on a case-by-case basis and District Offices will be notified by policy notice. In the absence of such notice, District Offices should not take any actions to limit acceptance of requirements as a result of benchmark attainment. *See* 13 CFR 124.504(d).

**43. When Will SBA Release a Requirement From the 8(a) BD Program?**

Once an offer has been made, SBA will release a requirement for formal competition outside the 8(a) BD Program only in very limited circumstances. Those circumstances are set forth in 13 CFR 124.504(e). In general, for SBA to release a requirement, the business development benefits to the incumbent participant of releasing the requirement should exceed the business development benefit to the portfolio of accepting the requirement for the program. Release of a requirement must be approved by the District Director.

**44. When Must an 8(a) Contract Be Awarded on a Competitive Basis?**

An 8(a) contract must be awarded competitively if:

- a. There is a reasonable expectation that at least two eligible participants will submit offers at a fair market price; and
- b. The anticipated award price of the contract, including options (*i.e.*, the government estimate of the total value of the contract, including options) will exceed \$5,000,000 for contracts assigned manufacturing NAICS codes and \$3,000,000 for all other contracts. *See* 13 CFR 124.506.

**45. Can a Requirement Be Awarded on a Sole Source Basis if the Final Negotiated Price Exceeds the Competitive Threshold?**

Where the estimate of the total value of a proposed 8(a) contract is less than the applicable competitive threshold and the requirement is accepted for sole source award, award may be made even though the negotiated contract price exceeds the competitive threshold, if the contract price is not more than 10 percent greater than the competitive threshold. *See* 13 CFR 124.506(a)(3).



**46. May a Requirement Be Split to Stay Under the Competitive Threshold?**

If the estimated value of a requirement exceeds the applicable competitive threshold, it may not be divided into several separate procurement actions of smaller amounts to make several sole source awards to a single contractor. *See* 13 CFR 124.506(a)(4).

**47. Are Any Firms Exempt from the Competitive Thresholds?**

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

**48. May SBA Accept Any Requirement Above the Competitive Threshold for Award on a Sole Source Basis?**

SBA may only accept a requirement for sole source award above the competitive threshold if the AA/BD finds that the nominated firm is the only participant that is capable of performing the requirement at a fair market price. If the District Office receives such an offer, it must also obtain comprehensive and persuasive information from the procuring activity that demonstrates efforts were made to identify other participants, and demonstrates why the nominated firm is the only 8(a) source. The District Office must forward this information and its recommendation to the AA/BD. *See* 13 CFR 124.506(d).

**49. What Procedures Apply to Competitive Requirements?**

Procuring activities will conduct competitions among and evaluate offers received from participants in accordance with 13 CFR 124.507.

**50. How Will SBA Determine Participant Eligibility in Sealed Bid Acquisitions and Negotiated Acquisitions?**

- a. Within 5 working days after receipt of a procuring activity's request for an eligibility determination, SBA will determine whether the firm is eligible for award. Eligibility criteria are found at 13 CFR 124.507(b)(2).
- b. In sealed bid acquisitions, after the procuring activity has received the bids, it will provide SBA a copy of the solicitation, the estimated fair market price, and a list of offerors ranked in the order of their standing for award (*i.e.*, first low, second low, etc.) with the total evaluated price for each offer, differentiating between base requirements and any

options. SBA will consider the eligibility of the first low offeror. If the first low offeror is determined to be not eligible, SBA will consider the eligibility of each next low offeror in order, until an eligible offeror is identified.

- c. In negotiated acquisitions, SBA will generally determine eligibility when the successful offeror has been established by the procuring activity.
- d. If the procuring activity contracting officer believes that the apparent successful offeror is not responsible to perform the contract, the matter must be referred to SBA under Certificate of Competency (COC) procedures in accordance with 13 CFR 125.5 and FAR 19.6.

**51. Can the 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 or protested by another participant or any other party. Any party with information concerning the eligibility of a participant to continue participation in the 8(a) BD Program or for purposes of a specific 8(a) contract may submit this information in accordance with 13 CFR 124.112(c) and 517.

**52. Can the Size of a Participant Be Questioned with Respect to Award of a Particular Contract?**

The size status of the apparent successful offeror for a competitive procurement may be protested according to 13 CFR 121.1001(a)(2). The size status of a nominated participant for a sole source procurement may not be protested by another participant or any other party. *See* 13 CFR 124.517(b).

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

A participant may not appeal SBA's determination not to award it a specific contract. However, it may request a formal size determination if SBA found it ineligible for a contract based on size. *See* 13 CFR 124.517(c).

**54. Can the NAICS Code Assigned to a Sole Source Requirement Be Challenged?**

The NAICS code assigned to a sole source 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 contract protest. Only the AA/8(a) BD may appeal a NAICS

code designation with respect to a sole source requirement. *See* 13 CFR 134.302(b); 13 CFR 124.517(d)(1).

**55. Can the NAICS Code Assigned to a Competitive Requirement Be Challenged?**

In connection with a competitive procurement, any interested party who has been adversely affected by a NAICS code designation may appeal the designation to SBA's Office of Hearings and Appeals in accordance with 13 CFR Part 134.

**56. How Are Requirements for the Defense Fuel Supply Center (DFSC) Processed?**

- a. DFSC's Fuel Energy Programs include the following:
  - (1) Direct Delivery (ground fuels, into plane and bunkers);
  - (2) Domestic Bulk (East/Gulf Coast and Inland West Coast); and
  - (3) Alternative Fuels (Natural Gas and Coal).
- b. With the exception of DFSC's coal program, these requirements, which are open, must be synopsisized in FedBizOpps as sources-sought requirements.
- c. When a participant has responded to the sources-sought synopsis, DFSC will provide the firm with a qualification package that includes criteria necessary to qualify. The firm must provide a copy of its 8(a) BD Program certification letter as part of the qualification package. This package may include, but is not limited to, the information listed in the Defense Logistic Agency and the SBA Partnership Agreement. Based on this information, DFSC will determine specific items that are suitable for 8(a) BD Program reservation.
- d. Upon receipt of notification, DFSC will issue the solicitation directly to the interested participant. To be considered, the interested participant must respond to the solicitation. DFSC will evaluate proposals and determine acceptability of the qualification package. Evaluation factors may include supply and transportation commitments and the firm's capability to perform. Should the firm be determined acceptable, DFSC will issue an offering letter on behalf of the participant to the servicing District Office.
- e. Most coal requirements are not open buys. However, for those exceptions where a requirement is open, the offering will be forwarded to the District Office having jurisdiction over the location where the work will be performed.

**57. Can an Award Be Made to a Firm Whose Program Term Has Expired?**

- a. In general, an 8(a) concern must be an eligible participant on the date of contract award. However, a concern that has completed its term of participation in the 8(a) BD Program may be awarded a competitive contract if it was eligible for award of the contract on the initial date specified for receipt of offers contained in the contract solicitation, and if it continues to meet all other applicable eligibility criteria. This rule applies even where the procuring activity has amended the solicitation to extend the date for submission of offers.
- b. For a negotiated procurement, a participant may submit revised offers, including a best and final offer, and still be awarded a competitive contract if it was eligible as of the initial date specified for the receipt of offers in the solicitation, even though its program term may have expired after that date.
- c. An 8(a) requirement for architect-engineer services with a value less than the competitive threshold amount and which uses the evaluation procedures prescribed by FAR subpart 36.6 will not be considered a competitive 8(a) requirement under this section.

**58. Who Can Execute an 8(a) Contract, Subcontract, or Modification?**

Contracting functions under 8(a) include all matters relative to the negotiation, execution, award, modification, administration, termination and close out of contracts by and between SBA and other federal agencies and involving subcontracts with 8(a) concerns. Only the following individuals can execute an 8(a) contract, subcontract or modification on behalf of SBA:

- a. An SBA Contracting Officer who is warranted to purchase goods and services or enter into contracts under the conditions, and to the limit, specified in his/her certificate of appointment;
- b. An individual who by virtue of his/her position within SBA is determined to be the head of a procuring activity. The District Director of the Washington District Office is one such individual; and
- c. The contracting officer of an activity within an agency to which SBA has delegated 8(a) contracting authority.

**59. How Is Participant Size Determined For a Contract?**

- a. General.
  - (1) No 8(a) BD firm may be awarded an 8(a) BD contract for which they are other than small.

- (2) SBA must have accepted a contract in support of the approved business plan of a particular participant before any size certification is valid. Any size certification that occurs prior to SBA's official acceptance of the contract for the 8(a) BD Program will have no effect.
- b. To determine participant size:
- (1) The SBA will review the participant's self-certification and determine if it is small for purposes of that contract, within 30 days of its receipt of a participant's size self-certification for a particular 8(a) BD contract. The 8(a) BD program follows the regulations at 13 CFR 121.603 for size.
  - (2) The SBA will review the concern's most recent financial statements or examine the number of individuals employed by the concern. After SBA verifies that the selected participant is small for the particular procurement, subsequent changes in size up to the date of award, except changes due to merger with or acquisition by another business concern, will not affect the firm's size status as it relates to that contract. If there has been a merger or an acquisition by another firm, the BOS must determine whether the firm is still eligible for the contract.
  - (3) The District Office may request a formal size determination from the Government Contracting (GC) Area Office serving the geographical area in which the principal office of the selected participant is located.
  - (4) If the District Office cannot verify that the participant is small, the concern will be ineligible for that contract, unless the firm is found to be small after a formal size determination.
  - (5) The participant may request a formal size determination from the GC Area Office serving the geographical area in which its principal office is located within 5 working days of its receipt of notice that it is not small for a particular 8(a) contract. Where the participant does not timely request a formal size determination, SBA may accept the procurement in support of another participant, or may rescind its acceptance of the offer for the 8(a) BD Program.

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

An 8(a) BD contract may be any of the types authorized in FAR Part 16 (*e.g.*, fixed price, cost reimbursement, incentive, indefinite-delivery, time and materials, etc.). SBA will generally not accept requirement contracts (FAR 16.503) and

indefinite-quantity contracts (FAR 16.504) unless they contain a guaranteed minimum quantity.

**61. What Is a Letter Contract?**

A letter contract is a written preliminary contractual instrument that authorizes immediate commencement of contract performance. Letter contracts will be accepted by SBA when issued by the procuring agencies pursuant to FAR 16.603. Letter contracts must be definite at the earliest practicable date, but no later than 180 days after issuance, or before 40 percent of the work is completed, whichever occurs first.

**62. What Is the Procurement Package?**

The procuring activity will provide SBA with complete information relating to the technical requirements of the proposed procurement including specifications, drawings, delivery or performance schedules, detailed cost estimates, applicable wage determinations, and other pertinent data, together with necessary copies of the solicitation document. This information is sometimes referred to as the procurement package.

**63. How is a Request for Proposals (RFP) Prepared?**

- a. Upon receipt of the procurement package, an RFP letter will be prepared by SBA and provided to the selected participant. This letter may be modified as necessary. The RFP provided by the activity may be used if it includes, or is appropriately modified to require the concern to include in its proposal, statements that it will not subcontract without prior approval, and that it understands that neither SBA nor the federal government is obligated to pay any expenses incurred by the concern in preparing and submitting its proposal. The RFP must contain a complete description of the supplies or services required, include applicable specifications, clearly state the delivery schedule, and include any other information necessary to enable the concern to prepare a complete and thorough proposal.
- b. The RFP must require the participant to submit appropriate cost and pricing data in support of its proposed price.
- c. Upon completion of negotiations that result in an accepted price of \$550,000 or more, the participant must submit a Certificate of Current Cost and Pricing Data in the format prescribed by FAR 15.406-2.

**64. What Guidance Should Be Provided to the Participant Regarding the Preparation of Its Proposal?**

If requested, the SBA contract negotiator will provide necessary and appropriate advice and instruction to the participant regarding the preparation of its proposal. SBA will identify areas in which the participant may need technical and management assistance. Such needs should be identified as early as possible so that SBA may provide appropriate assistance at the earliest possible time. Participants should be encouraged to request pre-bid conferences with procuring activities to review the scope of work and discuss any unanswered questions. These conferences should be requested after the participant has received the solicitation package, but before it has completed its cost proposal.

**65. Does SBA Approve Subcontracts?**

- a. SBA must give its approval before any performance on an 8(a) contract is subcontracted to another concern.
- b. SBA will not approve a proposed subcontracting arrangement if:
  - (1) The performance of work requirements would not be met;
  - (2) The proposed subcontractor has been suspended, debarred, or determined to be ineligible by any federal agency;
  - (3) SBA determines that the proposed subcontractor would control the performance of the requirement;
  - (4) SBA determines that the proposed subcontracting relationship is not an arms length agreement; or
  - (5) SBA determines that the proposed subcontracting arrangement is an attempt to circumvent SBA's size regulations.
- c. The participant must submit a certification with its final cost proposal that it will comply with the performance of work requirement set forth above. It must also provide the names of proposed subcontractors, and certify that none of the proposed subcontractors are debarred, suspended, voluntarily excluded or found to be ineligible for procurement programs.
- d. If a participant substitutes a new subcontractor during contract performance, it must certify that the new subcontractor is not debarred, suspended, voluntarily excluded or found to be ineligible for procurement programs.
- e. SBA will disapprove proposed subcontractors or subcontracting arrangements if any of the requirements set forth above are not met.

- 66. What Procedures Will Be Applied After Receipt of the Proposal if SBA Has Not Delegated 8(a) Contracting Authority or Negotiation Authority to the Procuring Agency?**
- a. Upon receipt of the proposal, the contract negotiator will review it for adequacy and completeness, recommend to the participant any necessary revisions, and determine whether the price proposed is fair and reasonable. The procuring activity's cost estimate may be used as a guide. The cost estimate and supporting data will be provided by the procuring activity contracting officer upon request. The detailed cost estimate is "For Official Use Only" and may not be revealed to the participant or any other party.
  - b. The SBA should obtain a copy of the field pricing report if one exists. The report should be received by SBA prior to negotiations but no later than immediately prior to contract award. SBA should not release a field pricing report to a participant unless authorized to do so by the procuring activity. The participant may request the report from the procuring activity contracting officer.
  - c. When the SBA contract negotiator deems the proposal to be adequate, he or she will forward it to the procuring activity. Once the submitted cost proposal is found to be acceptable by the procuring activity, SBA's contract negotiator will commence negotiations. SBA is responsible for initiating negotiations with the procuring activity within its time frame. If SBA does not initiate negotiations within the agreed time and the procuring activity cannot allow additional time, the procuring activity may, after notifying SBA, proceed with the acquisition from other sources. (*See FAR 19.808-1(a).*)
  - d. A participant has the right to be present during all negotiations between SBA and the procuring activity. However, at the discretion of the contracting officer, certain communications may take place in the absence of the participant. The participant must concur with the price, delivery schedule, and other terms of the contract.
  - e. The purpose of the negotiations, as far as the participant and SBA are concerned, is to negotiate the terms and conditions of the proposed subcontract and to agree upon a price that will permit the participant to perform the work and earn a reasonable profit. The representatives of the procuring activity will seek to limit the contract price to the amount they consider to be the "fair market price." If the price proposed by the procuring activity is not considered sufficient to assure a reasonable profit for the participant, the SBA contract negotiator, with the advice and assistance of any available price analysis personnel, will conduct further negotiations to obtain agreement on a price that is more



consistent with the participant's needs. The final price negotiated must be fair and reasonable to both the participant and the Government.

- f. The contract negotiator should diligently negotiate in pursuit of the most fair and reasonable price and should employ such negotiation skills and techniques as may be appropriate and necessary.
- g. If the price proposed by the procuring activity is not considered to be fair and reasonable or does not constitute a "fair market price", further negotiations will be conducted or the negotiations will be suspended, whichever is considered to be most appropriate under the circumstances. If negotiations are suspended, the Administrator may appeal to the head of the procuring agency pursuant to 13 CFR 124.505 and FAR 19.810.

**67. What Procedures Will Be Observed if SBA Has Not Delegated Contracting Authority to the Procuring Activity but Has Delegated Negotiation Authority to It?**

When appropriate, the SBA contracting officer may authorize the procuring activity to conduct negotiations directly with the participant. This should occur only when it is in the best interests of the participant. SBA will give the procuring activity, in writing, the authority to negotiate directly with the participant, citing FAR 19.808-1(b). Any agreements between the procuring activity and the participant must be approved by SBA.

**68. How Are Contract Documents Prepared?**

- a. **Sole Source Contracts.** Upon the conclusion of contract negotiations between the participant, the procuring activity, and SBA regarding terms, conditions and price, the procuring activity will prepare the contract documents. The contract must include Special 8(a) Contract Conditions and Special 8(a) Subcontract Conditions as prescribed in FAR 52.219-11 and 52.219-12 respectively. FAR does not allow for modification of these clauses (*see* FAR 52.104). If the need arises to add additional clauses to the 8(a) prime and/or subcontract documents, they should be negotiated with the interested party(ies) and included in the appropriate award documents.
- b. **Competitive 8(a) Contracts.** Award will be made through the normal 8(a) award procedures. If the procuring activity prepares the contract in accordance with FAR 19.811-2, the following clause must be negotiated with the procuring activity and included in the award document: "That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the 'Disputes' clause of said subcontract."

**69. How Will a Record of Negotiations Be Prepared?**

A copy of the memorandum of negotiations prepared by the contracting officer will be requested and included in the contract file. Whenever SBA participates in the negotiation proceedings, the contract negotiator must prepare a memorandum of negotiations and include it in the contract file. The SBA memorandum does not need to duplicate information contained in the memorandum prepared by the procuring activity. When SBA does not participate in the negotiations, a statement from the contract specialist that the negotiated price is fair and reasonable must be included in the contract file.

**70. Who Will Review and Approve the Contract in Cases Where Contracting Authority Has Not Been Delegated?**

The contract and the subcontract prepared by the procuring activity must be reviewed and approved by the SBA negotiator, the BOS and legal counsel prior to execution (signature) by SBA. The negotiator will use SBA Form 1016, "Approval of Award". Counsel's review will be on SBA Form 1732, 8(a) Contract Legal Review.

**71. How Will Contracts and Subcontracts Be Executed?**

- a. An 8(a) contract can be awarded as a tripartite agreement in which the procuring activity, the participant and SBA all sign the appropriate contract documents. A combined contractual document, or separate prime and subcontracts may be used.
- b. Where SBA receives a contract for signature valued at or below the simplified acquisition threshold, it will sign the contract and return it to the procuring activity within 3 working days.
- c. Where SBA has delegated contract execution authority directly to the procuring activity through a contract with the procuring activity and the participant, pursuant to FAR 19.811, the SBA will obtain signatures and return contract documents to the procuring activity within a maximum of 10 working days.
- d. The prime contract must be signed by the designated SBA contracting officer and the procuring activity's contracting officer. One copy marked "Duplicate Original" must be provided to the participant. In addition, SBA will return the executed original and signed copies of the prime contract document marked "Duplicate Original" in the manner and quantity requested by that activity. The SBA contracting officer will retain a copy marked "Duplicate Original" and request from the procuring activity additional copies as necessary. To be eligible to

receive a sole source 8(a) contract, a firm must be a current participant on the date of the award.

- e. The subcontract will be executed by the participant and the SBA contracting officer. The participant will sign first and the SBA contracting officer will normally sign the subcontract only after the prime contract has been completely executed by the contracting officers of the procuring activity and SBA. Where necessary to expedite the execution of the contract between SBA and the procuring activity, the subcontract may be executed prior to the execution of the prime contract. In such cases, however, a provision must be included in the subcontract as follows: "This subcontract shall not be effective unless and until the contemplated prime contract between SBA and the procuring activity is executed." The SBA contracting officer will retain the original executed subcontract in the contract file. One copy marked duplicate original will be provided to the participant and similar copies will be provided as requested to the procuring activity.
- f. When the procuring activity uses a single contract document (tripartite agreement) pursuant to FAR 19.811-1(c), the SBA will obtain the signature of the participant prior to signing and returning the contract to the procuring activity for signature.
- g. Distribution of contracts and subcontracts (FAR 4.201 and 19.811) will be made by the use of the distribution stamp as follows:
  - (1) Prime Contract. Original to procuring activity. Duplicate original to SBA and to the participant.
  - (2) Subcontract. Original to SBA. Duplicate original to the procuring activity and to the participant.
  - (3) Tripartite Contract and Modifications. Original to procuring activity and the SBA with a duplicate original to the participant.
- h. In addition, the Federal Acquisition Regulation (FAR) (*See* Subpart 3.6) limits a contracting officer from knowingly awarding a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees.

## **72. How Do District Offices Maintain Contract Files?**

- a. For contracts awarded through traditional 8(a) processes, a contract case file will be maintained for each 8(a) subcontract. SBA Form 594A, "Official SBA File - Section 8(a) Contract", will be used for each contract. A self-adhesive identification label will be affixed to the left-

hand corner of the rear divider (Part VI) with the name of the company and the contract numbers. On the center face of the file, a large white label will be affixed containing the following typed information:

- (1) Name of the company;
  - (2) SBA contract number; and
  - (3) Procuring agency contract number.
- b. The Contract File Checklist document will be used to ensure that the contract files contain all necessary contract documents. Copies of all contractual actions (*i.e.*, contracts, modifications, change orders, delivery orders, task orders, etc.) are necessary documents and should be filed in numerical order.
- c. Contracts awarded through Partnership Agreements do not require a contract file, as indicated above. However, for each contract award, a copy of the offer document and notice of award, or first page of the contract, will be kept in the firm's business development file.

**73. Can Government Furnished Property be Made Available to Participants?**

Government property available to SBA may be furnished to participants to use in performing 8(a) contracts. This property will be provided on an "as is" basis; *i.e.*, the property is offered in its current condition wherever located. The participant must determine that the property is suitable for its use and pay for all costs of transporting, installing, modifying, repairing, or otherwise making the property suitable for use. When Government property is furnished by SBA to a participant, the 8(a) contract will include, or be modified to include, the appropriate Government Property Clause. *See* FAR 45.106. If the clause prescribed in FAR 52.245-2 is used, the risk of loss provision in subsection (g) must be deleted and the risk of loss provisions prescribed in FAR 52.245-2, Alternate I, must be substituted. The clause captioned GOVERNMENT PROPERTY FURNISHED "AS IS", set out at FAR 52.245-19, must also be included in the subcontract.

**74. Are Post-Award Conferences of 8(a) Subcontractors Authorized?**

Post-award orientation conferences by procuring activities are authorized by FAR 42.503. SBA should make maximum use of such conferences to ensure that the participants have a clear understanding of the scope of the work to be performed.

**75. What Are the Responsibilities of Contract Administration?**

- a. The procuring activity is a party to the contract between itself and SBA and is, therefore, in privity of contract with SBA. The procuring activity is not a party to the subcontract between SBA and the participant and is not in privity of contract with the participant. This is true even though the subcontract may be in tripartite format. Therefore, the procuring activity has no authority with respect to the administration of the subcontract unless SBA delegates such authority.
- b. SBA delegates its authority to administer 8(a) contracts to the procuring activity or an activity designated by the procuring activity (*e.g.*, Defense Contract Administration Service). This is done by a provision of the contract between SBA and the procuring activity. SBA may delegate all contract administration functions except the approval of substitution (novation) agreements.
- c. Whenever another activity administering an 8(a) contract, pursuant to authority delegated by SBA, proposes to modify or change it, the contract between SBA and the procuring activity must also be similarly modified. Modifications to both will normally be prepared by the administering agency. In lieu of separate modifications to both the 8(a) contract and SBA's contract with the procuring activity, a tripartite agreement embodying the proposed modification may be executed by the participant, the procuring or administering activity, and SBA.

**76. How Are Assigned Claims Handled?**

Participants may assign payments due or those that will become due under an 8(a) contract to a bank, trust company, or other financial institution, including any Federal Lending Agency, pursuant to the "Assignment of Claims" provision of the contract. The assignee must file written notice of any such assignment and a copy of the instrument of assignment with the administering activity, the disbursing officer, and the surety, if any (*see* FAR 32.802). A copy of the fully executed Assignment and Notice of Assignment must be forwarded to the appropriate SBA District Office. The administrative contracting officer of the activity administering the contract will acknowledge receipt of the notice to the assignee pursuant to the FAR reference above. Whenever the assignee requests that SBA acknowledge receipt of the notice of assignment, SBA will inform the assignee that the acknowledgment will be done by the administrative contracting officer.

**77. How Are Contract Terminations Processed?**

- a. Contracts may be terminated for default (T4D) or for the convenience (T4C) of the Government pursuant to the clauses included in the

contract. If the participant experiences difficulties in performing a contract, SBA should attempt to provide the participant with appropriate management and technical assistance. If the participant becomes delinquent in the performance of a contract, or in making scheduled deliveries, the participant should request that the administering activity extend the delivery or performance schedules so as to permit the concern to perform the contract.

b. Termination for Default (T4D):

- (1) A decision to terminate a specific 8(a) contract for default (T4D) is made by the procuring activity contracting officer in cooperation with the appropriate SBA District Office.
- (2) The contracting officer must advise the ADD/8(a)BD in writing in advance of the intent to T4D the contract.
- (3) The SBA District Office may provide the participant with appropriate management and technical assistance to assist in preventing the T4D and advise the contracting officer of this effort. If the contracting officer believes reasons for termination continue to exist, after consulting with SBA, he or she may terminate the contract for default. SBA will then make efforts to locate another participant qualified to complete the subcontract. Negotiations will be conducted, as appropriate, with the procuring activity and the alternate participant. If a qualified alternate participant cannot be located, or negotiations for completion of the contract cannot be agreed to, the unperformed part of the defaulted contract will be returned to the procuring activity for re-procurement. SBA is not liable for any termination costs or re-procurement costs. However, the defaulted participant is liable for such costs pursuant to the default clause of the contract.
- (4) On bonded contracts, concurrence of the surety must be obtained prior to terminating the initial contract. The replacement participant must provide bonding for the amount of the new contract.
- (5) In lieu of a T4D, SBA may request that the procuring activity consider terminating the contract for convenience at no cost to either party.
- (6) Where a contracting officer demonstrates that an 8(a) contract will otherwise be subjected to a T4D, the Administrator may authorize another participant to complete performance on the contract and in conjunction with the procuring activity, permit novation of the contract. *See* 13 CFR 124.515.

- c. Termination for Convenience (T4C):
  - (1) In cooperation with SBA, the procuring activity's contracting officer may T4C an 8(a) contract whenever it is determined to be in the best interest of the Government. The participant will be entitled to payment by the procuring activity of all reasonable termination costs pursuant to the provisions of the T4C clause contained in the contract.
  - (2) When the owner or owners upon whom 8(a) BD Program eligibility is based relinquish ownership or control of the 8(a) concern, or enter into any agreement to relinquish ownership or control in the concern, the Government must T4C the contract unless a waiver is granted by the Administrator in accordance with 13 CFR 124.515.

## **78. How Are Contracts Closed Out?**

- a. Before the contract file can be retired to the records center, the BOS will request two documents from the contracting officer to show contract completion:
  - (1) An acceptance document that shows all items have been delivered and accepted by the Government.
  - (2) A payment document that shows payment has been made for the items accepted.
- b. The BOS will review the acceptance and payment documents for agreement with the contract schedule (delivery schedule) (*i.e.*, all items have been delivered and accepted, and payment has been made according to the terms of the contract). This will allow contract close out and retirement of the file to the records center. Both documents should be available from the contracting officer. The BOS will request that the clause "A copy of the acceptance document and a copy of the final payment document will be provided to SBA" be included in the contract with SBA.
- c. If the document(s) are not available from the contracting officer, the BOS will contact the participant to verify that all requirements have been met and all payments have been received. The amount received by the participant will help to determine whether SBA has received all contract modifications.

## CHAPTER 4B: CONTRACTS--SBA APPEALS TO HEADS OF PROCURING ACTIVITIES

### 1. Who Can File an SBA Procurement Appeal?

The SBA Administrator has the authority to file an appeal involving a federal procurement to the head of the procuring agency. A proposed appeal is initiated by the District Office and processed through the Office of Management and Technical Assistance (MTA) for the recommendation of the Assistant Administrator for Business Development (AA/BD) prior to approval by the Administrator.

### 2. What Can be Appealed?

- a. A contracting officer's decision not to make a particular procurement available for award as an 8(a) contract;
- b. A contracting officer's decision to reject a specific participant for award of an 8(a) contract after SBA's acceptance of the requirement for the program; and
- c. The terms and conditions of a proposed 8(a) contract, including the procuring activity's NAICS code designation and estimate of the fair market price. *See* 13 CFR 124.505(a).

### 3. What are the Procedures for Filing an Appeal?

- a. Upon receipt of a contracting officer's adverse decision, the Assistant District Director for 8(a) BD (ADD/8(a)BD) initiates the appeal by filing a Notice of Intent to Appeal.
- b. The Notice of Intent to Appeal must be signed by the ADD/8(a)BD and received by the contracting officer within 5 working days of SBA's receipt of the decision. A courtesy copy should be forwarded to the Director of the Office of Small Disadvantaged Business Utilization (OSDBU) for the procuring agency and to the Assistant Administrator for MTA (AA/MTA). The Notice of Intent must be mailed or sent by facsimile. *See* 13 CFR 124.505(b).

### 4. When Must the Administrator's Appeal be Filed?

The Administrator's appeal must be submitted to the head of the procuring agency within 15 working days of SBA's notification of intent to appeal or the appeal may be considered withdrawn. *See* 13 CFR 124.505(b)(3).



**5. Under What Circumstances Should a Notice of Intent to Appeal be Submitted to the Contracting Officer?**

A Notice of Intent may be submitted after the ADD/8(a)BD:

- a. Meets and/or discusses the issue with all parties ( *i.e.*, the participant, cognizant PCR, and the contracting officer) to attempt to resolve the issues;
- b. Obtains all supporting documentation to sustain SBA's position; and
- c. Determines that the appeal has merit and obtains written concurrence from the DD.

**6. What Information Must be Contained in the Notice of Intent to Appeal?**

The following information must be contained in the Notice of Intent to Appeal:

- a. A statement informing the contracting officer of SBA's intent to file an appeal with a summary of all issues; and
- b. A statement requesting that the procuring activity suspend further action regarding the procurement until the head of the agency issues a written decision. Upon receipt of the Notice of Intent, the procuring activity must suspend further action regarding the procurement until the head of the agency issues a written decision on the appeal, unless the head makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a consideration of the appeal. *See* 13 CFR 124.505(b)(2).

**7. What Information Should be Included in the Appeal Package?**

- a. To ensure timely processing, the District Office must submit a completed appeal package to the AA/BD within 2 working days of issuing the Notice of Intent to Appeal. A copy of the Notice of Intent should also be faxed to the AA/MTA.
- b. The appeal package must contain:
  - (1) A transmittal memo requesting action on the proposed appeal. The memo must contain the District Office's recommendation signed by the District Director or designee;
  - (2) A copy of the contracting officer's adverse decision;
  - (3) A copy of all pertinent documentation and information supporting the SBA's position, including a copy of the search letter; statement of work (SOW); identification, dollar amount, and description of

the procurement; and the ADD/8(a)BD's findings and determination (this should contain an item by item rebuttal of the contracting officer's decision);

- (4) A copy of the Notice of Intent to Appeal; and
  - (5) A draft copy of the proposed appeal to be signed by the Administrator. This should include specific rebuttal of each reason given by the contracting officer.
- c. The fact that an appeal has been initiated should not restrict the District Office from working with the procuring activity to reach an agreement.

## CHAPTER 4C: CONTRACTS--PARTNERSHIP AGREEMENTS

### 1. How Has SBA Delegated Its 8(a) Contract Authority?

- a. The U.S. Small Business Administration (SBA) has entered into external agreements, known as Partnership Agreements, with various federal agencies through which the Agency has delegated its authority for 8(a) contracting.
- b. Through executed Partnership Agreements, SBA delegates to the head of the agency, or designee, for redelegation to warranted federal agency contracting officers, its authority under § 8(a)(1)(A) of the Small Business Act to enter into 8(a) prime contracts, and its authority under § 8(a)(1)(B) of the Act to arrange for the performance of such procurement contracts by eligible 8(a) BD Program participants. Generally, a Partnership Agreement provides for the award of both contracts and purchase orders under the provisions of § 8(a) of the Act as implemented by the Federal Acquisition Regulations (FAR) (48 CFR and SBA's 8(a) Business Development (BD) Program regulations.) Some agencies with which SBA has entered into Partnership Agreements do not follow the FAR; *e.g.*, Federal Deposit Insurance Corporation. In accordance with 13 CFR 124.501(a), SBA delegates only the contract execution function. SBA remains the prime contractor on all 8(a) contracts, and the 8(a) participant remains SBA's subcontractor.

### 2. What are the Objectives of a Partnership Agreement?

- a. To delineate responsibilities regarding 8(a) contracts between SBA and the participating procuring agency;
- b. To establish the procedures for offer and acceptance between SBA and the participating procuring agency;
- c. To reduce the interval between the time the procuring agency contracting officers send an offering letter to SBA and receive an SBA decision on the offering to a maximum of 5 workdays;
- d. To emphasize that SBA only delegates the authority to sign contracts on its behalf and that SBA remains the prime contractor on all contracts;
- e. To eliminate SBA review of contracts and purchase orders executed under the authority of the Partnership Agreement; and

- f. To establish uniform policies and procedures regarding application of purchase orders to the 8(a) contracting process, when applicable.

### **3. How are Requirements Processed Under Partnership Agreements?**

- a. Unless otherwise specified in the Partnership Agreement, the participating procuring agency will:
  - (1) Determine which requirements are suitable for offering to the 8(a) BD Program in accordance with FAR subpart 19.8, and, where appropriate, identify, in conjunction with the appropriate SBA servicing offices, 8(a) participants capable of performing these requirements;
  - (2) Submit the offering letter for a sole source requirement to the SBA's District Office responsible for servicing the selected 8(a) participant, when an 8(a) firm has been identified;
  - (3) Submit an open offering letter for a sole source requirement to the SBA District Office that services the geographical area where the contracting activity is located, when the procuring agency has not identified a specific 8(a) participant for a requirement;
  - (4) Submit the offering letter for a competitive 8(a) procurement to the SBA District Office that services the geographical area where the contracting activity is located, except that offering letters for construction work will be sent to the SBA District Office located in the geographical area where the work will be performed, or, in the case of such contracts to be performed overseas, to the SBA Headquarters;
  - (5) Retain responsibility for compliance with all applicable provisions of the FAR and other applicable acquisition regulations, unless a FAR deviation is obtained;
  - (6) Provide a copy of any contract, as defined in FAR 2.101, including basic contracts, orders, modifications, and purchase orders, to the SBA servicing District Office within 15 calendar days of the date of award. Failure to timely provide the required documents to the SBA may result in suspension or rescission of the Partnership Agreement;
  - (7) Retain the option to use tripartite procedures to award 8(a) contracts and purchase orders to 8(a) participants, as specified in FAR Part 19;

- (8) Ensure that all contracts awarded pursuant to this Partnership Agreement contain provisions that:
    - (a) Require the SBA's approval of novation agreements submitted by the 8(a) participant; and
    - (b) Require advance notice to the SBA (as the prime contractor) prior to issuance of a final notice terminating the contract in whole or in part;
  - (9) Ensure that all NAICS codes for all 8(a) contracts comply with FAR 19.102;
  - (10) Ensure that all contracts comply with the appropriate work performance requirements, in accordance with FAR 19.508(e) and 13 CFR 124.510;
  - (11) Add language to every contract stating that even though the SBA may not be identified in section A of the contract, it is still the prime contractor on the contract; and
  - (12) Ensure that all proposed joint ventures involving 8(a) participants are approved by SBA before contracts are awarded.
- b. Unless otherwise specified in the Partnership Agreement, SBA will review the procuring agency's offering letters, issue acceptance or rejection letters, and make eligibility determinations.
- (1) Sole source procurements. SBA will issue an acceptance letter or notification of rejection within 5 working days of receipt of an offering letter. Acceptance must include size verification and determinations with respect to all elements of eligibility (*e.g.*, determinations of adverse impact, NAICS code appropriateness and program eligibility). The SBA determines only 8(a) BD program eligibility and does NOT determine whether the firm can perform on a particular requirement. Absent actual notification of rejection within 5 working days of receipt of the offer, the procuring activity may assume that SBA accepts its offer for the 8(a) BD Program. *See* 13 CFR 124.503(a)(3).
  - (2) Competitive acquisitions. SBA will issue an acceptance letter or notification of rejection within 5 working days of receipt of an offering letter. Absent a notification of rejection within 5 working days of receipt of the offer, acceptance may be assumed on the sixth working day. Following receipt of bids, and within 2 working days after a request from the contracting officer, SBA will issue an eligibility determination for the firm with the lowest bid. In the case of a negotiated procurement following receipt of initial

offers including price, and within 2 working days after a request from the contracting officer, SBA will issue an eligibility determination for all firms in the competitive range, if discussions are to be conducted. SBA will issue an eligibility determination for all firms with a realistic chance of award within 2 working days after a request from the contracting officer, if no discussions are to be conducted;

- (3) Requirements under the simplified acquisition threshold (FAR 2.101). SBA will review the eligibility of the selected 8(a) participant within two (2) working days after receipt of a copy of the signed purchase order document. The purchase order document may be delivered by any means acceptable to the SBA District Office. SBA will provide a copy of any negative eligibility determination to the contracting activity and the 8(a) participant. Absent receipt of a negative eligibility determination from SBA within 2 working days, the 8(a) contractor will be authorized to begin performance. No offering or acceptance letter is required for requirements processed under the simplified acquisition threshold;
- (4) Contract negotiations. SBA will provide 8(a) participants with assistance in contract negotiations when requested by either the 8(a) firm or the procuring activity contracting officer;
- (5) Appeal authority. SBA retains its appeal authority in accordance with FAR 19.810;
- (6) Surveillance reviews. SBA retains the right to perform on-site contract surveillance reviews;
- (7) 13 CFR Part 124 compliance. SBA retains the responsibility for determining compliance with all applicable provisions of 13 CFR part 124, including determining eligibility;
- (8) Open offering letter. SBA selects an appropriate 8(a) participant when the procuring activity submits an open offering letter for a sole source requirement; and
- (9) Missing award documents. SBA issues a letter to the procuring activity, with a copy to the senior procurement executive (FAR 2.101), on a quarterly basis, identifying accepted requirements for which award documents have not been received by the SBA district office.

**4. How Are Contracts Executed Under Partnership Agreements?**

- a. Under a Partnership Agreement, an 8(a) contract can be awarded directly by the procuring activity through a contract between the procuring activity and the participant. *See* 13 CFR 124.508(a)(2).
- b. The cognizant procuring activity contracting officer may make direct award of a contract to the 8(a) participant after the requirement has been offered to and accepted by SBA. Acquisitions that employ the simplified acquisition procedures authorized by FAR Part 13, limited to the simplified acquisition threshold (FAR 2.101), require no offer or acceptance. Contract execution will be on the appropriate form specified in the FAR or the procuring agency's acquisition regulations. The "Issued by" block will identify the awarding procuring activity office. The cognizant SBA District Office for the 8(a) participant will be identified in the award document. The 8(a) participant will be listed as the contractor. The procuring activity is responsible for issuing procurement instrument identification numbers. SBA will not issue subcontract numbers.

## CHAPTER 4D: CONTRACTS--CONSTRUCTION

### 1. Are There Any Special Procedures for Construction Requirements?

Section 8(a)(11) of the Small Business Act (15 U.S.C. § 637(a)(11)) provides that, to the maximum extent practicable, 8(a) construction requirements should be awarded within the county or State where the work is to be performed. SBA's 8(a) regulations implement this congressional mandate. This section clarifies what a "bona fide place of business" is and how SBA will make that determination in individual cases. It also clarifies offering and nominating procedures, eligibility determination procedures, and geographical boundary determination procedures for 8(a) construction requirements.

### 2. What is a Bona Fide Place of Business?

SBA's regulations provide, in pertinent part:

- a. "Bona fide place of business", for purposes of 8(a) construction procurements, means a location where a participant regularly maintains an office that employs at least one full-time individual within the appropriate geographical boundary. The term does not include construction trailers or other temporary construction sites. *See* 13 CFR 124.3.
- b. A participant's principal place of business is always a bona fide place of business for purposes of 8(a) construction requirements. A participant may have bona fide places of business in more than one location.

### 3. What Does "Regularly Maintains an Office" Mean?

"Regularly maintains an office" means a participant conducts business activities as an on-going business concern from a fixed location on a daily basis. The best evidence of the regular maintenance of an office is documentation that shows that third parties transact business with a participant at a location within a particular geographical area. Such evidence includes advertisements, bills, correspondence, lease agreements, land records, and evidence that the participant has complied with all local requirements concerning registering, licensing, or filing with the State or County where the place of business is located. However, a lease agreement alone, without more, does not establish the regular maintenance of an office. Further, a participant does not have a bona fide place of business in a particular location if it does not have the licenses, registrations, tax receipts, telephone bills, and filings commensurate with regularly maintaining an office at that location.



**4. What Does "Full-Time Individual" Mean?**

- a. Full-time individual means an individual who conducts the business activities of the participant during normal business hours.
  - (1) The individual may not work for any person or entity other than for the participant during normal business hours.
  - (2) The term does not include independent contractors.
- b. The best evidence of the employment of a full-time individual is employment agreements, payroll records, tax documentation, and employee benefit documentation.

**5. How Will SBA Determine Whether a Participant Has a Bona Fide Place of Business in a Designated Geographical Area?**

- a. At any time, a servicing District Office may submit documentation on behalf of a participant to another District Office (reviewing District Office) in an effort to establish that the participant has a bona fide place of business within the reviewing District Office's geographical area. The following requirements apply to such requests:
  - (1) In order to apply for a specific competitive solicitation, such documentation must be submitted at least 15 working days before initial offers that include price are due.
  - (2) Within 10 working days of receipt of submission, the reviewing District Office will conduct a site visit, if practicable.
  - (3) Within 5 working days of a site visit, the reviewing office will make a determination whether or not the participant has a bona fide place of business in its geographical area and issue the appropriate written notification to the participant's servicing District Office.
  - (4) If the participant has established that it has a bona fide place of business, then the participant's servicing District Office will issue a letter to the participant informing the participant of the determination.
  - (5) The letter will also state that the participant must immediately notify the servicing District Office of any changes that could affect its bona fide place of business status.
  - (6) The letter is valid as long as there are no material changes to the facts relied on by SBA in making its bona fide place of business determination.

- (7) A District Office may re-evaluate a participant's bona fide place of business status at any time, and should consider any information relevant to that issue that it receives from another party.
  - (8) If a District Office determines that a participant has not established that it has a bona fide place of business, the District Office must submit the determination to the AA/BD or designee for review before it is issued. The AA/BD will review the determination as quickly as practicable.
- b. A participant has the burden of clearly establishing that it has a bona fide place of business within a designated geographical area.
- (1) If a participant submits conflicting, vague, or insufficient evidence or documentation, SBA may make a negative determination.
  - (2) A participant may reapply for bona fide place of business status at any time.
- c. Each bona fide place of business must have its own CCR profile, including:
- (1) location information;
  - (2) A complete capability statement; and
  - (3) 8(a) certification data, to be maintained by the Office of Certification and Eligibility.

## **6. How Will SBA Make Eligibility Determinations?**

Eligibility determinations are made by the District Office that services the apparent successful offeror or the nominated participant. Eligibility includes bona fide place of business status for purposes of competitive and open sole source construction requirements. A servicing District Office making an eligibility determination must rely on the bona fide place of business status determination made by the appropriate reviewing District Office. For competitive construction requirements, SBA will determine a participant's eligibility as of the date of a participant's initial offer, which includes price, and will make an eligibility determination within 5 working days of a procuring activity's request for an eligibility determination. For sole source construction requirements, SBA will determine a participant's eligibility as of the date SBA accepts the requirement.

**7. Which District Office Must Be Offered Competitive 8(a) Construction Requirements?**

Competitive 8(a) construction requirements must be offered to the District Office servicing the geographical area where the work is to be performed. If the work will be performed in more than one area, the requirement will be offered to the District Office servicing the geographical area where the majority of the work is to be performed. The District Office must immediately forward the requirement to the AA/BD or designee.

**8. How Will SBA Determine the Geographical Boundary for a Competitive Construction Requirement?**

The AA/BD, or designee, will determine whether a competitive 8(a) construction requirement should be competed within the geographical boundaries of one or more SBA District Offices, within a state, or within the state and nearby areas. In establishing a competitive boundary, the AA/BD, or designee, will consider the number of firms within the District Office that have the capacity to perform the requirement and, when it appears there would not be a sufficient number of firms to establish competition, will consider expanding the geographical boundaries to ensure competition. Only those participants with bona fide places of business within the established geographic boundary are eligible to submit offers.

**9. Which District Office Must be Offered an Open Sole Source Construction Requirement?**

Open sole source 8(a) construction requirements must be offered to the District Office servicing the geographical area where the work is to be performed.

**10. How Will SBA Nominate a Participant for an Open Sole Source Construction Requirement?**

- a. For open sole source construction requirements, SBA will nominate only a participant with its primary or a bona fide place of business located within the appropriate geographical area.
- b. The District Office that services the geographical area where the work is to be performed will nominate an eligible participant from qualified firms located within the geographical boundaries of that District Office. If a qualified participant or match cannot be found, the District Office must refer the requirement to the AA/BD or designee, who has the sole discretion to nominate an eligible participant. The AA/BD, or designee, will nominate a participant with a bona fide place of business either within the same state or within a reasonable proximity to where the work is to be performed.

**11. Which District Office Must Be Offered Sole Source Construction Requirements When a Procuring Activity Nominates a Specific Firm?**

The District Office servicing a nominated participant must be offered the requirement when a procuring activity nominates a specific participant for a sole source 8(a) construction requirement.

**12. How Will SBA Accept a Requirement Where a Procuring Activity Nominates a Specific Participant?**

If a nominated participant is eligible and an appropriate match exists, SBA will accept the requirement on behalf of the participant. A nominated participant is not required to have a bona fide place of business within any geographical boundary relative to where the work will be performed. If a nominated participant is not eligible, or an appropriate match does not exist, SBA will notify the procuring activity. The procuring activity may then nominate an alternate participant, or offer the requirement to SBA as an open sole source or competitive 8(a) requirement.

## CHAPTER 4E: CONTRACTS--TRANSFERS, SUBSTITUTIONS, AND WAIVERS

### 1. Can 8(a) Contracts Be “Sold” or “Transferred”?

Contracts cannot be sold; they can, however, be transferred under certain conditions. Under the 8(a) Business Development (8(a) BD) Program, SBA, as the prime contractor to a federal procuring activity, awards a subcontract to a program participant for performance. SBA has the statutory authority to terminate a contract for the convenience of the government, approve a request for waiver of termination, or, where termination for default is threatened, substitute another eligible 8(a) participant. [Small Business Act, § 8(a)(21)]

### 2. Can SBA Substitute One 8(a) Firm With Another on an 8(a) Contract?

- a. Where a procuring activity contracting officer demonstrates to SBA that an 8(a) contract will otherwise be terminated for default, SBA may authorize another participant to complete performance and, in conjunction with the procuring activity, permit novation of the contract without invoking the termination for convenience or waiver provisions of 13 CFR 124.515. *See also* 13 CFR 124.518(c).
- b. When an 8(a) concern defaults under a contract, the procuring activity contracting officer is authorized to re-procure the goods or services defaulted upon by whatever means are appropriate under the circumstances. However, since SBA is the prime contractor, it should propose eligible participants to the procuring activity for acceptance.

### 3. How are Substitutions Processed?

- a. Substitutions (contract transfers) must be prepared and executed in accordance with FAR 42.1204 and must be supported by the documentation specified. Substitutions are processed as follows:
  - (1) When a substitution is required, SBA will obtain the procuring activity’s concurrence to the substitution action. SBA will attempt to locate another qualified and eligible participant to complete the contract.
  - (2) The servicing District Office for the substitute participant must determine that the participant has the technical, managerial, and financial capacity required for contract performance, and meets all other eligibility requirements. The District Office must then obtain the procuring activity’s approval of the proposed substitute.

- (3) If a qualified and eligible participant acceptable to the procuring activity is identified, negotiations will be conducted, as appropriate, with the procuring activity and the alternate participant.
- (4) If the original and substitute participants are both serviced by the same District Office, the Assistant District Director for 8(a) BD (ADD/8(a)BD) will approve the substitution with the concurrence of counsel. For substitutions involving participants from different Districts, the receiving ADD/8(a)BD is the approving official.
  - b. Upon approval of the substitution, the District Office will take all actions required; *e.g.*, modify the original contract document to reflect the reduction of quantity and cost, set up new contract documents, and if necessary, notify the transferring District Office that the contract is fully accounted for in the receiving office.
  - c. If a qualified participant cannot be identified or negotiations cannot be consummated, SBA should request the procuring activity to consider terminating the contract, and the unperformed part of the defaulted contract will be returned to the procuring activity for re-procurement. SBA is not liable for any re-procurement costs. However, the defaulted participant is liable for such costs pursuant to the default clause of the contract.

**4. What Happens If an 8(a) Contractor is No Longer 51 Percent Owned and Controlled by Disadvantaged Individuals?**

If an 8(a) contractor is no longer 51 percent owned and controlled by disadvantaged individuals (except concerns owned by tribes, ANCs, CDCs or NHOs) or if an agreement is entered into which would result in the firm no longer being 51 percent owned and controlled by disadvantaged individuals, the procuring activity must terminate the contract for convenience unless the Administrator of SBA grants a waiver.

**5. What Happens if an 8(a) Contract is Transferred or Novated to Another Firm?**

If an 8(a) contract is transferred or novated to another firm for any reason, the procuring activity must terminate the contract for convenience unless it receives a waiver from the Administrator of SBA as set forth below (Questions 7-15 of this Chapter). *See* 13 CFR 124.515(a)(1)(ii).

**6. Who Has the Authority to Grant Waivers to the Termination for Convenience Rule and Under What Circumstances?**

The Administrator, as a matter of discretion and on a non-delegable basis, may waive the termination requirements if requested to do so by the 8(a) contractor when:

- a. It is necessary for the owner(s) of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing;
- b. Ownership and control of the concern that is performing the contract will pass to another participant, but only if the acquiring firm would otherwise be eligible to receive the award directly as an 8(a) contract;
- c. Any individual upon whom eligibility was based is no longer able to exercise control of the concern due to physical or mental incapacity or death;
- d. The head of the procuring agency, or an official with delegated authority from the agency head, certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions; or
- e. It is necessary for the disadvantaged owner(s) of the initial 8(a) awardee to relinquish ownership of a majority of the voting stock of the concern in order to raise equity capital, but only if:
  - (1) The concern has graduated from the 8(a) BD Program;
  - (2) The disadvantaged owner(s) will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and
  - (3) The disadvantaged owner(s) will maintain control of the daily business operations of the concern. *See* 13 CFR 124.515(b). *See* Matter of International Data Products, SBA No. BDP-125, at 11(1999); 15 U.S.C. §637(a)(21)(B).

**7. When Must the 8(a) Contractor Request the Waiver?**

The 8(a) contractor must request a waiver in writing prior to the change of ownership and control except in the case of death or incapacity. A request for waiver due to incapacity or death must be submitted within 60 days after such occurrence. *See* 13 CFR 124.515(c).

**8. What Information Must Be Contained in the Waiver?**

The participant seeking to change ownership or control must specify the grounds upon which it requests a waiver, and must demonstrate that the proposed transaction would meet such grounds. *See* 13 CFR 124.515(c).

**9. What Actions Will Occur When a Waiver Request is Received From the Original Participant?**

Once a waiver request is received, the District Office must determine whether the participant who will receive the contract:

- a. Is eligible to receive the contract in accordance with 8(a) BD Program regulations. *See* 13 CFR 124.515(d) and 124.507(b)(2);
- b. Is a small business under the NAICS code assigned to each contract;
- c. Is in compliance with any applicable competitive business mix target established or remedial measure imposed by 13 CFR 124.509;
- d. Has a bona fide place of business in the applicable geographic area if the contract is for construction; *S (see* 13 CFR 124.507(c)(2));
- e. Has the technical capability and capacity to perform under the assigned NAICS code;
- f. Has the financial capacity and capability to perform; and
- g. Is approved by the contracting activity.

**10. How Is the Waiver Request Processed?**

- a. If all the above conditions are met and the District Office believes a waiver is warranted, the District Office will draft a recommendation for action by the Administrator. The BOS for the firm requesting the waiver will:
  - (1) Refer contract eligibility questions to the BOS responsible for the recipient 8(a) firm.
  - (2) Draft an analysis and recommendation to be reviewed by the ADD/8(a)BD for accuracy and completeness, the District Counsel for legal sufficiency, and the DD for approval and signature. If the receiving participant is in a different District, the recommendation must include the concurrence of the District Director of the receiving District Office.



- b. The completed waiver request, the recommendation of the District Directors(s), and all supporting documentation, will then be forwarded to the AA/MTA for its recommendation. The AA/MTA will then forward the package to the AA/BD who will review it and forward it to the Administrator with his or her recommendation.
- c. Documentation should include:
  - (1) Certification of impairment and approval for transfer of performance for the contract;
  - (2) Financial analysis for the participant taking over the contract (transferee) and the effect on the contract, to include, as a minimum cash flow, bonding and financial stability.
  - (3) Confirmation of appropriate contract NAICS code.
  - (4) Determination that the participant taking over the contract (transferee) is eligible for award of the contract; and
  - (5) A determination that the waiver request complies with 13 CFR 124.515.
- d. If any of the above parties determines that a waiver should not be granted, such party has the discretion to return it to the requester for additional information or justification or to forward it through the appropriate channels together with a recommendation that the waiver request be denied.

**11. What If Ownership is Not Transferred, But All the Operating Assets are Transferred from the 8(a) Contractor to Another Participant?**

In processing a request for a waiver under this Chapter, SBA will treat a transfer of all a participant's operating assets to another participant the same as the transfer of an ownership interest, provided the participant that transfers its assets to another eligible participant:

- a. Voluntarily graduates from the 8(a) BD Program; and
- b. Ceases its business operations, or presents a plan to SBA for its orderly dissolution. *See* 13 CFR 124.515(f).

**12. How Is the Case Processed If the Administrator Denies the Request for a Waiver?**

If the waiver is not granted, the District Director must request that the procuring activity terminate the contract for the convenience of the Government. The

Administrator has discretion to decline a request for waiver even though legal authority exists to grant the waiver. *See* 13 CFR 124.515(a) and 124.515(h).

**13. Can the Participant Denied the Waiver Appeal the Administrator's Decision?**

The 8(a) contractor may appeal SBA's denial of a waiver request by filing a petition with the Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134 within 45 days of the date of receipt of the Administrator's decision. *See* 13 CFR 124.515(i).

**14. Who Can Transfer or "Substitute" a Contract if a Waiver Has Been Approved?**

Only SBA, together with the contracting activity, can transfer or substitute the performance of an 8(a) contract to another participant. In view of the purposes of the 8(a) BD Program, transfer of an 8(a) contract to another concern or non-participant will only be approved in accordance with the provisions of 13 CFR 124.515.

**15. What Is the Relationship Between Requests for Changes of Ownership and Requests for a Waiver Under This Chapter?**

Changes of ownership must be approved by SBA under Chapter 14 of this SOP and 13 CFR 124.105. The change of ownership request must precede the request for waiver if at all possible and, at the very least, must be submitted simultaneously with the request for waiver. The change of ownership request and the waiver request will be coordinated by the appropriate parties (District Office, Office of Certification and Eligibility and Office of Management and Technical Assistance).

## CHAPTER 4F: CONTRACTS--SOLE SOURCE

### 1. Are There Dollar Limits on the Amount of 8(a) BD Sole Source Contracts that a Participant Can Receive?

- a. For participants that have a revenue-based primary NAICS code at the time of program entry, the 8(a) contract dollar limit above which it can no longer receive sole source 8(a) contracts is five times the annual receipts size standard corresponding to that NAICS code or \$100,000,000, whichever is less.
- b. For participants that have an employee-based primary NAICS code at the time of program entry, the 8(a) contract dollar limit above which it can no longer receive sole source 8(a) contracts is \$100,000,000.
- c. Both competitive and sole source contracts are counted in determining whether the dollar limits have been reached. *See* 13 CFR 124.519(a).

### 2. What Participants Are Subject to these Dollar Limits?

The dollar limits apply to all participants that entered the program after December 31, 1997, except for tribally owned concerns and concerns owned by Alaska Native Corporations. *See* 13 CFR 124.519(c).

### 3. How Will Compliance With Dollar Limitations Be Determined?

- a. Compliance will be determined by referring to contract award information contained in GSA's Federal Procurement Data System (FPDS). The Office of Operations and Support (OOPS) will extract 8(a) contract data quarterly from the FPDS and disseminate it to District Offices to determine compliance. Each office should have accurate data available on all awards, modifications and options.
- b. A sole source requirement cannot be accepted on behalf of a participant subject to the dollar limitations if the cumulative value of all 8(a) awards (both competitive and sole source) made to that firm, as reported in the FPDS data bases, exceeds the applicable limit.
- c. SBA will not consider 8(a) contracts awarded under \$100,000 in determining whether a participant has reached its contract dollar limit under Question 1 of this Chapter. *See* 13 CFR 124.519(a)(3).
- d. SBA includes the dollar value of 8(a) options and modifications in determining whether a participant has reached its 8(a) contract limit

under Question 1 of this Chapter. If an option is not exercised or the contract value is reduced by modifications, SBA will deduct those values. *See* 13 CFR 124.519(d).

- e. A participant's eligibility for a sole source award in terms of whether it has exceeded its 8(a) contract limit under Question 1 is measured as of the date that the requirement is accepted for the 8(a) BD Program without taking into account whether the value of that award will cause the limit to be exceeded. *See* 13 CFR 124.519(e).

#### **4. Can the 8(a) Contract Limits Be Waived?**

The Administrator on a non-delegable basis may waive the requirement prohibiting a participant from receiving sole source 8(a) contracts where the participant has exceeded the contract dollar limitations set forth in Question 1 of this Chapter where the head of a procuring activity represents to the Administrator that award of a sole source 8(a) contract to the participant is needed to achieve significant interests of the Government. *See* 13 CFR 124.519(f).

#### **5. Once the 8(a) Contract Limit is Exceeded, is the Participant Eligible for Competitive 8(a) Contracts?**

Once the 8(a) contract limit under Question 1 is reached, a participant may not receive any more sole source contracts, but it remains eligible for competitive 8(a) awards. *See* 13 CFR 124.519(b).

## Chapter 5: PARTICIPANT REVIEW PROCESS

### 1. What Is the Legal Authority for the Annual Review of the 8(a) Participant?

The Small Business Act and 13 CFR Part 124 establish requirements for participants to provide information annually, and guidelines for review of this information. The submission of financial statements is covered in 13 CFR 124.602 with additional requirements in 13 CFR 124.509(c). Submissions regarding continued eligibility are covered in 13 CFR 124.112(b) and 124.601. Submissions for the business plan are covered in 13 CFR 124.403.

### 2. What Comprises a Complete Participant Review?

- a. The complete participant review is composed of two separate required parts, one based on the fiscal year and one based on the program year, and also, if necessary, a separate eligibility review. Both reviews occur at the end of the participant's program year.
  - (1) Part one is the financial review. It is tied to the submission requirements for the financial statements, which the participant provides at the end of its fiscal year (see Questions 3-6 of this Chapter).
  - (2) Part two is the annual review. It is tied to the end of the participant's program year and combines the submissions required to remain eligible in the program as specified in 13 CFR 124.112(b). Additionally, a review of the participant's business plan, including updates and modifications as discussed in 13 CFR 124.403, is accomplished during the annual review. As part of the annual review, SBA reviews the firm's growth and progress towards attaining the ability to compete in the open market without SBA assistance (see Questions 7-25 of this Chapter).
  - (3) Eligibility review (see Questions 26-30 of this Chapter). This only takes place if the financial or annual review raises questions about the participant's eligibility.

### 3. What Financial Information is Required from the Participant for the Financial Review?

- a. Each participant is required to submit an annual financial statement, including all notes, attachments, and supplements as prepared. The type of statement that must be submitted depends on the participant's gross

annual receipts as set forth below. Statements under (1) or (2) must be prepared in accordance with Generally Accepted Accounting Principles.

- (1) Participants with gross annual receipts of more than \$5,000,000 must submit an audited annual financial statement prepared by a licensed independent Certified Public Accountant (CPA) within 120 days after the close of the firm's fiscal year.
  - (2) Participants with gross annual receipts between \$1,000,000 and \$5,000,000 must submit a reviewed annual financial statement prepared by a licensed independent Certified Public Accountant (CPA) within 90 days after the close of the firm's fiscal year.
  - (3) Participants with gross annual receipts of less than \$1,000,000 must submit an annual statement, in a format acceptable to SBA, prepared in-house, or a compilation statement prepared by a licensed independent accountant, verified as to accuracy by an authorized officer, partner, limited liability company member, or sole proprietor of the participant within 90 days of the close of the firm's fiscal year.
- b. SBA may require audited or reviewed financial statements when needed to obtain more complete information about a concern's assets, liabilities, income or expenses. 13 CFR 124.602(f). This need may arise in the context of the firm's capacity to perform a specific contract or the firm's continued eligibility. Based on input from the ADD/8(a) BD, the District Director will determine whether the higher level financial statements will be required.
  - c. For each completed fiscal year, SBA will require each participant to provide or to break out financial data in order to permit SBA to calculate the firm's total assets, current ratio, debt/net worth ratio, net worth, net sales, pre-tax profit, and sales/working capital ratio. The financial information provided by the 8(a) participant must also include a Balance Sheet and Profit and Loss Statement.

#### **4. Can the Requirement for Audited Financial Statements Be Waived?**

- a. For good cause, the servicing District Director may waive the requirement for submission of audited financial statements. Good cause includes, but is not limited to, the following:
  - (1) The concern provides documentation showing it had an unexpected increase in sales towards the end of its fiscal year that created an unforeseen requirement for audited statements;

- (2) The concern provides documentation showing it unexpectedly has experienced severe financial difficulties that would make the cost of audited statements a particular burden; or
  - (3) The concern has been an 8(a) participant for less than 12 months.
- b. The procedure for processing a request to waive the requirement for audited financial statements is as follows:
- (1) The participant submits a written request for a waiver, documenting the need for the waiver;
  - (2) The Business Development Specialist (BDS) reviews the request and prepares a recommendation;
  - (3) The Assistant District Director/8(a)BD (ADD/8(a)BD) adds comments and his or her recommendation;
  - (4) The District Director approves or denies the request; and
  - (5) The BDS notifies the firm in writing of the District Director's decision. If the decision is to grant the waiver, the letter must notify the participant that it must still provide a self-prepared financial statement under Question 3 a.(3) above. If the decision is to deny the requested waiver, the letter must notify the participant that an audited or reviewed financial statement under Question 3 a.(1) or 3 a.(2) is required. The letter to the participant must advise that the financial statement (whether self-prepared, reviewed or audited) must be provided within 30 days of the date of the letter, or, if the fiscal year for which the statement is being provided has not ended, within 90 days of the close of the fiscal year.

## **5. When Should the Financial Review Be Completed?**

The District Office should complete the financial review at the same time that it conducts the annual review.

## **6. What Steps Must Be Taken to Perform a Complete Financial Review?**

The following steps establish minimum actions that must be taken, and do not preclude the BDS from taking any additional actions necessary to perform a financial review of a particular participant.

- a. Based upon a review of data in the official 8(a) database, the District Office staff will issue a letter to the firm reminding it that its financial statements are due. This letter will describe the types of financial

statements that are needed depending on the participant's revenues, as set forth in Question 3(a), and must be issued no later than 30 days prior to the close of the participant's fiscal year.

- b. The BDS will determine whether the type of financial statement submitted is correct for the level of gross annual receipts reported in the financial summary. The BDS will immediately request the participant to submit the correct statement if an incorrect one has been submitted.  
Note: An 8(a) participant who submits a financial statement that does not meet the requirements set forth in Question 3a. of this Chapter is not eligible for program support, except in the case of a waiver for audited financial statements.
- c. Upon receipt of the financial statement, the BDS will enter the following data into the activity logging section of the firm information screen maintained in the official 8(a) database: the date the financial statement was received, and the type of financial statement submitted (*i.e.*, audited, reviewed, or prepared in-house).
- d. The BDS will then enter the financial worksheet information into the official 8(a) database financial screen and perform a preliminary review of the statements to determine whether there are any apparent issues that require immediate attention and need to be immediately addressed, e.g. issues involving size, control, or excessive withdrawals. The BDS should also examine the financial statements to determine whether there is a risk that the firm might not be able to meet its business activity targets by the end of its program year. Upon completing the preliminary review, if there are no outstanding issues, the BDS will put the financial statement in the participant's file for review when the annual review is performed.
- e. The BDS conducts the financial review based upon the financial information received.
  - (1) The BDS will record comments on the general financial condition of the participant as well as any areas where the participant may need further assistance or careful monitoring for future trends.
  - (2) If, in the course of the financial review, any questions or concerns were raised about the disadvantaged individual's continued economic disadvantage or any other eligibility concerns, an eligibility review must be performed (see Questions 25-30 below).
  - (3) The financial review will include consideration of the following:



- (a) if the firm's primary NAICS code is revenue-based, whether the financial information coupled with the business tax returns shows that the firm is still a small business;
  - (b) whether there is financial information showing that the firm is affiliated with a non-disadvantaged firm so that it is no longer small (see affiliation guidance in 13 CFR 121.103);
  - (c) whether there have been excessive withdrawals under 13 CFR 124.112(d);
  - (d) whether the financial information is consistent with the firm's annual report of contracting activity;
  - (e) whether the firm has substantially achieved its goals under 13 CFR 124.302(b) outside of the seven Performance Trend criteria in Question 9; and
  - (f) whether the firm has met its business mix requirements under 13 CFR 124.509.
- f. The BDS will enter into the activity logging section of the firm information screen in the official 8(a) database that the financial review is complete, and will file the IRS Form 4506 and financial statements in the participant's file. The BDS may submit the IRS Form 4506 to the IRS, as needed.

**7. When Must the BDS Send the Participant the Annual Review Update Package?**

The BDS may send the annual review update package as early as 30 to 60 calendar days before the program year end date, and must send it no later than 15 calendar days prior to the end of a participant's program year.

**8. When Must the Participant Submit Information for the Annual Review?**

The participant must submit the required information within 30 calendar days after the end of its program participation year.

**9. What is the Review of Performance Trend Indicators?**

- a. Performance trend indicators are financial analysis tools used to determine if the 8(a) participant is making economic progress. Performance trend analysis will be calculated and included as part of the annual review process.

- b. This analysis will use the 8(a) participant's last fiscal year end statement (before program admission) as the base year. The BDS will determine the 8(a) participant's total assets, current ratio, debt/net worth ratio, net worth, net sales, pretax profit, and sales/working capital ratio for the base year and each succeeding program year and enter it into the trend analysis section of the annual review.
- c. The BDS will note all trend analysis financial developments in the comments section of the annual review and discuss these developments with the 8(a) participant.
  - (1) **Total Assets** are current assets plus non-current assets. This figure is recorded as a raw number for each program year (based upon the most recent fiscal year data). The most recently completed fiscal year is compared with the previous year's performance.
  - (2) **Net Sales** represents all net sales of the 8(a) participant plus any other revenues associated with the main operations of the business (or those labeled as operating revenues). This figure is recorded as a raw number for each program year (based upon the most recent fiscal year data). The most recently completed fiscal year is compared with the previous year's performance.
  - (3) **Pretax Profit**, also known as earnings before taxes (EBT), is simply net income with income taxes added back. This figure is recorded as a raw number for each program year (based upon the most recent fiscal year data). The most recently completed fiscal year is compared with the previous year's performance.
  - (4) **Net Sales to Working Capital.** Net sales represents all net sales of the corporation plus any other revenues associated with the main operations of the business (or those labeled as operating revenues). Working capital is current assets minus current liabilities. The ratio is net sales divided by working capital. This ratio is recorded for each program year (based upon the most recent fiscal year data). The current fiscal year is compared with the previous year's performance.
  - (5) **Net Worth is Total Assets minus Total Liabilities.** This figure is recorded as a raw number for each program year (based upon the most recent fiscal year data). The most recently completed fiscal year is compared with the previous year's performance.
  - (6) **Current Ratio.** Current Ratio is current assets divided by current liabilities. Current assets include inventory, accounts receivable, cash, and cash equivalents. Current liabilities include accruals,

accounts payable, and notes payable. The acceptable current ratio varies by industry. The ratio is compared with industry standard tools. The most recently completed fiscal year is compared with the previous year's performance.

- (7) **Debt to Net Worth Ratio.** Debt/Net Worth Ratio is total debt (liabilities) divided by net worth. A low ratio indicates long term financial safety. A high ratio may indicate that the firm has limited ability to obtain credit from outside sources. The ratio is compared with industry standard tools. The most recently completed fiscal year is compared with the previous year's performance.
- d. The BDS must perform a summary review of the trend analysis as part of the 8(a) participant's annual review to determine whether the participant compares favorably with non-disadvantaged firms of similar size in its same primary NAICS code which have access to credit and capital.
- (1) Whenever the review indicates that an 8(a) participant exceeds the industry mean in four of the seven categories reviewed (i.e., total assets, current ratio, debt/net worth ratio, net worth, net sales, pre-tax profit, sales/working capital ratio) in any program year (based upon the most recent fiscal year data), the BDS will notify the 8(a) participant in writing that it has exceeded the industry mean in four of these seven categories and that it may be subject to early graduation proceedings if it exceeds four of these seven categories in the succeeding program year.
- (2) In assessing the overall competitive strength and viability of a Participant during the 8(a) Annual Review process, if the BDS determines that an 8(a) Participant exceeds the industry mean in four of the seven categories reviewed for two consecutive years then the BDS will initiate early graduation proceedings pursuant to SBA's regulations and Question 13 of Chapter 10 of this SOP (See 13 C.F.R. Parts 123.303 and 304), unless it is apparent that early graduation is not warranted due to compelling reasons. If such reasons exist, the BDS will submit a written recommendation to the Associate Administrator for Business Development (AA/BD), setting forth the reasons for the exception to early graduation along with the industry analysis for the (8) Participant. The recommendation should consider the overall competitive strength and viability of the 8(a) Participant. The recommendation must be submitted through the ADD/8(a)BD and District Director to the AA/BD for approval or decline.

**10. When Must the BDS Complete the Annual and Financial Reviews?**

- a. The BDS must complete the annual and financial reviews within 30 calendar days of receiving all the requested information for the annual review from the participant.
- b. This 30 day limit does not include any eligibility reviews that may be recommended based on information obtained during or outside the annual review process.

**11. When is the Annual Review Conducted?**

- a. The annual review is conducted at the end of a participant's program year. A program year begins on the anniversary date of the participant's acceptance into the 8(a) Business Development (8(a) BD) program and ends the day before the next anniversary date. The BDS will perform a total of eight (8) Annual Reviews and the exit evaluation (discussed below) during the participant's program term.
- b. The annual review is conducted at the close of program years one through eight.
- c. The first review will be performed one year and 30 days after the firm's date of admission to the program. The next six (6) reviews will be performed within 30 days after the end of the firm's program participation year.
- d. At the end of the last program year, the SBA will conduct an exit evaluation of the firm and an exit survey with the owner.
  - (1) The exit evaluation will include a summary of services/benefits received by the firm during its program tenure. The evaluation will address: total contracts received, training received, joint venture agreements, mentor-protégé agreements, and surplus property. The evaluation will also include a financial trend analysis (*see* Question 9 above) and SBA will initiate graduation proceedings, if appropriate (*see* Chapter 10, Question 4).

- (2) The exit survey will consist of questions to the owner addressing: benefits of the program to the firm, problems experienced during the program term, and recommendations to improve the program.
- (3) The exit evaluation and survey will be conducted not more than 90, but not less than 30, days before the participant exits the program.

## 12. What Information Must Be Requested for the Annual Review?

The BDS must request the following information from each participant:

- a. A completed Annual Update Review, SBA Form 1450.
- b. A completed Personal Financial Statement, SBA Form 413, for each disadvantaged individual upon whom 8(a) certification was based. Each individual must also include his or her most recent Federal tax return, including all schedules, attachments and supporting forms.
- c. A list of any pending adverse actions.
- d. A signed certification, included in SBA Form 1450, stating that the participant meets program eligibility requirements. 13 CFR 124.112(b)(1).
- e. Information regarding any changes in the participant's ownership, control or structure since the firm was certified for 8(a) participation that have not been previously reported to SBA. This includes changes in the Participation Agreement, Operating Agreement, Articles of Incorporation, By-laws or stock issues.
- f. Annual compensation data, including a record of all payments, compensation, and distributions (*i.e.*, loans, advances, salaries and dividends) made by the participant to each of its owners, officers or directors, or to any person or entity affiliated with these individuals. 13 CFR 124.112(b)(5). *See* SBA Form 1450, Attachment A, Individual Compensation Worksheet.
- g. A statement from each individual upon whom 8(a) eligibility was based regarding any transfer of assets to any immediate family member, or to a trust the beneficiary of which is an immediate family member, since the date of the last statement for the most recent annual review.
- h. If the participant is an approved protégé under SBA's Mentor-Protégé program, a narrative report detailing the contacts it has had with its mentor and benefits it has received from the mentor/protégé relationship.

13 CFR 124.520(f). *See* SBA Form 1450, Attachment B, Mentor/Protégé Worksheet.

- i. Updates and modifications to the participant's business plan. 13 CFR Part 124.402-403. This information must be submitted within 30 days after the close of each program year. SBA Form 1010C, 8(a) Business Plan, may be used.
- j. A copy of the participant's current CCR profile, describing its current contract performance capabilities.
- k. The participant's annual contract award forecast for the coming year. 13 CFR 124.403(b). The contract forecast is included in SBA Form 1450, 8(a) Annual Update.
- l. A transition management plan for participants either entering or already in the transitional stage. 13 CFR 124.403(c). The Transition Management Strategy is included in SBA Form 1450, 8(a) Annual Update.
- m. An IRS Form 4506, Request for Copy or Transcript of Tax Form, filled in for Business Tax Forms, must also be signed and returned as part of the financial review package. The BDS must also request copies of the Business Tax Return for that year from all participants.
- n. Any other information the BDS deems necessary for the review.

### **13. What is Included in the Annual Review?**

The annual review includes a review of (1) the business plan and (2) the participant's compliance with program eligibility criteria.

- a. In performing the business plan part of the review, the BDS must:
  - (1) Review the participant's business plan with the participant and modify the plan as appropriate;
  - (2) Ensure that the participant's capability statement (CCR profile) has been updated; and
  - (3) For participants in the transitional stage of the program (years 5 through 9), review the transition management strategy.
- b. In performing the compliance part of the review, the BDS must:
  - (1) Ensure all required submissions to support continued eligibility are provided and complete;

- (2) Review the personal financial information for each disadvantaged owner;
- (3) Analyze the participant's compliance with required business activity targets; and
- (4) Review performance trend indicators.

**14. What is Reviewed in the Business Plan Part of the Annual Review?**

The BDS reviews the following information in the business plan part of the annual review:

- a. The modification of the minimum elements of the business plan, as indicated in 13 CFR 124.402(c), except item 2, the primary NAICS code;
- b. The current capability statement or CCR profile;
- c. The annual forecast of contract support requirements; and
- d. The transition management strategy, when required.

**15. What Is a Capability Statement?**

The capability statement describes the participant's current contract performance capabilities, and is maintained in its CCR profile.

**16. What Information Is Contained in the Participant's Annual Forecast?**

The annual forecast must include:

- a. The aggregate dollar value of 8(a) contracts sought by the participant, broken down by sole source and competitive opportunities, where possible;
- b. The aggregate dollar value of non-8(a) contracts sought by the participant; and
- c. The types of contract opportunities sought by the participant, identified by product or service.

**17. What Information Is Contained in the Transition Management Strategy, and When Must It Be Submitted?**

- a. The transition management strategy must describe:

- (1) How the participant intends to meet the applicable non-8(a) business activity target during the transitional stage of participation; and
  - (2) The specific steps the participant intends to take to continue its business growth and promote profitable business operations after the expiration of its program year.
- b. The transition management strategy must be submitted with the annual review documents beginning with the first year of the firm's transitional stage and each year thereafter. *See* 13 CFR 124.308(c).

**18. What Steps Should the BDS Follow in Reviewing the Business Plan Part of the Annual Review?**

The BDS must annually review the participant's business plan and any modifications. The participant must submit any modified plan and updated information to its BDS within 30 calendar days after the close of each program year. *See* 13 CFR 124.403. In order to complete the business plan part of the annual review, the BDS will:

- a. Coordinate with the participant any changes requested in the business plan or corporate capabilities.
- b. Review the submissions to ensure that, at a minimum, they address the items contained in 13 CFR 124.402(c) (business plans), except the requirements involving the participant's primary industrial classification.
- c. Verify that the submitted changes are clear. If they are not clear, request clarification from the participant on any point not understood.
- d. Determine whether the annual contract forecast data presented in the Form 1450 seem reasonable, and coordinate any changes with the participant. One suggested approach is to base this on a comparison to the firm's historical contract rate for the past 3-5 years. Any projected increase or decrease in projected contract activity should be explained. Under this approach, any increase or decrease that exceeds a 15 to 20 percent change should require a detailed and credible explanation.

**19. What Steps Must Be Followed in Reviewing Compliance Information for the Annual Review?**

The following list represents the steps the BDS must follow to complete the compliance part of the annual review. These steps establish required minimum actions, and are not meant to preclude the BDS from taking any additional actions deemed necessary to review a particular participant. The BDS must:



- a. Enter the date of receipt of the information into the activity logging section on the firm information screen in the official 8(a) database.
- b. Ensure all items are returned and complete, including signatures where appropriate. Any missing or incomplete information must be noted and a request for this information sent by certified mail to the participant. The BDS will give the participant 10 calendar days to supply all missing information. If all the information is not submitted within 10 calendar days, the BDS will initiate termination proceedings.
- c. Review all changes to the participant's ownership and structure. If the changes affect program eligibility, the BDS will initiate an eligibility review. Such changes include, but are not limited to, changes in stock ownership, issuance of new shares or the creation of a new class of stock, changes in the officers and board of directors, and modifications of the Operating Agreement or Participation Agreement.
- d. Calculate the adjusted personal net worth of each disadvantaged individual upon whom the participant's eligibility was based to determine if it exceeds \$750,000. In determining personal net worth, the ownership interest in the participant and the equity in the primary personal residence are excluded. The BDS should determine whether there are any questions/concerns that the information reported might be inaccurate. If the adjusted net worth exceeds \$750,000, the BDS must initiate termination proceedings from the 8(a) program. In addition, an individual may lose economically disadvantaged status based on an increase in the fair market value of all assets or an increase in personal income. An individual may also cease to be economically disadvantaged due to improvement in the 8(a) participant's financial condition compared to the financial profile of firms in the same primary industry and ability to compete in the open market without SBA assistance or if there have been excessive withdrawals. *See* Chapter 2D, Question 5, regarding economic disadvantage.
- e. Analyze records of payments, compensation, and distributions to determine if there appears to have been any excessive withdrawals of funds or other business assets. *See* 13 CFR 124.112(d)(3). If the analysis raises questions or concerns, an eligibility review will be initiated to determine if the firm should be terminated or graduated early from the program.
- f. Review the participant's fiscal year-end total revenue to ensure that the Business Activity Target (BAT) has been met. If it has not been met, remedial measures must be taken. *See* Chapter 6.

- g. Enter completion of the annual review and the BDS's recommendation into the activity logging section on the firm information screen in the official 8(a) database.

## **20. When Does the BDS Perform an Exit Evaluation?**

An exit evaluation is performed on any participant leaving the program. Participant firms that have completed their nine-year tenure in the program will receive an exit evaluation in lieu of a ninth annual review. Any participant that is terminated, achieves early graduation, or voluntarily withdraws from the 8(a) BD program must have an exit evaluation.

## **21. What is Included in the Exit Evaluation?**

The exit evaluation consists of a summary of services/benefits received by the firm during its program tenure and an exit survey of questions to the owner on the effectiveness of the 8(a) BD program.

- a. The exit evaluation will include a summary of services/benefits received by the firm during program tenure. The evaluation will address:
  - (1) total contracts received;
  - (2) training received;
  - (3) joint venture agreements;
  - (4) mentor-protégé agreements; and
  - (5) surplus property.
- b. The exit survey will consist of questions to the owner addressing:
  - (1) benefits of the program to the firm;
  - (2) problems experienced during the program term; and
  - (3) recommendations to improve the program.

## **22. What is the Time Frame for an Exit Evaluation?**

The exit evaluation and survey will be conducted not more than 90, but not less than 30 days before exiting the program.

**23. How Are Questions/Concerns Handled Concerning Any Item in the Compliance Part of the Annual Review?**

If any part of the annual review gives the BDS reason to question the continued eligibility of the participant, the BDS will initiate an eligibility review specifying the information in question. Initiating an eligibility review does not keep the compliance part of the annual review open.

**24. What Must the BDS Do to Complete the Annual Review?**

- a. Upon completion of the analysis, the BDS will forward the completed annual review to the District Director through the ADD/8(a) BD for final disposition.
- b. The BDS will then enter completion of the annual review into the activity logging section on the firm information screen in the official 8(a) database.

**25. How is the 8(a) Participant Informed of the Results of the Annual Review?**

The ADD/8(a) BD must send a letter to the 8(a) participant within five (5) days of making a final disposition on the annual review, notifying the firm of the results of the review. A final disposition on the annual review cannot be made if an eligibility review is required until the eligibility review is completed. The letter may also include other matters such as new business activity targets or the date on which the firm's next financial statements are due.

**26. What Is an Eligibility Review?**

An eligibility review is an analysis of specific issues affecting the continued eligibility of a program participant. Although every annual review involves a generalized review of eligibility, an eligibility review is a more in-depth review performed as a result of the discovery or receipt of information raising specific issues calling into question a participant's continued eligibility for the 8(a) BD program.

**27. When Is an Eligibility Review Initiated?**

An eligibility review is initiated whenever the BDS has reason to question a participant's continued eligibility. The review can be triggered by:

- a. Receipt of specific and credible information alleging that a participant no longer meets the program eligibility requirements;
- b. Information developed with a change of ownership, structure or substitution action; or

- c. Anything else that raises a question concerning a participant's continued eligibility.

## **28. How Often Are Eligibility Reviews Performed?**

- a. An eligibility review is not an annual requirement, and is not required for every participant. This review will only be initiated when SBA has reason to believe the participant may no longer be eligible for the 8(a) BD program.
- b. If the eligibility issue has a financial element, the BDS will process an IRS Form 4506.

## **29. What Is the Process for an Eligibility Review?**

The process for an eligibility review is as follows:

- a. The BDS performs the eligibility review and prepares a report with a preliminary recommendation as to whether the participant is ineligible.
- b. The ADD/8(a)BD reviews the entire package and makes a recommendation, and then forwards the package to the District Director.
- c. When the preliminary recommendation is to retain the participant in the program, the District Director makes the final recommendation.
- d. When the final recommendation is to recommend removal from the program, the complete package, including the suspension, termination, or early graduation recommendation, is forwarded to the Central Office Duty Station (CODS) servicing the District Office. The CODS reviews the entire package, obtains a legal review by its Senior Counsel, makes a recommendation, and forwards the complete package to the Office of Certification and Eligibility (OCE) in Headquarters. The OCE then makes a recommendation to the Assistant Administrator for Business Development (AA/BD), who makes the final decision.

## **30. What Must the Eligibility Review Report Contain?**

The eligibility review must contain:

- a. A narrative concerning the basis for the eligibility review;
- b. A detailed analysis of all the information pertinent to the eligibility issue;
- c. All information and documents pertaining to the eligibility issue; and

- d. The BDS's recommendation. The recommendation should contain a brief summary of the eligibility review, including the issue and findings, along with the proposed disposition.

**31. What Are the Possible Results of an Eligibility Review?**

The possible results of an eligibility review are:

- a. Retention in the 8(a) program--no further action required.
- b. Recommendation for early graduation--refer to CODS.
- c. Recommendation for suspension and termination--refer to CODS.
- d. Recommendation for termination--refer to CODS.

**32. Are there form letters available for use by District Offices?**

See appendices for sample letters pertaining to reviews under this Chapter.

## CHAPTER 6: BUSINESS ACTIVITY TARGETS

### 1. What Are 8(a) Business Activity Targets (BATs)?

To attain full competitive viability by the conclusion of its participation in the 8(a) Business Development (8(a)BD) Program, the participant must make maximum efforts to obtain business outside the program. Accordingly, during the transitional stage of participation, SBA requires that the participant achieve certain targets of non-8(a) contract revenue. These targets are called business activity targets (BAT) and are expressed as a percentage of total revenue. During the transitional stage of program participation, participants must meet the following BATs:

Program Year	Year in Transition Stage	Business Activity Target
5	1	15 %
6	2	25 %
7	3	35 %
8	4	45 %
9	5	55 %

### 2. How is Compliance With BATs Measured?

- a. The Business Opportunity Specialist (BOS) measures a participant's compliance at the end of each program year in the transitional stage.
- b. Compliance is ascertained by comparing the participant's non-8(a) revenue to its total revenue during the program year just completed. *See* 13 CFR 124.509(b)(3).
- c. 8(a) support is determined by adding the base year value of all 8(a) contracts awarded during the applicable program year to the value of all options and modifications executed during that year.

### 3. How Do Participants Report Compliance with BATs?

- a. At the close of each fiscal year, the participant must provide annual financial statements with a breakdown of 8(a) and non-8(a) revenue. *See* 13 CFR 124.602.

- b. The participant must certify that it is in compliance with the applicable BAT or with any remedial measures imposed by SBA before it can receive any 8(a) contract during the transitional stage.

#### **4. How Can a Participant Demonstrate Entitlement to Reinstatement to Receive Sole Source 8(a) Contracts After Non-Compliance?**

If a participant demonstrates compliance with its BAT, SBA will allow it to receive sole source 8(a) contracts before its annual review.

- a. The participant can demonstrate that it has complied with its BAT by:
  - (1) Waiting until the end of the current program year and demonstrating as part of the normal annual review process that it has met the BAT for the current year; or
  - (2) Submitting information regarding its 8(a) revenue and non-8(a) revenue to SBA quarterly throughout the current program year.
- b. To qualify for reinstatement during the first six months of the current program year, the participant may submit to SBA its financial statements and additional information demonstrating that it has received non-8(a) revenue and new non-8(a) contract awards that are equal to or greater than the dollar amount by which it failed to meet its business activity target for the just completed program year. For this purpose, SBA will not count options on existing non-8(a) contracts in determining whether a participant has received new non-8(a) contract awards. See examples at 13 CFR 124.509(d).
- c. To qualify for reinstatement during the last six months of the current program year, the participant must demonstrate that it has achieved its non-8(a) business activity targets as of that point in the current program year. For this purpose, SBA will count options on existing non-8(a) contracts.
- d. When evaluating compliance with the BAT, the BOS must review both the 8(a) revenue and non-8(a) revenue. This ensures that the BOS knows the total amount of revenue.

#### **5. What Happens If a Participant Fails to Meet Its BAT?**

If the participant fails to meet the applicable BAT, it is ineligible to be awarded sole source 8(a) contracts in the current program year unless a waiver is granted. It may also be subject to other requirements imposed by SBA. *See* 13 CFR 124.509(d)-(e). The ADD/8(a)BD will notify the participant in writing of any

remedial measures imposed. Additionally, the BOS will increase monitoring of the participant's contracting activity.

## **6. What Remedial Actions/Measures Can SBA Impose?**

- a. SBA is authorized to take appropriate remedial measures whenever a participant fails to attain its BAT. Remedial measures are imposed during the subsequent program year.
- b. The remedial measure(s) will depend on the extent to which the participant failed to attain the targets and the effort it expended to seek non-8(a) business. These remedial actions include, but are not limited to:
  - (1) Requiring the firm to obtain counseling, management assistance and/or technical assistance.
  - (2) Requiring the firm to attend seminars and/or workshops related to management, business development, financing, marketing, proposal preparation, construction management, etc.
  - (3) Requiring the participant to take affirmative steps to expand the dollar volume of its competitive business activity, such as changes in marketing or financing strategies.
- c. The remedial measures should be designed to bring the participant into compliance with its BAT and must be:
  - (1) Precise: addressing one specific problem at a time, not dealing with generalities, and not leaving the solution or outcome vague or debatable.
  - (2) Prescriptive: reflecting a specific strategy or condition to be met, and dealing with each problem separately.
  - (3) Attainable: assuring that measures are affordable and capable of being implemented within a reasonably short period of time, assigning specific time periods for the problem to be corrected or solved, and assuring that measures are not long-term, drawn out solutions that cannot be measured or completed within weeks or months.
  - (4) Restricted: providing a specific time period for remediation, *e.g.*, one month, three weeks, and establishing check points, *e.g.*, at first, third, and fifth weeks; solution or specific progress should be measurable in this period.



- (5) Definite: specifying the actions that will occur if the prescription or remediation is not followed or achieved; ensuring that if "a" is done, "b" will follow; if "a" is not done, "c" will follow.

**7. What Must the BOS Do After He or She Has Reviewed a Participant's Compliance with Its BAT and Any Remedial Measures Imposed?**

- a. As a result of the annual review, the BOS must prepare a written evaluation and recommendation concerning any remedial measures imposed during the prior review. In determining compliance with the remedial measures, the BOS should consider:
  - (1) The firm's most recent year-end and quarterly financial statements.
  - (2) The business activity report of non-8(a) and 8(a) revenue based on the firm's fiscal year.
  - (3) The firm's compliance with its marketing plan/strategy as expressed in its business plan/transition management plan.
  - (4) The documented efforts of the firm to obtain non-8(a) contracts.
  - (5) Other information relevant to the firm's pursuit and acquisition of non-8(a) contracts.
- b. The BOS must submit the evaluation and recommendation for remediation to the ADD/8(a)BD who will comment and forward the package to the District Director for a final determination.
- c. The BOS may recommend program termination if a participant makes no effort to obtain non-8(a) revenues.

**8. May a Participant That Has Failed to Achieve Its BAT Request a Waiver of the Prohibition of Sole Source 8(a) Contracts?**

A participant that has failed to achieve its BAT may request such a waiver. The decision to grant or deny a waiver is at SBA's discretion and cannot be appealed. A waiver may be requested when:

- a. The head of a procuring activity states that the award is needed to achieve significant interests of the Government. The SBA Administrator on a non-delegable basis may approve this waiver. *See* 13 CFR 124.509(e)(2).
- b. Denial of a sole source contract would cause severe financial hardship so that the participant's survival may be jeopardized. As the designee of the AA/8(a)BD, the District Director may approve this waiver.

- (1) The participant must provide a narrative with supporting documentation explaining in detail the extent of the financial hardship.
  - (2) An example of financial hardship may include impact on the company, company employees and the community.
- c. Extenuating circumstances beyond the participant's control caused it not to meet its BAT. The AA/8(a)BD or designee may approve this waiver.
- (1) The participant must provide a narrative with supporting documentation explaining in detail the extenuating circumstances.
  - (2) An example of an extenuating circumstance might be a cancelled procurement where the 8(a) firm had invested considerable time and dollars for bid/proposal and/or negotiation costs, and the cancellation caused the loss of lease deposits or similar expenses and had a negative impact on additional marketing, hiring of new employees or start-up funds for new projects.

## **9. How Is a Waiver Processed?**

A request for waiver will be processed by the BOS servicing the firm. The ADD/8(a)BD will review the BOS's assessment and recommendation, and forward the package to the District Director for action. The District Director will append a recommendation and forward the package to the Assistant Administrator for Business Development (AA/BD), attention Assistant Administrator, Management and Technical Assistance (AA/MTA). The AA/MTA will review the package, append its recommendation, and forward the package to the AA/BD for review, decision, or transmission to the Office of the Administrator. The AA/MTA will transmit the final decision and package to the ADD/8(a)BD for disposition.

## CHAPTER 7: CHANGE OF OWNERSHIP

### 1. **What Is a Change of Ownership?**

A change of ownership is the transfer of any ownership interest in the 8(a) participant, including transfers resulting from mergers and acquisitions. A change of ownership may affect program eligibility and must be approved by SBA. *See* 13 CFR 124.112.

### 2. **What Is a Change of Business Structure?**

A change of business structure is a change in the legal identity of a participant, *e.g.*, a change from a sole proprietorship to a corporation.

### 3. **Can a Firm Continue Participation in the 8(a) Business Development Program Subsequent to a Change of Ownership or Business Structure?**

A firm may continue to participate in the 8(a) Business Development (8(a) BD) Program after a change of ownership or business structure if it has received prior approval from SBA for the change or if the previous owner held less than a 10 percent interest in the concern and the change is reported within 60 days. If the previous owner held a 10 percent interest or more in the participant and the participant has not received prior approval from SBA for the change or where a change of ownership results from the death or incapacity of a disadvantaged individual for which a request prior to the change of ownership could not occur, SBA will suspend the participant pending SBA's processing of the change. *See* 13 CFR 124.105(i).

### 4. **What Will Happen If a Participant Does Not Request SBA's Approval of a Change of Ownership or Business Structure, or Proceeds Without Approval?**

- a. In cases where advance approval is required, if a participant does not request SBA's approval of a change of ownership or business structure, or requests approval for the change but completes the change prior to receiving SBA's approval, SBA will suspend the participant from program participation pending resolution of the request. If the change is approved, the length of any suspension will be restored to the participant's program term in the following circumstances:
  - (1) In the case of death or incapacity of the disadvantaged owner; or
  - (2) If the firm requested prior approval and waited at least 60 days for SBA's approval.

- b. Any change of ownership completed without the prior approval of SBA may also be grounds for termination from the 8(a) BD Program.

**5. What Is the Process for Suspending the Participant Pending Resolution of a Request for Change of Ownership or Business Structure?**

- a. If suspension is based on a change of ownership and/or business structure made without prior SBA approval, the District Office will prepare the Notice of Suspension.
- b. The District Office will forward the following information to the appropriate Central Office Duty Station (CODS):
  - (1) A Notice of Suspension;
  - (2) A copy of the request for a change of ownership or structure, if available;
  - (3) Evidence that the change of ownership or structure has been completed without prior SBA approval; and
  - (4) If applicable, evidence of the death or incapacity causing the change of ownership.
- c. The suspension recommendation will be prepared by the Business Opportunity Specialist (BOS) with a review by the District Counsel.
- d. Upon concurrence by the Assistant District Director for 8(a) BD (ADD/8(a)BD), the suspension package will be submitted to the District Director.
- e. If the District Director agrees with the recommendation, he or she will approve it, add any relevant comments, and forward the package to the appropriate CODS.
- f. The CODS will review the suspension package, request any necessary additional information from the District Office, add its recommendation and any relevant comments, obtain comments from its counsel, and forward the package to the Office of Certification and Eligibility (OCE).
- g. The OCE will review the package, add its recommendation and any relevant comments, and forward the package to the Assistant Administrator for Business Development (AA/BD).
- h. If the AA/BD agrees that the participant should be suspended, he or she will sign the Notice of Suspension. The OCE will mail the Notice of Suspension to the participant and e-mail or fax a copy to the CODS. The CODS will forward a copy to the District Office.

**6. 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. The decision of the AA/BD is final.

**7. What Documents Must Be Submitted By the Participant in Support of a Request for a Change of Ownership or Business Structure?**

The participant must submit the following documents in support of its request:

- a. SBA Form 1010. The participant only needs to complete those sections indicating the proposed changes of ownership, business structure, control, and/or management.
- b. SBA Form 413. Each new individual claiming disadvantage, new officer, new director, new partner, new management member, and new stockholder owning more than 10 percent of the shares of the participant, and the spouses of each of these individuals, must submit an updated SBA Form 413.
- c. Personal federal income tax returns. Each new individual claiming disadvantage, new officer, new director, new partner, new management member and new stockholder owning more than 10 percent of the shares of the participant must submit personal federal income tax returns for the most recent two year period, including all W-2 forms and schedules.
- d. IRS Form 4506. Each new individual claiming disadvantage, new officer, new director, new partner, new management member and new stockholder owning more than 10 percent of the shares of the participant must submit IRS Form 4506.
- e. SBA Form 912. Each new individual claiming disadvantage, new officer, new director, new partner, new management member, new key employee and new owner of more than 10 percent of the shares of the participant must submit SBA Form 912. A “key employee” includes, but is not limited to, an employee who has significant decision making authority and/or management authority.
- f. FD Form 258, FBI Applicant Fingerprint Card. Any new individual who indicates an arrest record or a criminal history on SBA Form 912 must submit FD Form 258. The District Office will forward the SBA Form 912 and completed FD Form 258 to the Office of the Inspector General, Investigations Division, Office of Security Operations (OIG). The OIG will then forward FD Form 258 to the FBI for review. Upon receipt of the individual’s record of criminal history from the OIG, the

District Office must immediately compare it to SBA Form 912 to ensure that the individual disclosed his or her complete criminal record. If the OIG's report contains arrests and/or convictions not disclosed by the individual, the District Office must contact the individual and provide him or her with the opportunity to explain the reason for failing to disclose such arrests and/or convictions. The District Office must also obtain from the individual any details not contained on the individual's record of criminal history received from the OIG, such as fines paid, jail time, probation served and court disposition papers.

- g. Resumes. Each new officer, new director, new key employee, and new owner of more than 10 percent of the shares of the participant must submit a personal resume. The resume must list in chronological order education, technical training, and business and employment experience, with the employer's name, dates of employment, type of work and duties for each position. The resume must reflect all positions held by the individual, and any gaps in dates of employment must be explained.
- h. Stock certificates and stock ledger.
  - (1) For proposed changes of corporate ownership and/or business structure, the participant must submit copies of all stock certificates (front and back) that will be issued to consummate the change of ownership and a draft copy of the stock ledger reflecting the proposed issuance of this stock. However the stock certifications should not be signed until the change of ownership is approved.
  - (2) For changes of corporate ownership and/or business structure that have already been completed, the participant must submit signed copies of all stock certificates (front and back) that were issued to consummate the change of ownership and a copy of the stock ledger reflecting the issuance of this stock.
- i. Copies of any stock options.
- j. Copies of any executed or proposed buy/sell agreements.
- k. Copies of any other documentation that may affect the final determination (such as Articles of Incorporation, Bylaws, Minutes of Shareholders' meetings, Minutes of Board of Directors' meetings, and Resolutions of the Board of Directors). If the articles or bylaws have not been changed, a new set need not be submitted.
- l. Copy of proposed Partnership Agreement (if the 8(a) concern is becoming a partnership).

- m. Copy of Articles of Organization and Operating Agreement (if the participant is becoming a Limited Liability Company).
- n. Brief explanation of why the change of ownership or business structure is requested.

**8. What Must the BOS's Analysis of the Proposed Change of Ownership or Business Structure Contain?**

The BOS's analysis must contain:

- a. A summary of the proposed change. The analysis of the proposed change must include a determination regarding the company's 8(a) contracts. If the proposed change of ownership would result in the disadvantaged individual(s) owning less than 51% of the participant (except where the proposal would substitute one or more individuals claiming disadvantaged status for an individual already determined by SBA to be disadvantaged), the BOS must analyze the change of ownership in connection with the termination for convenience/waiver provisions of 13 CFR 124.515.;
- b. A summary of the ownership and control of the participant prior to the proposed change;
- c. A summary of the ownership and control of the participant after the proposed change;
- d. A conclusion as to whether the participant will remain eligible if the change is completed;
- e. An analysis of the participant's compliance with 13 CFR 124.103 and 124.104 (social and economic disadvantage) if the change is effected; and
- f. A copy of the annual review, if it supports the participant's continuing eligibility status, if the participant had an annual review within the last six months, and if all the information and documents necessary to complete the review were provided.

**9. Who Reviews a Proposed Change of Ownership or Business Structure?**

- a. The BOS prepares an analysis of the change and makes a recommendation.
- b. District Counsel reviews the analysis. The review of the District Counsel must include:

- (1) An analysis of how the participant's eligibility may be affected by the change of ownership or business structure; and
  - (2) A statement that the structure after the change is permissible under local law.
- c. The ADD/8(a)BD makes a recommendation and submits the package to the District Director for review.
  - d. The District Director reviews the package, makes a recommendation, and forwards the package to the appropriate CODS for review.
  - e. The CODS reviews the request and adds its recommendation. At any time in the process, the CODS may request further information from the participant or the District Office. The CODS then obtains a legal review from its counsel, and forwards the package with any comments to the OCE.
  - f. The OCE reviews the request, adds its recommendation, and forwards the package to the AA/BD.
  - g. The AA/BD makes the decision whether to approve or deny the change and notifies the CODS and District Office. The District Office will notify the participant of the AA/BD's decision.

**10. What Are the Time Limits for Processing a Change of Ownership?**

- a. The District Office will process the request within 30 days of the receipt of all required documentation.
- b. The CODS will process the request within 20 days after receipt of all required documents from the District Office.
- c. The AA/BD will issue a final decision within 10 days of receipt of all required documents from the CODS.

**11. What Eligibility Standards Apply to Changes of Ownership or Business Structure?**

The standards for determining eligibility after a change of ownership or business structure are the same as those for initial eligibility, except that the individual's adjusted net worth requirement is increased to \$750,000.

**12. What Is the Process for a Change of Name?**

- a. The participant must advise the District Office of a change in name. The AA/BD's approval is not required for a change in name.



- b. The participant must submit to the District Office:
  - (1) Documents, authorizing the change of name: (*e.g.*, corporate minutes); and
  - (2) A copy of the recorded amended articles of incorporation or articles of organization showing the change.
- c. The BOS will review the change of name documents to ensure that the change is that of name alone. (For example, a change from ABC to ABC, Inc. is a change of business structure, not just a change of name.)
- d. District Counsel will give an opinion that the change is legally completed.
- e. The BOS, with the concurrence of the ADD/8(a)BD, will change all SBA records to reflect the name change.
- f. The BOS will advise the participant to notify the procuring agencies with which the participant has contracts to execute a name change modification in accordance with the Federal Acquisition Regulation (FAR). *See* § 42.1205 of the FAR, 48 CFR 42.1205.

## CHAPTER 8: JOINT VENTURES AND TEAMING ARRANGEMENTS

### 1. What Is a Joint Venture Agreement?

For purposes of this SOP chapter, a Joint Venture Agreement (JVA) is an agreement between an eligible 8(a) participant and one or more other business concerns to establish a new legal entity solely for the purpose of performing a specific 8(a) contract. The contract is then awarded to the Joint Venture entity rather than to one or more of the participants.

### 2. When Are Joint Ventures Permitted?

Joint Ventures are permitted only when:

- a. The 8(a) participant lacks the capacity to perform the contract on its own;
- b. The Joint Venture arrangement is fair and equitable;
- c. The Joint Venture will be of substantial benefit to the 8(a) participant; and
- d. The 8(a) participant brings substantial resources and/or expertise to the Joint Venture.

### 3. What Does Capacity Mean?

- a. "Capacity" means the overall ability of a business concern to meet the quality, quantity and time requirements of the contract. Generally, capacity is the firm's ability to provide adequate and appropriate management, labor, equipment, plant, bonding and financial resources to successfully complete the contract. (38 Comp. Gen. 864, affirmed Nov. 6, 1959; B149122, July 31, 1962; B149096, Aug. 9, 1962; B154734, Aug. 26, 1964.)
- b. Some of the areas of capacity include:
  - (1) Adequate bonding (if necessary);
  - (2) Adequate financing;
  - (3) Technical expertise;
  - (4) Experience with similar requirements;
  - (5) Access to specialized/required equipment; and

- (6) Access to appropriate facilities.

#### **4. What Role Must the 8(a) Participant Have in the Joint Venture?**

An 8(a) participant must be designated as the managing (or lead) venturer, and an employee of the managing venturer must serve as the project manager responsible for performance of the 8(a) contract.

#### **5. How Does SBA Determine if the Joint Venture Is Small?**

- a. Except in the case of Joint Ventures under SBA's Mentor/Protégé program, for all sole source requirements and for competitive 8(a) procurements that are equal to or less than one half the size standard of the North American Industry Classification System (NAICS) code assigned to the requirement or are \$10 million or less for employee-based size standards:
  - (1) The 8(a) concern is considered to be affiliated for size purposes with the other concern(s); and
  - (2) The combined annual receipts or number of employees of all concerns in the Joint Venture must not exceed the size standard for the NAICS code assigned to the 8(a) procurement.
- b. For an 8(a) competitive procurement that exceeds half the size standard of the assigned revenue-based NAICS code, or \$10 million for an employee-based NAICS code, a Joint Venture of at least one 8(a) participant and one or more other business concerns may submit an offer as a small business so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract. *See* 13 CFR 124.513(b). *See also* 13 CFR 124.513(b)(3) ) and Question 6 of this chapter for special size rules for Joint Ventures between Mentors and Protégés under SBA's Mentor/Protégé program.

#### **6. How Does SBA Determine if the Joint Venture is Small Under the Mentor/Protégé Program?**

A Joint Venture between a Protégé 8(a) firm and its approved Mentor will be deemed small provided that the Protégé is small under the size standard for the NAICS code assigned to the procurement and otherwise meets relevant eligibility requirements. *See* 13 CFR 124.513(b)(3). This means that under the Mentor/Protégé program, the combined size of the Mentor and its approved Protégé may exceed the size standard applicable to the project for either sole source or competitive projects, as long as the Protégé is small under the size standard for the NAICS code assigned to the procurement.

**7. What Office Must a Participant Notify if it Intends to Enter into a Joint Venture Agreement and What Information Will be Provided to the Participant?**

- a. An 8(a) participant must notify and request approval from the servicing District Office for any contemplated agreements, arrangements or understandings, regardless of type, that may in any way give an interest to any person, other than those upon whom eligibility is based, in the operation, management or control of the 8(a) concern. This includes JVAs.
- b. The District Office must provide the participant and any other parties to the Agreement notice of all provisions required by SBA in the JVA and all restrictions imposed by SBA on such agreements.

**8. What Are the General Requirements for Submitting and Obtaining SBA Approval of Joint Venture Agreements?**

- a. The Joint Venture applicants must submit all required information to the managing 8(a) participant's servicing District Office as soon as possible, but no fewer than 20 working days prior to the scheduled date for contract award. Incomplete packages will be returned to the participant without action. The managing participant is the managing partner or lead venturer.
- b. The JVA must be approved by SBA prior to the award of an 8(a) contract to the Joint Venture.
- c. Failure to obtain SBA approval of the JVA prior to award of the contract will result in SBA's request that the buying activity terminate the award to the Joint Venture.
- d. SBA must approve in advance all proposed amendments, modifications, or extensions to a JVA.

**9. What Documentation Must be Submitted by the Joint Venture Applicants to the District Office for Approval of a Joint Venture?**

The managing 8(a) participant in the Joint Venture must submit the following information to its servicing District Office:

- a. The Joint Venture Agreement (the agreement must meet all the requirements set forth in 13 CFR 124.513(c) and the Question 10 of this chapter);
- b. Three years of signed company year end financial statements and federal tax returns for each participant;

- c. A letter from the managing 8(a) participant stating:
  - (1) What the 8(a) participant or participants lack in capacity and/or capability which makes the Joint Venture necessary for project performance;
  - (2) What specific benefits the 8(a) firm will receive from participation in the Joint Venture (in addition to contract revenue) and how these benefits will affect the 8(a) firm; and
  - (3) What resources the 8(a) participant will bring to the Joint Venture; and
- d. The supplemental information Question 11 of this chapter.

## 10. What Must Be in the Joint Venture Agreement?

Every JVA to perform an 8(a) contract, including those between Mentors and Protégés, must contain a provision:

- a. Setting forth the purpose of the Joint Venture;
- b. Designating an 8(a) participant as the managing venturer of the Joint Venture, and an employee of the managing venturer as the project manager responsible for performance of the 8(a) contract;
- c. Stating that not less than 51 percent of the net profits earned by the Joint Venture will be distributed to the 8(a) participant;
- d. Providing for the establishment and administration of a special bank account in the name of the Joint Venture. This account must require the signature of all parties to the Joint Venture or designees for withdrawal purposes. All payments due the Joint Venture for performance on an 8(a) contract will be deposited in the special account, and all expenses incurred under the contract will be paid from the account;
- e. Itemizing all major equipment, facilities, and other resources to be furnished by each party to the Joint Venture, with a detailed schedule of cost or value of each;
- f. Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiations of the 8(a) contract;
- g. Obligating all parties to the Joint Venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member;
- h. Designating that accounting and other administrative records relating to the Joint Venture be kept in the office of the managing venturer, unless

approval to keep them elsewhere is granted by the District Director or his or her designee upon written request;

- i. Requiring that the final original records be retained by the managing venturer upon completion of the 8(a) contract performed by the Joint Venture;
- j. Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the Joint Venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the Joint Venture; and
- k. Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA not later than 90 days after completion of the contract.

**11. What Supplemental Information Must Be Submitted by the Joint Venture Applicants to the District Office?**

- a. Along with the JVA, the Joint Venture applicants must submit the following general identifying information:
  - (1) The name of the Joint Venture (the new entity);
  - (2) The EIN of the Joint Venture;
  - (3) The business credit report (formerly the DUNS) number of the Joint Venture;
  - (4) The names of the firms participating in the Joint Venture;
  - (5) For each firm involved in the Joint Venture, submit:
    - (a) The primary industry of the firm;
    - (b) The current capabilities of the firm;
    - (c) A brief description of the history of the firm;
    - (d) SBA Form 355 (Application for Small Business Size Determination); and
    - (e) SBA Form 1623 (Certification Regarding Debarment, Suspension and other Responsibility Matters).
- b. The Joint Venture applicants must submit a description of the project that includes:
  - (1) Customer agency;

- (2) Size and dollar value of project;
  - (3) Type of project (general construction, janitorial, etc.);
  - (4) Expected award date for the project;
  - (5) Duration of project and requirements for performance;
  - (6) Copy of the requirement's offer and acceptance letters;
  - (7) Draft or final copy of bid proposal or offer;
  - (8) An analysis (prepared by the Joint Venture participants) of the project that describes the anticipated cash flow, personnel, equipment and facility requirements;
  - (9) A copy of the Statement of Work; and
  - (10) The procurement's FedBizOpps synopsis.
- c. For non-8(a) participants, the Joint Venture applicants must submit:
- (1) The number and value of contracts in the same NAICS code as that assigned to the procurement;
  - (2) Relevant experience and professional licenses, etc.; and
  - (3) Details of all previous Joint Ventures with 8(a) firms, including the names of all participants in those JVAs.
- d. Each 8(a) Joint Venture participant must indicate the effect the JVA and the contract award will have on their performance of existing contracts in terms of the following:
- (1) Cash flow;
  - (2) Personnel;
  - (3) Equipment; and
  - (4) Facilities.
- e. The Joint Venture applicants must outline the distribution of profits for the Joint Venture and must demonstrate that the combined 8(a) participants will receive at least 51 percent of the profits earned by the Joint Venture.
- f. The Joint Venture applicants must demonstrate that the Joint Venture meets the relevant size requirements, and must analyze the percentages of work to be performed by each firm and each subcontractor. *See* 13 CFR 124.510, 124.513(d); 125.6.

- g. The Joint Venture applicants must submit the following financial information and certifications:
  - (1) Documentation indicating the establishment and administration of a special bank account in the name of the Joint Venture. *See* Question 10;
  - (2) Amount and percentage of capital that each venturer is contributing;
  - (3) Three years of signed company year end financial statements and federal tax returns for each participant; and
  - (4) Where appropriate, evidence that the Joint Venture has sufficient bonding.
- h. The Joint Venture applicants must submit the following employee information:
  - (1) A list of the employees needed to perform the project (by position, type and number in each category);
  - (2) The number and skills of employees supplied to the Joint Venture by each venturer; and
  - (3) A brief description of the hiring and employee management responsibilities of each venturer.
- i. The Joint Venture applicants must submit the following concerning project management and administration:
  - (1) An explanation of how project management will be handled (the managing 8(a) participant must maintain project management control);
  - (2) An explanation of the specific responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract; and
  - (3) A breakdown of work tasks to be performed by each joint venturer.
- j. The Joint Venture applicants must also submit:
  - (1) A statement certifying that all the required provisions have been incorporated into the JVA, as set forth in 13 CFR 124.513(c);
  - (2) A statement certifying that the provisions of the JVA are fair and equitable and will substantially benefit the 8(a) participant along with an explanation demonstrating this; and



- (3) A statement certifying that the 8(a) participant will bring substantial value to the Joint Venture in terms of resources and expertise other than 8(a) status.

## **12. What is the Review Process for a Joint Venture?**

- a. The Business Opportunity Specialist (BOS) in the District Office servicing the managing 8(a) participant has the following responsibilities:
  - (1) Initial review of the entire package for completeness and of the JVA to ensure that all required provisions are included;
  - (2) Review of the participant firms to ensure compliance with size standard requirements;
  - (3) Review of the package to determine whether the Joint Venture is fair and whether it will substantially benefit the 8(a) Participants(s);
  - (4) Review of the package to determine whether the 8(a) participant brings something of value to the Joint Venture in terms of resources and expertise other than its 8(a) status;
  - (5) Review of the package to ensure the non-managing venturer(s) provides the lacking necessary capacity the managing venturer is missing. Given that the JVA will only be permitted where an 8(a) concern lacks the necessary capacity to perform a specific contract on its own, the BOS must review the package to ensure the non-managing venturer provides this missing capacity. The JVA must address this missing capacity, and the non-managing venturer(s) must provide it;
  - (6) Preparation of a summary report of findings;
  - (7) Submission of the summary report and relevant supporting documents to the District Counsel for review for legal sufficiency; and
  - (8) Submission of the report to the Assistant District Director for 8(a) BD (ADD/8(a)BD) for review and recommendation.
- b. The District Counsel is responsible for reviewing the summary report, Joint Venture Agreement and supporting information for legal sufficiency.

- c. The ADD/8(a)BD is responsible for reviewing the summary report, JVA and supporting documents, and makes a recommendation to the District Director.
- d. The District Director or Deputy District Director is responsible for reviewing the summary report, JVA and supporting documents, and makes a final decision whether or not to approve the Joint Venture.
- e. The District Office is responsible for notifying the participant and other interested parties of the decision to approve or deny the Joint Venture.

### **13. What Analysis Should the BOS Include in the Summary Report?**

In assessing the appropriateness of the Joint Venture, the BOS should consider factors including, but not limited to, the following:

- a. Whether it fits into the business development needs identified in the firm's approved business plan;
- b. The purpose of the Joint Venture and specific benefits to be gained by the 8(a) firm. The BOS will review the package to ensure the non-managing venturer(s) provides the lacking necessary capacity the managing venturer is missing. Given that the JVA will only be permitted where an 8(a) concern lacks the necessary capacity to perform a specific contract on its own, the BOS must review the package to ensure the non-managing venturer provides this missing capacity. The JVA must address this missing capacity, and the non-managing venturer(s) must provide it;
- c. The size of the Joint Venture participants, and/or the Joint Venture;
- d. The finances of each participant, and financing of the Joint Venture, including cash flow;
- e. Affiliations of each participant;
- f. Percentage of disadvantaged ownership;
- g. Number of and skills of employees supplied to the Joint Venture by each venturer;
- h. Type and value of equipment contributed by each venturer;
- i. Number and value of contracts received by each participant in the NAICS code assigned to the requirement;
- j. Relevant expertise or professional licenses, etc. of each venturer;
- k. The 8(a) participant's compliance with business activity targets;

- l. Each participant's history of Joint Ventures;
- m. The breakdown of work or tasks to be performed by each participant;  
and
- n. The impact of the Joint Venture requirement on performance of the 8(a) participant's existing contracts in terms of cash flow, personnel, equipment, and facilities.

#### **14. What Must the District Office Summary Report Address?**

The District Office review should be based on consideration of the factors outlined in the Question 13 above, and the summary report must address the following issues at a minimum:

- a. The specific resources that the participant lacks which cause the Joint Venture to be necessary. *See* Question 3 of this chapter pertaining to capacity. In determining whether the 8(a) participant lacks sufficient capacity, the scope of prior contracts and past performance should be considered. The BOS's analysis will address the managing venturer's lacking resources. The analysis specifically addresses how the non-managing venturer(s) provides these lacking resources. Given that the JVA will only be permitted where an 8(a) concern lacks the necessary capacity to perform a specific contract on its own, the summary report addresses how the non-managing venturer(s) provides this missing capacity. The summary report must address this missing capacity and how the non-managing venturer(s) provides it.
- b. Whether all required provisions specified in 13 CFR 124.513(c) have been incorporated into the JVA.
- c. Whether all the provisions of the Joint Venture are fair and equitable and for the substantial benefit of the 8(a) participant. In order to determine whether the firm will substantially benefit from the Joint Venture, the BOS may consider, among other things, dollars earned on the project, and the likelihood that as a result of the Joint Venture the firm will improve capabilities, increase experience, acquire new equipment, acquire additional employees, be capable of handling larger procurements, obtain expertise in a new area, or acquire new skills.
- d. The specific resources the 8(a) participant brings to the Joint Venture. In determining whether the 8(a) participant will bring substantial resources to the Joint Venture, the BOS should consider the equipment, personnel, expertise, bonding, financing, management capabilities, and facilities the 8(a) participant will contribute. For managing venturers, the BOS may also examine the expertise brought to the Joint Venture by the project manager. "Substantial" is not specifically defined, but is

dependent on the nature of the procurement and the particular resources the 8(a) participant brings. However, if the 8(a) participant contributes far less than would warrant its receipt of 51 percent of the net profits of the Joint Venture, the presumption is created that the 8(a) participant is not contributing substantial enough resources to the Joint Venture.

**15. Who in SBA Makes the Final Decision for Joint Venture Agreements When More than One District Office is Involved?**

Joint Venture Agreements involving program participants having different servicing District Offices must be approved by the District Director of the servicing office of the managing 8(a) firm. Agreements will be forwarded from the ADD/8(a)BD of the District Office servicing the managing 8(a) firm (after comment) to the servicing offices of the secondary 8(a) participant firms. Those offices will be allowed 3 working days to append comments and recommendations. The agreement package will then be returned to the managing participant's servicing District Office for final decision by the District Director.

**16. How Much of the Work Under a Requirement Must the Joint Venture Perform?**

In order to be awarded an 8(a) contract, the Joint Venture must perform at least the following percentages of work:

- a. Services (non-construction). 50% of the cost of the contract incurred for personnel with its own employees;
- b. Supplies or products. 50% of the cost of manufacturing the supplies or products (not including the cost of materials);
- c. General construction. 15% of the cost of the contract with its own employees (not including the cost of materials); and
- d. Special trade construction. 25 % of the cost of the contract with its own employees (not including the cost of materials). *See* 13 CFR 124.510, 13 CFR 125.6.

**17. How Much of the Work of the Joint Venture Must the 8(a) Participant Perform?**

The 8(a) participant (or the total of all 8(a) participants involved in the Joint Venture) must perform a significant portion of the contract. Significance must be determined on a case-by-case basis, factoring considerations such as:

- a. The nature of the industry of the procurement;

- b. The level of resources dedicated by the participant or participants (including man-hours, equipment, bonding, etc.); and
- c. The ultimate business development benefits that the participant(s) will receive from their performance on the contract.

**18. How Does SBA Review Joint Ventures After Approval?**

- a. The BOS for the managing participant will perform a review of financial information submitted quarterly and annually by the approved Joint Venture.
- b. All Joint Ventures must be reviewed annually by the servicing District Office of the managing 8(a) participant. This review takes place as part of the managing participant's annual review. The review will commence with the participant's first annual review after the Joint Venture has been in effect and will result in a report containing the following information:
  - (1) Whether the Joint Venture participants are complying with prime contractor performance requirements (*see* 13 CFR 125.6);
  - (2) Whether financial records are being recorded and kept as required;
  - (3) Whether the personnel of each Joint Venture participant is performing work as stipulated in the agreement and proposal;
  - (4) Whether equipment is used and accounted for as stipulated;
  - (5) Whether SBA has approved all amendments to the JVA; and
  - (6) Whether the 8(a) participant(s) are receiving substantial benefit from the Joint Venture.
- c. If there is more than one 8(a) participant in the Joint Venture, the BOS for each non-managing participant must examine the Joint Venture to determine whether the participant from that District Office is receiving substantial benefit from the Joint Venture and whether the participant is contributing substantial resources to the Joint Venture. The reviews for non-managing Joint Venture participants also take place during such participant's annual review.
- d. SBA may inspect the records of the Joint Venture at any time, with or without notice.
- e. A copy of the report described under item b., above, will be provided to the District Offices servicing the other participants, if any.

**19. Are there Special Considerations for Contract Award and Execution?**

- a. Contract documents must list the name of the Joint Venture as the contractor. Signature approval of the contract is done with the following signatures unless awarded pursuant to a delegation of contract authority:
  - (1) SBA;
  - (2) Contracting activity;
  - (3) Managing venturer (8(a) firm); and
  - (4) All of the Joint Venture partners.
- b. The client case number used in the SACS/MEDCOR system will be the managing participant's case number with added characters, in accordance with SACS/MEDCOR instructions. The BOS must immediately enter the Joint Venture's name, EIN and DUNS number, and the Agency's prime contract number into all relevant databases.

**20. Can the Joint Venture Agreement be Amended?**

The Joint Venture may be amended with advance approval from SBA. The members of the Joint Venture must submit the amendment(s) and justification(s) to the District Office servicing the managing participant for approval. The approval process is the same as for the original agreement (review and recommendation by BOS and ADD/8(a)BD, legal clearance from District Counsel, and the final decision by District Director).

**21. What Actions Must be Accomplished After Contract Completion?**

After contract completion, a final close-out meeting should be held with the Joint Venture participants to discuss the value of the Joint Venture with regard to increases in the firm's capacity and capability, whether the goals set forth at the inception of the Joint Venture were actually achieved and if not, why not, and any other concerns arising from the Joint Venture.

**22. What is a Contractor Team Arrangement?**

A teaming arrangement may be an arrangement in which a potential prime contractor agrees with one or more companies to have them act as its subcontractors under a specified Government contract or acquisition program or it may be a JVA. The requirements under the limitation of subcontracting must be maintained. *See* FAR §§ 9.601 9.602, and 52.219-14, 48 CFR 9.601, 9.602 and 52.219-14. To maximize the number and type of procurement opportunities, 8(a) firms are allowed and encouraged to team with both 8(a) and non-8(a) firms.

However, the SBA is not normally involved with these arrangements, and the SBA is not required to review or approve them.

**23. What is the Role of Teaming Arrangements in the 8(a) BD Program?**

A teaming arrangement may be a desirable business development tool. However, it may affect a participant's eligibility if it results in circumstances of actual or negative control, affiliation, or loss of small business status. Consequently, a proposed teaming agreement must be carefully evaluated to determine the relationship of the parties.

## CHAPTER 9: MENTOR/ PROTÉGÉ PROGRAM

### 1. What Is the Purpose of the Mentor/Protégé Program?

The purpose of the Mentor/Protégé program is to enhance the capabilities of 8(a) participants and to improve their ability to successfully compete for federal government contracts.

### 2. What Forms of Assistance Can Mentors Provide to Protégés?

Mentors may provide the following forms of assistance to Protégés:

- a. Technical and management assistance;
- b. Financial assistance, including equity investments and/or loans;
- c. Subcontracting support; and
- d. Assistance in performing prime contracts through joint venture arrangements.

### 3. How Long Can the Mentor/Protégé Relationship Last?

The Mentor/Protégé relationship may last as long as the term agreed upon by the parties, as expressed in the Mentor/Protégé Agreement, provided the Protégé remains in the 8(a) Business Development (8(a) BD) Program. However, the relationship should last at least 1 year.

### 4. What Are the Benefits of a Mentor/Protégé Relationship?

The benefits of the Mentor/Protégé relationship include:

- a. The two firms approved by SBA to be a Mentor and Protégé under 13 CFR 124.520 may joint venture as a small business for any government procurement, provided that the Protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement, and other relevant program requirements are met.
- b. In order to assist the Protégé to raise capital, the Mentor may own an equity interest of up to 40 percent in the Protégé despite the more limited, general ownership restrictions on eligibility in 13 CFR 124.105(g) and (h). In the event the Mentor/Protégé relationship ends, the Mentor may retain its ownership percentage in the Protégé existing at the time the relationship ends to avoid any detrimental impact on capital.



- c. A determination of affiliation or control may not be found between a Protégé firm and its Mentor based solely on the Mentor/Protégé Agreement or any assistance provided pursuant to the Agreement.

**5. Can a Contract Be Awarded to the Mentor and Protégé Based Simply on the Mentor/Protégé Agreement?**

A contract cannot be awarded to the Mentor and Protégé based simply on the Mentor/Protégé Agreement. In order for a Mentor to participate in an 8(a) contract as a prime with its Protégé, they must joint venture.

**6. What Information Must Be Submitted by the Parties Applying for the Mentor/Protégé Program?**

To apply for the program, the parties must submit the following information:

- a. A signed Mentor/Protégé Agreement;
- b. A signed SBA Form 1623, *Certification Regarding Debarment, Suspension, and Other Responsibility Matters*;
- c. Financial statements for the mentor for the 2 previous years;
- d. The Mentor's federal tax returns for the past two years, including a signed IRS Form 4506 (Request for Copy or Transcript of Tax Return);
- e. Evidence of good character, which can be demonstrated by letters of commendation from business associations, organizations or peers, or by contract performance certifications issued by procuring activities;
- f. A narrative by the Mentor regarding its commitment and ability to assist the Protégé by sharing lessons learned and practical experience gained through its general knowledge of government contracting (this narrative may be part of the agreement); and
- g. Any other information SBA deems appropriate.

**7. What Steps Does SBA Take to Determine if the Mentor Is Qualified?**

In determining whether a Mentor is qualified for the Mentor/Protégé program, the Business Opportunity Specialist (BOS) will:

- a. Run a business credit report on the potential Mentor. The potential Mentor need not be small. It may be another 8(a) firm, another small firm, or a large business.

- b. Determine whether the Mentor is an 8(a) participant in the developmental stage. Firms in the Developmental Stage of program participation are not eligible to be Mentors.
- c. Determine whether the Mentor shows the commitment and ability to assist the Protégé. Evaluate whether the Mentor has demonstrated the ability to impart value to the Protégé.
- d. Analyze the business credit report and the Mentor's narrative.
- e. Analyze financial statements to determine whether the Mentor has had favorable financial health, including profitability, for at least the last two years.
- f. Examine the character of the Mentor. *See* 13 CFR 124.108. The BOS should consider the following factors:
  - (1) Any indication of criminal conduct;
  - (2) Any violation of SBA regulations;
  - (3) Any indication of lack of business integrity, civil or criminal; and
  - (4) Placement on the federal list of debarred or suspended contractors. Excluded Parties List at [www.arnet.gov](http://www.arnet.gov) or any other current Internet list should be checked.
- g. Determine whether the Mentor already has a Protégé, and, if so, determine:
  - (1) Whether the two 8(a) participants are competitors, in which case the additional Mentor/Protégé relationship may not be approved; and
  - (2) Whether the Mentor can handle the additional Mentor/Protégé relationship without adversely affecting the development of either Protégé firm. If the BOS determines that it cannot, then the additional Mentor/Protégé relationship should not be approved. *See* 13 CFR 124.520(b)(2).
- h. Review any on-going business relationships of the Mentor with other participants or small businesses.
- i. Review the Mentor's participation in any other formal Mentor/Protégé programs, and determine whether any conflict exists.
- j. The BOS reviews all of the above areas to determine if the potential Mentor is qualified; however, the agreement will be disallowed, if the potential Mentor fails to demonstrate:

- (1) Favorable financial health;
- (2) Good character;
- (3) The ability to receive Federal contracts. The potential Mentor must not be on the Federal list of debarred or suspended contracts; and
- (4) The ability to impart value to the potential Protégé.

## **8. How Does an 8(a) Participant Qualify as a Protégé?**

- a. In order to qualify as a Protégé initially, the 8(a) participant must one of the following three:
  - (1) Be in the developmental stage of program participation;
  - (2) Have never received an 8(a) contract; or
  - (3) Have a size that is less than half the size standard corresponding to its primary NAICS code.
- b. The Protégé must be an 8(a) participant in good standing (*e.g.*, no termination or suspension proceedings against it, and up to date with all reporting requirements).
- c. The Protégé may not have an existing SBA approved Mentor/Protégé Agreement. *See* 13 CFR 124.520(c)(3).

## **9. What Must the Mentor/Protégé Agreement Contain?**

The Mentor/Protégé Agreement must contain the following:

- a. An assessment of the Protégé's needs.
- b. A developmental plan specifying what assistance the Mentor will provide to address those needs. Areas of assistance may include, but are not limited to:
  - (1) Financial assistance in the form of equity investments or loans;
  - (2) Accounting assistance;
  - (3) Management assistance;
  - (4) Technical assistance;
  - (5) Subcontracting assistance;
  - (6) Marketing assistance;

- (7) Business planning assistance;
  - (8) Manufacturing assistance;
  - (9) Technology transfers;
  - (10) Sharing of human resources; and
  - (11) Participation in joint ventures.
- c. A provision specifying that the Mentor will provide the assistance for a minimum of one year.
  - d. A provision specifying that either the Mentor or the Protégé can terminate the Agreement with 30 days advance notice to the other party, and to SBA.
  - e. A provision that the Agreement cannot be changed without SBA's approval.

#### **10. How Does the BOS Evaluate a Mentor/Protégé Agreement?**

In evaluating the Mentor/Protégé Agreement, the BOS will:

- a. Determine whether all the appropriate documentation is in the file. If it is not, it must be requested prior to review.
- b. Determine the eligibility of the Mentor.
- c. Determine the eligibility of the Protégé.
- d. Review the Agreement to see that all the elements are present. Factors to be considered include:
  - (1) Whether the assistance needed and offered is permissible;
  - (2) Whether the assistance needed and offered is appropriate to the Protégé;
  - (3) Whether the assistance will be sufficient to promote significant developmental gains to the Protégé;
  - (4) Whether the Agreement is solely a means for the non-participant Mentor to receive 8(a) contracts;
  - (5) If the Mentor is a participant or 8(a) graduate, whether the Mentor received a favorable evaluation from its current or former servicing District Office;

- (6) Whether there is any prior affiliation or relationship between the Protégé and the Mentor. The BOS must consider the nature of the relationship and its implications for participation in the Mentor/Protégé program. The analysis should factor in the existence of familial relationships, previous employment relationships, economic dependence, common management, and other similar factors;
  - (7) Whether the Mentor and Protégé are under any other formal Mentor/ Protégé programs; and
  - (8) Equity interest stock transfers, pursuant to 13 CFR 124.520(d)(2), are processed as amendments to the basic MPAs. Equity interest amendments require the submittal of comprehensive plans delineating the purpose and forecasted results of the capital infusions and should demonstrate support of the 8(a) firms' continued business development. Amendments are initially reviewed by the servicing district offices. Equity interest stock transfers should not have a negative effect on protégés' ownership and control and changes in the firms' business structures resulting from stock transfers will be reviewed for continued eligibility of the 8(a) firms.
  - (9) Whether the application demonstrates an understanding of SBA program regulations, requirements, and operating procedures.
- e. Make a recommendation whether to approve or disapprove the Agreement. The recommendation must be supported by a written analysis that addresses every element above. Failure to support any single element will not necessarily cause the agreement to be disapproved. Approval or disapproval will be based on the totality of the factors.

## **11. What Is the Approval Process for a Mentor/Protégé Agreement?**

The approval process for a Mentor/Protégé Agreement is as follows:

- a. The request for approval of a Mentor/Protégé Agreement must be submitted to the BOS in the Protégé's District Office.
- b. After the BOS reviews the Agreement and prepares a thorough evaluation and recommendation, which must include the comments of District Counsel, the agreement is forwarded to the Assistant District Director for 8(a) BD (ADD/8(a)BD).
- c. If the ADD/8(a)BD does not approve the Mentor/Protégé Agreement, the process stops. The ADD/8(a)BD notifies both parties to the

proposed Mentor/Protégé Agreement of the SBA's final decision at whatever point the process stops.

- d. If the ADD/8(a)BD recommends approval of the Agreement, he/she will forward the recommendation to the District Director.
- e. If the District Director agrees with the approval recommendation, he or she will forward the Agreement to the Office of Management and Technical Assistance in Headquarters.
- f. If the Office of Management and Technical Assistance agrees with the recommendation, it will forward the Agreement to the Assistant Administrator for Business Development (AA/BD) for final approval. Only the AA/BD may make a final decision to approve a Mentor/Protégé Agreement.
- g. If the AA/BD approves the Agreement, the Office of Management and Technical Assistance will notify the Mentor and Protégé as well as the District Office.

## **12. When Will SBA Refuse to Approve a Mentor/Protégé Agreement?**

SBA will not approve a Mentor/Protégé Agreement when:

- a. The developmental gains are not tied to the firm's approved business development plan;
- b. The assistance proposed by the Mentor is not sufficient to promote any significant developmental gains to the Protégé;
- c. The Agreement is just a mechanism to enable a non-8(a) participant to receive 8(a) contracts; or
- d. The Agreement poses issues of negative control.

## **13. Can a Protégé Have More Than One Mentor?**

The Protégé may not have more than one Mentor at a time.

## **14. Can the Mentor/Protégé Agreement Be Modified?**

The Mentor/Protégé Agreement may be modified if the modification is approved by the District Director. The changes may not be effected prior to receiving the District Director's approval. The process for modifying the Agreement is as follows:

- a. The proposed modification(s) must be submitted to the firm's BOS for evaluation.
- b. After the BOS reviews the proposed modification(s) and prepares a thorough evaluation and recommendation, which includes the comments of District Counsel, the Agreement is forwarded to the ADD/8(a)BD.
- c. If the ADD/8(a)BD denies the proposed modification(s), the process stops. The ADD/8(a)BD notifies both parties to the Mentor/Protégé Agreement of the SBA's final decision at whatever point the process stops.
- d. If the ADD/8(a)BD recommends approval of the proposed modification(s), he/she will forward the recommendation to the District Director.
- e. The District Director makes the final decision whether to approve a modification.

**15. Is There Any Periodic Review of the Mentor/Protégé Relationship?**

- a. The BOS will review the Mentor/Protégé relationship and provide comments as a part of the annual review of the Protégé's business plan to determine whether the relationship should continue for another year.
- b. This review will be made at the first annual review after the Agreement has been approved and at every annual review while the Agreement remains in effect. *See* Chapter 5 of this SOP for Annual Reviews.

**16. What Must Be Submitted for the Annual Review of the Mentor/Protégé Relationship?**

The following information must be submitted by the Mentor and Protégé for purposes of the annual review:

- a. A request by the Mentor and Protégé to extend the Mentor/Protégé Agreement for an additional year.
- b. Certification by the Protégé that the Agreement has not been modified without SBA approval.
- c. A report for the previous year or, if the relationship has existed for less than one year, from the beginning of the Mentor/Protégé relationship, containing the following:
  - (1) All technical and/or management assistance provided by the Mentor to the Protégé;

- (2) All loans to and/or equity investments made by the Mentor to the Protégé;
  - (3) All subcontracts awarded by the Mentor to the Protégé, and the value of each subcontract;
  - (4) All federal prime contracts awarded to joint ventures between the parties to the Mentor/Protégé Agreement, including sole source and competitive 8(a) contracts, small business set- asides, and full and open competition contracts. Each reported contract must reflect the total performance period and break out the contract's total dollar value by the base year's dollars and each option year's dollars. Additionally, the list of contracts must identify the percentages of the contract performed and the revenues generated by each joint venture participant, broken out by the current year and cumulatively; and
  - (5) The amount of dollars credited toward the Mentor's subcontracting plan due to the Protégé's participation.
- d. A narrative describing the success of the Mentor's assistance in addressing the developmental needs of the Protégé and any problems encountered.
  - e. A description of any changes to the goals of the Mentor/Protégé relationship.
  - f. Certification by the Mentor that it continues to possess good character and a favorable financial position.

**17. What Factors Regarding The Mentor/Protégé Relationship Are Annually Evaluated?**

- a. The following factors regarding the Mentor/Protégé relationship are evaluated during the annual review:
  - (1) The amount and substance of the assistance the Mentor has provided to the Protégé as compared to the projected assistance set forth in the Agreement;
  - (2) Whether the assistance has resulted in material benefits or developmental gains to the Protégé;
  - (3) Whether the Protégé has reached the transitional stage;
  - (4) Whether the Protégé has achieved a size that exceeds half the size standard corresponding to its primary NAICS code;



- (5) Whether the Protégé has received several significant 8(a) contracts;  
and
  - (6) Whether any issues and concerns in the relationship have been  
resolved.
- b. The written determination to continue or dissolve the Agreement must be supported by an analysis that addresses every element above. Failure to support any single element above will not necessarily cause the agreement to be dissolved. Continuation or dissolution will be based on the totality of the evaluation.

**18. What Is the Review Process for the Mentor/Protégé Annual Review?**

- a. The BOS evaluates the Mentor/Protégé relationship based on the above factors and makes a recommendation whether to permit the continuation of the relationship.
- b. The ADD/8(a)BD makes the final determination whether to authorize the continuation of the Mentor/Protégé Agreement.
- c. Once the Mentor/Protégé review is completed, the BOS will notify both the Mentor and Protégé of the outcome of the review in writing.

## CHAPTER 10: LEAVING THE 8(a) PROGRAM

### 1. What Are the Ways a Participant May Leave the 8(a) Business Development Program?

A participant may leave the 8(a) Business Development (8(a) BD) Program in the following ways:

- a. Term Completion
- b. Graduation
- c. Voluntary Withdrawal.
- d. Early Graduation.
- e. Termination.

### 2. What Happens After a Participant Leaves the Program?

- a. Once a participant leaves the program for any reason, it is no longer eligible to receive 8(a) BD Program assistance, including the award of contracts under section 8(a) of the Small Business Act, except a competitive 8(a) contract may be awarded to a concern that has completed its program term under the limited conditions enumerated in 13 CFR 124.507(d).
- b. After leaving the program, the participant remains obligated to complete previously awarded 8(a) contracts, including any priced options that may be exercised and any modifications within the scope of the contract. SBA will continue to provide contractual assistance on active 8(a) contracts to firms that have exited the program.
- c. When participants with current 8(a) contracts go out of business or when the individuals upon whom eligibility is based cease to own and control the participant, new provisions must be made for the performance of the 8(a) contracts. *See* 13 CFR 124.515 and Chapter 4E of this SOP.

### 3. What is Term Completion?

Term completion occurs when a firm successfully completes the 9 years in the 8(a) Business Development program allowed by regulation, without demonstrating that it substantially achieved the targets, objectives, and goals contained in the business plan.

#### **4. What Is Graduation?**

- a. “Graduation” means a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals contained in the participant’s business plan, thereby demonstrating its ability to compete in the market place without assistance. *See* §7(j)(10)(H) of the Small Business Act. In determining the meaning of graduation, reference should be made to the statute.
- b. “Early Graduation” means a participant has substantially achieved the targets, objectives and goals in its business plan and has the ability to compete in the market place without 8(a) assistance prior to the completion of its 9 year program term.

#### **5. What Is Voluntary Withdrawal?**

A participant may choose to withdraw from the program voluntarily at any time prior to the expiration of its program term. This withdrawal is called voluntary and becomes effective when the Assistant Administrator for Business Development (AA/BD) signs the notarized Voluntary Withdrawal Agreement after it is executed by the participant.

#### **6. What Is Likely To Trigger Voluntary Withdrawal?**

Events likely to trigger voluntary withdrawal include:

- a. The owner or owners no longer wish to participate in the program; or
- b. The participant wishes to avoid involuntary termination from the program or early graduation proceedings.

#### **7. What Is The Procedure For Voluntary Withdrawal?**

- a. The Business Opportunity Specialist (BOS) forwards a Voluntary Withdrawal Agreement to a participant who indicates an interest in voluntary withdrawal from the 8(a) BD Program. (A Voluntary Withdrawal Agreement must also be sent by the Central Office Duty Station (CODS) with every letter proposing a participant’s termination.) The participant may not make any modifications to the Voluntary Withdrawal Agreement.
- b. A legally authorized official, preferably the disadvantaged individual, must sign the agreement on behalf of the participant and have it notarized.

- c. The executed Voluntary Withdrawal Agreement must be returned to the District Office, unless it is in response to a Letter of Intent to Terminate, in which case it should be returned to the CODS that issued the letter.
- d. The executed Agreement, along with any memorandum or explanatory documents from the participant, must be sent to the District Counsel for review, and then to the Assistant District Director for 8(a) BD (ADD/8(a)BD) and District Director for approval and signature.
- e. The District Office then forwards the entire package to the appropriate CODS. The CODS reviews the package, obtains approval of its counsel, and forwards the package to the Office of Certification and Eligibility (OCE) Headquarters.
- f. The OCE reviews the Agreement and forwards the entire package to the AA/BD for final approval and signature.
- g. The AA/BD signs the agreement and forwards it to the District Office with a copy to the CODS. The date of the AA/BD's signature is the effective date of the Agreement. The District Office will provide the participant with a signed copy of the Agreement.
- h. The ADD/8(a)BD must input information concerning the Voluntary Withdrawal Agreement into SACS. If a termination action against the participant has also been initiated, the CODS will also enter the date of the Agreement into CTS. An executed termination has precedence over a subsequently submitted Voluntary Withdrawal Agreement.

## **8. When May SBA Initiate Early Graduation?**

Early graduation may occur at any time during program participation. SBA may initiate early graduation procedures with a participant in any of the following situations:

- a. The participant has substantially achieved the targets, objectives and goals in its business plan ahead of schedule, and thus has demonstrated the ability to compete in the marketplace without program assistance. *See* §7(j)(10)(H) of the Small Business Act.
- b. The participant has substantially achieved the benchmarks for its primary NAICS code, and thus has demonstrated the ability to compete in the marketplace without program assistance. *See* §7(j)(10)(H) of the Small Business Act.
- c. There is evidence that excessive funds or other assets have been withdrawn from the participant causing SBA to determine that the

participant has demonstrated the ability to compete without assistance under the program. *See* 13 CFR 124.112(d).

**9. What Amount of Withdrawals Is Considered Excessive For the Purpose of Early Graduation?**

- a. Excessive withdrawals, resulting in early graduation, are defined as those withdrawals during any one fiscal year of a participant that exceed \$150,000 for participants with sales up to \$1,000,000; exceed \$200,000 for participants with sales between \$1,000,000 and \$2,000,000; and exceed \$300,000 for participants with sales over \$2,000,000. *See* 13 CFR 124.112(d)(3). Withdrawals below the stated amount for the sales category for a given participant may still be excessive, depending on the financial strength of the participant and other pertinent factors. Total withdrawals are calculated on each person upon whom eligibility is based. For example, for a participant with sales of \$900,000 and with 2 persons upon whom eligibility was based, the total withdrawals may not exceed \$300,000, or 2 times \$150,000.
- b. A “withdrawal” includes, but is not limited to, officer’s salary, cash dividends, distributions in excess of amounts needed to pay S Corporation taxes, cash and property withdrawals, bonuses, loans, advances, payments to immediate family members, investments on behalf of an owner, officer, or key employee, acquisition of a business not merged with the participant, charitable contributions, and speculative ventures. *See* 13 CFR 124.112(d)(1).
- c. A recommendation for termination rather than early graduation may be made whenever SBA determines that:
  - (1) Withdrawal of excessive funds jeopardizes the financial capacity of the participant; and
  - (2) The participant is no longer financially capable of performing in the program.

**10. What Is Termination?**

Termination is the involuntary ending, for good cause, of a participant’s participation in the 8(a) BD Program before the expiration of its program term. Examples of good cause are listed in 13 CFR 124.303. This list is illustrative only. Other bases for termination exist, including one or more disadvantaged individuals are no longer economically disadvantaged.

**11. Do Procedures for Early Graduation and Termination Differ?**

The same procedures apply to both early graduation and termination actions.

**12. Who May Initiate an Early Graduation or Termination Action?**

An early graduation or termination action is usually initiated by the District Office servicing the participant, but it may also be initiated by the OCE or the CODS.

**13. What Is the Procedure for an Early Graduation or Termination Action?**

The following procedures apply to early graduation and termination actions:

- a. The District Office prepares a narrative and compiles all relevant documents explaining the basis for early graduation or termination.
- b. The District Counsel reviews the evidence supporting early graduation or termination.
- c. The ADD/8(a)BD and the District Director review the BOS's recommendation. If they do not approve, the process stops. If they agree with the recommendation, they append their approval and any comments.
- d. The District Office then forwards the documentation to the appropriate CODS for review. Once the early graduation or termination package has been submitted to the CODS, only the CODS, not the District Office, can cancel the early graduation or termination action.
- e. Early graduation or termination actions require the approval of the CODS Chief and its counsel.
- f. The CODS reviews the documentation within 20 calendar days and, if it agrees that termination or early graduation is appropriate, prepares and issues a Letter of Intent to Graduate Early or a Letter of Intent to Terminate to the participant. The Letter of Intent to Graduate Early or the Letter of Intent to Terminate must cite the specific reasons for the action and state that the participant has 30 calendar days from the date it receives the letter to submit a written response to the CODS to justify retention in the program.
- g. If the CODS issues a Letter of Intent and receives a response from the participant within the 30 day response period, the CODS will forward the participant's response to the District Office for a supplemental opinion. The District Office has 10 days to issue the supplemental opinion. The CODS will evaluate the participant's response and District Office's supplemental opinion within twenty (20) calendar days of its

receipt of the supplemental opinion from the District Office or the deadline for issuance of the opinion, whichever comes first.

- h. If, after considering any response from the participant to the Letter of Intent to Graduate Early or Letter of Intent to Terminate, the CODS determines that graduation or termination is not warranted, the CODS will notify the District Office, and the District Office will notify the participant in writing.
- i. If, after considering any response from the participant, the CODS determines that early graduation or termination is warranted, the CODS will refer the matter to the OCE for review with its comments and a draft Notice of Early Graduation or Notice of Termination. If the OCE concurs with the CODS' recommendation, it will forward the matter to the AA/BD for action within ten (10) calendar days.
- j. Within 3 days of receipt, the AA/BD will make a final determination.
  - (1) If the decision is not to graduate early or terminate the participant, the OCE will notify the CODS, which will notify the participant, with a copy to the servicing District Office.
  - (2) If the decision is to graduate early or terminate the participant, the AA/BD will sign and the OCE will issue a Notice of Graduation or Notice of Termination, with a copy to the CODS and the servicing District Office. *See* 13 CFR 124.304.

**14. What Does the Notice of Early Graduation or Notice of Termination Contain?**

- a. The Notice sets forth the specific facts supporting the decision and the reasons for the decision.
- b. It advises the participant that it may appeal the decision to the Office of Hearings & Appeals (OHA) under 13 CFR Part 134.
- c. The notice will also discuss lack of any response, or an inadequate response to the Letter of Intent to Terminate, and will review the reason(s) for graduation or termination given in the Letter of Intent. If a response to the Letter of Intent to Graduate Early or Letter of Intent to Terminate has been submitted, the Notice of Early Graduation or Termination must discuss each argument made in the response. The Notice will be mailed or delivered via a method that provides for verification of the date of service and of delivery or attempted delivery.

**15. How Long Does the Participant Have to Appeal the Notice of Early Graduation or Notice of Termination?**

The participant must appeal to OHA within 45 calendar days after it receives the Notice of Early Graduation or Termination.

**16. What are the Responsibilities of the District Office If It Decides to Change Its Recommendation?**

- a. If the initial recommendation is changed, the ADD/8(a)BD must provide a specific rationale for the change. The CODS may require the District Office to submit clarifying information or additional documentation.
- b. The ADD/8(a)BD will forward to the CODS Chief any information received from the participant together with the new recommendation.

**17. How is Additional Information Treated During the 45-Day Appeal Period?**

- a. If, after the Notice of Early Graduation or Notice of Termination is issued, the District Office receives information during the 45-day appeal period that would support statements that the participant should not be graduated early or terminated, the District Office will forward that information to the CODS with a recommendation to rescind the decision to terminate the firm or graduate the firm early.
- b. The CODS will evaluate this information, make a recommendation, and refer the matter to the OCE in Headquarters.
- c. A recommendation will be made by the OCE to the AA/BD regarding whether to continue the action.
- d. The AA/BD may decide to let the Notice of Early Graduation or Termination stand, or may rescind the Notice in writing, with a copy to the CODS and the servicing District Office.

**18. What Is the Effective Date of the Termination or Early Graduation?**

If the Notice of Early Graduation or Notice of Termination is appealed, it is effective on the date the Office of Hearings and Appeals (OHA) issues a decision upholding the early graduation or termination. If the Notice is not appealed, it is effective on the date the appeal right expires.



**19. Does the Participant Continue to Receive Program Support During the Pending Early Graduation or Termination Proceeding?**

- a. Unless a participant is also suspended in conjunction with a termination proceeding, the participant, if eligible, will continue to receive program support until it is terminated or graduated early.
- b. Following the appeal of a Notice of Termination or Notice of Early Graduation to OHA, the participant may still receive program support until a decision is made by OHA unless the participant is suspended or ineligible.

**20. What Is the Effect of Early Graduation or Termination?**

Once terminated or graduated early, the firm is no longer eligible to receive any 8(a) BD Program support other than contractual support for existing 8(a) contracts. *See* 13 CFR 124.304(f).

**21. Who Makes the Computer Entries With Respect to Early Graduation or Termination?**

The District Office will make the appropriate entry in SACS concerning the initiation of a termination action. The respective CODS or OCE will enter information into the CTS concerning the events involved in the early graduation or termination of a participant.

**22. What is a Suspension?**

Suspension is the temporary disqualification of a participant by the AA/BD from all 8(a) contract support and all other forms of program assistance. *See* 13 CFR 124.305.

**23. What Circumstances Justify Suspension of a Participant?**

- a. A participant may be suspended at any time after a Letter of Intent to Terminate has been issued. SBA will take action to suspend a firm only if it determines that suspension is needed to protect the interests of the Government. Circumstances that justify suspension include:
  - (1) Facts showing a clear lack of program eligibility;
  - (2) Conduct indicating a lack of business integrity such as indictment or conviction of the participant or its principals of a criminal offense;
  - (3) Submission of false information to SBA; or

(4) Fraudulent conduct of the participant or its principals.

- b. A participant may be suspended in conjunction with a change of ownership or business structure.

**24. What Is the Effect of a Suspension on Non-8(a) Contracting?**

A suspension from program participation under SBA rules has no effect on a participant's eligibility for non-8(a) contracts. However, a debarment or suspension under subpart 9.4 of the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4, will disqualify a participant from receiving all federal contracts, including 8(a) contracts.

**25. What Is the Suspended Participant's Responsibility With Respect to its Current 8(a) Contracts?**

The participant must continue to perform any current 8(a) contracts, unless the contracts were terminated for default or for the convenience of the Government.

**26. Who May Initiate a Suspension in Conjunction With a Termination?**

The District Office may request suspension of a participant with its recommendation for initiation of termination, or anytime during the termination process.

**27. What are the Procedures for Suspending a Participant in Conjunction With a Termination?**

- a. The District Office will prepare a narrative explaining why suspension is necessary to protect the interests of the Government. Complete documentation providing adequate evidence must be included in accordance with 13 CFR 124.305(d).
- b. The request requires review by the ADD/8(a)BD and District Counsel, and approval by the District Director.
- c. The request must be sent to the CODS for review by the Chief and CODS counsel. The CODS may require that the District Office submit clarifying information or additional documentation.
- d. The CODS will prepare the Notice of Suspension and, after review and clearance by its counsel, forward it along with the justification for suspension to the OCE for its concurrence and the concurrence of the AA/BD.

- e. The CODS or OCE will timely enter the relevant information into the CTS.
- f. The Notice of Suspension is issued by the AA/BD with a copy to the CODS and the servicing District Office.

**28. What Are the Requirements for a Notice of Suspension?**

- a. A Notice of Suspension may be issued any time after issuance of a Letter of Intent to Terminate.
- b. The Notice of Suspension must contain the information listed in 13 CFR 124.305(b).
- c. The Notice of Suspension must be sent to the participant's last known address via certified mail, return receipt requested.

**29. What Is the Effective Date of a Suspension?**

The effective date of the suspension is the date the Notice of Suspension is issued.

**30. May a Suspension Be Appealed?**

A participant may appeal a Notice of Suspension by filing a petition with the Office of Hearings and Appeals (OHA) within 45 calendar days from the date it receives the letter. *See* 13 CFR part 134. The authority to grant a hearing is within the discretion of OHA. A suspension remains in effect pending the decision on appeal.

**31. What Is the Final Decision of the Agency?**

If the suspension is timely appealed, the OHA decision is the final Agency decision. If there is not a timely appeal, the decision of the AA/BD is the final Agency decision.

## CHAPTER 11: OUTREACH AND MARKETING

### 1. **How is Marketing Accomplished for the District Office?**

- a. For the purpose of the 8(a) BD Program, marketing is planning and executing strategies to promote the program and to increase procuring agencies' use of 8(a) firms.
- b. Marketing is locally tailored; however, there are some general guidelines that each office should follow. The District Office (DO) must plan various activities each year to promote the 8(a) BD Program to potential participants. The DO must also nurture a relationship with every procuring activity in order to increase the number of 8(a) contracts. At least once per year the Assistant District Director for 8(a) Business Development (ADD/8(a)BD) should visit each procuring activity within the district's geographic boundaries. This annual visit should include a visit with the Small and Disadvantaged Business Utilization Specialist (SADBUS), contracting staff and program staff.

### 2. **What Should the ADD/8(a)BD Be Prepared to Discuss During the Meeting Between the ADD and SADBUS and Program Manager/Staff?**

- a. The ADD/8(a)BD should be prepared to discuss the following with the SADBUS and program manager/staff:
  - (1) Changes to the 8(a) BD Program;
  - (2) Changes to the 8(a) portfolio, in terms of numbers and capabilities of individual firms;
  - (3) Any problems with contract performance or other matters over the previous year;
  - (4) The procurement needs of the activity; and
  - (5) How the 8(a) BD Program and individual 8(a) firms can better serve the activity.
- b. The ADD will follow up the meeting with letters to the SADBUS and program manager summarizing the meetings.

### 3. **How Does a Marketing Visit Differ From an Annual Contract Review?**

The purpose of the marketing visit is to discuss the future needs of the procuring activity and to market the 8(a) BD Program. The discussion should focus on how

SBA and the 8(a) BD Program can better serve the needs of the procuring activity, and should highlight the capabilities of 8(a) firms in the portfolio. In contrast, the purpose of the 8(a) contract review (discussed in Chapter 12) is to evaluate the performance of procuring activities that have been delegated procurement authority, and to determine whether those activities have followed the correct procedures in awarding contracts to 8(a) firms. When necessary, as for example in cases where the procuring activity is far away, the two visits may be combined. However, it is recommended that the two visits take place at separate times, when possible, due to the different natures and purposes of the visits.

**4. How Does the Business Opportunity Specialist (BOS) Provide Maximum Opportunities for 8(a) Firms?**

- a. The BOS strives to increase the 8(a) share of prime contracts and 8(a) participation in subcontracting opportunities by:
  - (1) Reviewing, and training participants to review, FedBizOpps;
  - (2) Notifying qualified 8(a) firms of procurement opportunities and counseling such firms on marketing and promotion strategies; and
  - (3) Communicating with the procuring activities on a regular basis in order to maximize their use of the 8(a) BD Program.
- b. The BOSs should attempt to increase both the dollar value and percentage of total contract awards to 8(a) firms.

**5. How often Should the BOS Review FedBizOpps and What is the Purpose of the Review?**

The BOS should review FedBizOpps and other relevant compilations on a daily basis in order to learn about upcoming 8(a) and non-8(a) procurements that may be of interest to the firms in the BOS's portfolio. Procurements that appear to be of interest to any of the firms in the portfolio will be communicated to the interested firm via phone call, e-mail, or personal contact. These compilations are usually available on the Internet. The BOS may contact the Director of the Office of Program Review for other sources of announced procurements.

**6. How Does the ADD/8(a)BD Coordinate and Interface with Contracting Activities?**

- a. The ADD will regularly interface with all of the contracting activities within the geographic boundaries of the DO in order to market the 8(a) BD Program and to learn about future procurements that might be

appropriate for the program. In addition, as stated above, the ADD will visit each contracting activity at least once per year.

- b. At the beginning of each year, the ADD will obtain a list of all small business and other set-aside procurements planned for the next year for each procuring activity. For each procurement, the ADD will:
  - (1) Call the program office to discuss the option of awarding the procurement to an 8(a) firm;
  - (2) Send copies of 8(a) capability statements to the program manager; and
  - (3) Follow up by further discussing the procurement with the small business office and the program manager during the annual marketing visit.
- c. The ADD should encourage the contracting activities to include SBA when training their personnel on aspects of the small business program.

#### **7. What Other SBA Programs Should the District Office Promote?**

The DO should provide information on the following programs/topics:

- a. Certificate of Competency (COC) program;
- b. Size determinations;
- c. Size standards;
- d. CCR;
- e. Subcontracting assistance;
- f. Loans;
- g. Surety Bond Guarantee program;
- h. Business development (SBDC, SCORE, SBIR, Veterans, International Trade, and CAWBO initiatives);
- i. HUBZone program; and
- j. Small Disadvantaged Business (SDB) certification.

#### **8. How Does the District Office Conduct Outreach?**

- a. The ADD/8(a)BD will develop an outreach plan annually to include all activities planned for the coming year. The DD will approve the plan

not later than November 1. It is understood that the outreach plan will continuously change as opportunities arise and new ideas are developed.

- b. The outreach plan will identify:
  - (1) Groups of people, businesses, agencies and other organizations to be targeted during the coming year;
  - (2) Outreach events and tentative dates;
  - (3) Outreach materials to be assembled or developed; and
  - (4) A description of travel plans and an estimate of travel money required.
- c. Outreach materials can be obtained from the director of the Office of Outreach and Marketing.

## CHAPTER 12: 8(a) AGENCY REVIEW

### 1. What Is an 8(a) Agency Review?

The 8(a) agency review is a review of 8(a) contracts awarded by procuring activities using delegated authority under partnership agreements. The Assistant District Director for 8(a) BD (ADD/8(a)BD) is responsible for selecting procuring activities to review in locations covered by his or her District Office (DO), using the criteria set forth in question 3 below.

### 2. Why Does the ADD Perform an 8(a) Agency Review?

The ADD performs the 8(a) agency review to determine whether the procuring activity has followed the proper procedures in awarding 8(a) contracts and, if necessary, to provide suggestions, training or assistance to enable it to improve its contract award procedures. The review is also performed to ensure that only qualified and eligible firms receive 8(a) awards.

### 3. How Are 8(a) Agency Review Sites Selected?

- a. The ADD/8(a)BD will select procuring activities to review based on the following criteria:
  - (1) Number of contracts awarded during the previous fiscal year using delegated contracting authority;
  - (2) Contract dollars awarded during the previous fiscal year using delegated contracting authority;
  - (3) Number of complaints from the public or 8(a) participants concerning the procuring activity's use of its delegated contracting authority; and
  - (4) Number of instances in which the procuring activity failed to follow proper procedures, as set forth in the partnership agreement.
- b. The ADD/8(a)BD shall conduct a contract review on each procuring activity within the district office's geographic boundaries that awarded 1 or more contracts during the previous fiscal year.

### 4. How Does the ADD/8(a)BD Schedule an 8(a) Agency Review?

The first thing the ADD must do in scheduling an 8(a) agency review is contact the procuring activity by telephone to explain the purpose and nature of the



review and to arrange a mutually convenient date for the review. The date must be far enough in the future to permit at least 30 days between the formal notification letter and the review. Once the date has been set, the ADD must send a formal notification letter to the head of the procuring activity with copies to the Small and Disadvantaged Business Utilization Specialist (SADBUS) and the chief contracting officer.

**5. What Information Should Be Included in the 8(a) Agency Review Notification Letter?**

The notification letter must:

- a. Confirm the dates of the 8(a) contract review;
- b. Describe the purpose of the contract review;
- c. Discuss any special problems or issues that will be discussed;
- d. Identify the person or persons who will be conducting the review;
- e. Request (or confirm, if known) a point of contact;
- f. Note work area requirements, including desk space and phone access;  
and
- g. List information needed before the site visit.

**6. What Specific Information Must the ADD Request in the 8(a) Agency Review Notification Letter?**

The ADD must request:

- a. A list of all 8(a) contracts awarded using delegated contracting authority during the prior full fiscal year and thus far in the current fiscal year, including the dollar amount of contracts, contractors, the duration of each contract, and the type of work; and
- b. A description of any problems or issues the procuring activity would like to discuss with SBA.

**7. How should the ADD Prepare for the 8(a) Agency Review?**

In order to prepare for the 8(a) agency review, the ADD should:

- a. Review the materials the procuring activity sends in response to the Contract Review Notification Letter;

- b. Identify companies the procuring activity routinely or excessively uses, with the intent of providing the name(s) of alternate firms that have received few or no contracts from the Federal government.
- c. Contact the Small Business Specialist and other contracting activity personnel (e.g., Director of Contracting) before the actual contract review, if appropriate;
- d. Select a representative sample of contracts for review;
- e. Coordinate with the point of contact concerning review activity (e.g., obtaining contract files, and interviewing contracting personnel);
- f. Request the presence of the Director of Contracting, Small Business Specialist, Competition Advocate, Technical Director, or other employees, as appropriate, at the entrance meeting;
- g. Determine who, if anyone, should accompany him or her on the review, considering the scale of the review as well as the interests, experience and availability of staff members; and
- h. Arrange for entry into the building where the review will take place.

#### **8. How Does the ADD/8(a)BD Select Contracts to Be Reviewed?**

The ADD starts the selection process by obtaining appropriate information from the contracting activity (e.g., request a printout of all SF 279 or DD Form 350 actions of more than \$100,000, indicating contract number, award amount, contractor name and business size, type of action, NAICS code, and synopsis code). Based on this information, the ADD should select a sample that includes contracts involving various procurement needs, such as mission and base support operations, construction, supplies, research and development, etc. The sample should also include various types of contracts, including fixed price, time and materials, cost-reimbursement, and indefinite delivery. The ADD should select enough files in the sample to detect significant trends and to establish valid findings.

#### **9. How Does the ADD Conduct an Entrance Briefing?**

The ADD will conduct the entrance briefing by:

- a. Introducing any team members;
- b. Discussing the purpose, scope, and methodology of the 8(a) contract review;
- c. Remind the staff that the 8(a) Business Development program is a business development program. Accordingly, the SBA wishes to

develop as many firms in the portfolio as possible. As such, we wish to distribute contracts to the greatest number of firms practicable.

- d. Inquiring about any areas of special concern to the activity acquisition managers and/or head of the contracting activity;
- e. Explaining how the report will be prepared and issued; and
- f. Confirming the time for the exit briefing.

#### **10. How are the 8(a) Contracts Reviewed?**

In reviewing the contracts awarded under delegated contracting authority, the reviewer(s) must determine if the awards comply with the terms of the relevant partnership agreement. Taking a sample of no fewer than five 8(a) contracts awarded during the prior fiscal year under the authority of the partnership agreement, the reviewer(s) will review the contract file for compliance with the essential elements of the agreement. If fewer than five 8(a) contracts were awarded in the prior fiscal year, all contracts must be reviewed. In examining the contract files, the reviewer(s) will:

- a. Review the activity's offering letter to SBA;
- b. Review the SBA's letter accepting the requirement into the 8(a) BD Program;
- c. Review any purchase orders. For purchase orders, the file should indicate that SBA was provided a copy of the signed purchase order document and that SBA was afforded the opportunity to address eligibility of the firm. The opportunity for SBA to address eligibility may be demonstrated either by SBA's response to the agency that the firm is program eligible, or by the agency delaying performance not less than two working days from the date of the signed purchase order document;
- d. Review the contract for required contract clauses;
- e. Verify that SBA was provided a copy of the award document after contract award;
- f. If there was a novation of the contract, verify that SBA was provided the opportunity to review and approve the novation;
- g. If there was a termination of the contract, verify that SBA was provided advance notice, as the prime contractor, prior to issuance of the final notice of termination;
- h. Review the appropriateness of the NAICS codes;

- i. Verify that the contract complies with the work performance requirements of FAR 19.508(e), if applicable;
- j. Look for language added to the contract stating that, even though the SBA may not be identified in section A of the contract, the SBA is still the prime contractor on the contract; and
- k. If the contract is performed by a joint venture, insure that the SBA approved the joint venture before award of the contract.

#### **11. How Does the ADD Conduct an Exit Briefing?**

- a. Before conducting the exit briefing, the ADD must advise his or her District Director concerning the preliminary assessment of the procuring activity's contract awards (*e.g.*, general program strengths and weaknesses, issues of non-compliance, *etc.*).
- b. At the exit briefing the ADD must:
  - (1) Discuss program strengths and significant deficiencies identified during the 8(a) contract review;
  - (2) Solicit comments about the review, make a note of any forthcoming corrective actions, and offer to accept rebuttals within a reasonable time;
  - (3) Recognize those contracting activity personnel who assisted the team during the support review;
  - (4) Remind the staff that the 8(a) Business Development program is a business development program. Accordingly, the SBA wishes to develop as many firms in the portfolio as possible. As such, we wish to distribute contracts to the greatest number of firms practicable. Where the procuring activity has routinely or excessively used a small number of firms, the SBA will offer alternative firms and devise a strategy with the procuring activity to use firms that have received few or no Federal contracts.
- c. The ADD should avoid discussing minor deficiencies at the exit briefing and should not argue with the procuring activity representatives. The procuring activity representatives must be given an opportunity to raise any defenses to issues raised and must be assured that those defenses will be considered prior to the issuance of the final report.

#### **12. How Does the ADD Prepare the 8(a) Agency Review Report?**

- a. The report must include:

- (1) Names of reviewers and review date(s);
  - (2) Scope of the review, including specific contracts reviewed and personnel interviewed;
  - (3) Findings from the contracts according to the items listed above; and
  - (4) Findings and recommendations from interviews with staff.
- b. If the review finds that the procuring agency routinely abuses the authority of the partnership agreement, the report will recommend the suspension of the authority for that location.
  - c. The report will be signed by the District Director and issued to the head of the procuring activity, with a copy to the Assistant Administrator for the Office of Program Review and a copy to the procuring activity's small business office.
  - d. The Office of Program Review will review the District Director's recommendations and make a recommendation to the AA/BD, who will review and forward the recommendation for final action to the Office of Strategic Alliances.
  - e. A reminder that the 8(a) Business Development program is a business development program. Accordingly, the SBA wishes to develop as many firms in the portfolio as possible. As such, we wish to distribute contracts to the greatest number of firms practicable. Where the procuring activity has routinely or excessively used a small number of firms, the SBA will offer alternative firms and devise a strategy with the procuring activity to use firms that have received few or no Federal contracts.

## **CHAPTER 13: REPRESENTATIVES USED AND COMPENSATION PAID**

### **1. 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 a semiannual basis. The form requires participants to report all agents, representatives, attorneys, accountants, consultants and other parties (other than employees) whom they compensated for assisting them in obtaining federal contracts. They must also report the amount paid to such parties and provide a detailed description of the activities performed.

### **2. Why Must Program Participants Complete SBA Form 1790?**

The Small Business Act requires that 8(a) BD Program participants complete this form semiannually. *See* § 8(a)(20) of the Small Business Act, 15 U.S.C. §637(a)(20). The purpose of the requirement is to limit the potential for abuse in the award of contracts under the federal procurement process.

### **3. Does the District Office Have an Obligation to Notify the Firms in its Portfolio When It is Time to Complete SBA Form 1790?**

The District Office must notify the firms in its portfolio when it is time for them to complete the form. The District Office may notify the firms by regular or electronic mail (e-mail). If regular mail is used, a copy of the form must be enclosed with the letter. If e-mail is used, a copy of the form must be attached electronically to the e-mail, or a link to the web page where the form can be found must be included in the e-mail.

### **4. What Periods Do Reports Cover and When Must They Be Completed?**

Each report covers one half of the calendar year. The first semiannual report covers the period from January 1st through June 30th. The second report covers the period from July 1 through December 31<sup>st</sup>. The District Office notification that the form is due should be sent at least one month prior to the end of the reporting period. The firm has 45 days from the end of the reporting period to submit the form.

**5. How Is SBA Form 1790 Reviewed and Processed?**

- a. The District Office will review all SBA Form 1790s received from participants and will enter the required information into SACS/MEDCOR within 15 days after receipt of the form.
- b. All original SBA Form 1790s returned by participants will be kept in their respective Business Development files.
- c. The Assistant District Director for 8(a) BD (ADD/8(a)BD) or Business Opportunity Specialist (BOS) for the participant will review all forms indicating that agents, representatives, attorneys, accountants, consultants and other parties (other than employees) were used to obtain federal contracts to determine if the relationship between the compensation paid and activities provided appears to be reasonable and appropriate.
- d. If the compensation paid relative to the services provided appears reasonable and appropriate and the report does not raise a suspicion of improper activity, the reviewer (ADD/8(a)BD or BOS) will note this on the form with the reviewer's name and date, and the original report will be filed in the participant's Business Development file. No further action is required.
- e. For those reports that include payments that do not appear to be reasonable or appropriate relative to the services provided or that raise a suspicion of improper activity, the ADD/8(a)BD will forward a copy of the report to the Assistant Administrator for Program Review with a brief analysis explaining the basis for his or her concern.
- f. If the Assistant Administrator for Program Review agrees with the ADD/8(a)BD that the compensation paid for services does not appear reasonable or that the report raises a suspicion of improper activity, the Assistant Administrator will forward the SBA Form 1790 to the Inspector General.
- g. The Office of Program Review will issue an annual, summary report of SBA Form 1790 compliance by the District Office.
- h. The failure to submit SBA Form 1790 on a timely basis will be considered good cause for the initiation of a termination proceeding.

## CHAPTER 14: DATA MANAGEMENT

### 1. **How Does SBA Collect Data for Purposes of the 8(a) Business Development (8(a) BD) Program?**

SBA primarily uses two electronic database systems to collect data. The first system is the Central Tracking System (CTS). It is primarily used to track applications to the 8(a) BD Program as they move through the various levels of review, and collects data on firms applying to the program. The second system is SACS/MEDCOR (Servicing and Contracting Subsystem/Minority Enterprise Development Central Office Repository). SACS/MEDCOR is comprised of two systems (SACS and MEDCOR) that have been combined into one integrated system. This integrated system is primarily used to service and monitor firms and collects data on a nationwide level. It is also used to prepare the “Annual Report to the U.S. Congress on Minority Small Business and Capital Ownership Development.” The SACS portion of SACS/MEDCOR operates on the SBA District Offices’ Local Area Networks, with file transfer capability to the Headquarters Office of 8(a) BD (MED LAN) file server. In general, SACS/MEDCOR provides program information, business status, and contract activity for each participant in the program. All updates to the database files are performed by the SBA field office staff in an interactive mode.

### 2. **What Is SACS Used For?**

SACS is used to assist staff in operating and managing the 8(a) BD Program at the field office level. Reports generated from the system are used to manage, monitor, and evaluate program participants, and to report on program accomplishments and effectiveness of business development assistance. The system provides both historic information and current tracking data needed to monitor all the program participants’ activities.

### 3. **Where Are the Instructions for Using SACS/MEDCOR?**

The SACS/MEDCOR Desktop Reference Manual provides complete instructions for using the integrated system. Copies of the manual are available electronically at the 8(a) BD location of the SBA Intranet Web Site ([http://yes.gov/8\(a\)BD/](http://yes.gov/8(a)BD/)).

### 4. **How Is the Data Entered into SACS?**

- a. A download from the CTS system provides the initial information records on a firm to SACS. The subsequent input of required data for daily operation is the responsibility of the 8(a) BD staff at the field level. Additional supporting data will sometimes be obtained from other



related systems such as CTS, Federal Data Procurement System (FDPS), CCR, etc.

- b. The District Director is responsible for certifying the integrity of the information contained in SACS regarding the District Office's assigned portfolio. The responsibility for validation and verification of data is delegated to the Assistant District Director for 8(a) BD (ADD/8(a)BD). Any delegation of the ADD/8(a)BD's responsibilities must be made in writing.

## **5. Who Is Authorized to Use SACS/MEDCOR?**

- a. In SACS/MEDCOR, the broadest access, Access Level 4, is granted to the ADD/8(a)BD as the Data Base Administrator. The ADD/8(a)BD may delegate the responsibility for system administration to Information Resource Management (IRM), in which case the ADD/8(a)BD is then assigned Access Level 3 (Supervisory Business Opportunity Specialist (BOS)). A BOS is assigned Access Level 2 (BOS). Access Level 1, "Read Only," can be assigned to individuals for administrative purposes.
- b. Only individuals with Access Level 4 are authorized to add or delete users, transfer firms to another district, and upload or download SACS/MEDCOR data. Individuals with Access Level 3 can access all contracts and information on firms in the district office's portfolio. They can add, modify or delete information for any firm and assign firms to a BOS. Individuals with Access Level 2 have access to all contracts and information on firms. However, they are authorized to add or change information only on those firms assigned to them by their supervisor, and do not have authority to delete records. Individuals with Access Level 1 are only authorized to view information screens and do not have access to modify information in the SACS/MEDCOR system.

## **6. How Often is SACS Maintenance and Transfer of Files Required?**

SACS requires periodic maintenance to keep the database files intact. This maintenance should be performed at least weekly in accordance with the "System File Maintenance" instructions contained in Section 6 of the "Users Manual." Weekly maintenance speeds system operation and increases data integrity. The District Office should also transfer files at least weekly, in accordance with Section 5.6.9 of the Users' Manual. More specifically, in transferring files, the "Transfer of MEDCOR Data" function transmits to, and receives information from, the Headquarters Office MED LAN.

**7. What Standard Management Reports are Available?**

Several standard reports are available, in the SACS/MEDCOR system, to assist with reviewing, verifying and managing data. They can be accessed by selecting the "Reports" option in the SACS/MEDCOR Main Menu. The reports are classified as "Servicing", "Requirements", "Contracts", and "Miscellaneous". They provide general information on the firm's requirements received, contracts awarded, contract modifications and BOS's activities.

**8. How Is SACS/MEDCOR Used to Create Reports?**

The SACS/MEDCOR database is a collection of file drawers (databases). Each file drawer is titled, has a collection of data contained in various fields, and is linked to other file drawers by a common field. The SACS/MEDCOR data dictionary describes the structure of each database and its associated fields. The IRM should have a copy of the data dictionary.

**9. What Training is Required to Use SACS/MEDCOR?**

- a. All 8(a) BD staff personnel must be trained to use SACS/MEDCOR. The ADD/8(a)BD or designee will provide supervised training to all new SACS/MEDCOR users. Detailed training is especially important to users with Access Levels 2 and 3. The ADD will conduct refresher training periodically.
- b. Selected individuals, designated by the ADD/8(a)BD, may receive additional training to become more proficient in using SACS/MEDCOR and in customizing report formats.

## **CHAPTER 15: 7(J) MANAGEMENT AND TECHNICAL ASSISTANCE PROGRAM**

### **1. What Is the 7(j) Management and Technical Assistance Program?**

- a. Section 7(j) of the Small Business Act, 15 U.S.C. §636(j), empowers the Agency to provide management and technical assistance to eligible individuals and businesses.
- b. SBA provides 7(j) assistance by awarding funds to third parties known as awardees/recipients (service providers) to absorb all, or part, of the costs of specific management and technical assistance projects. These service providers may be individuals, for-profit concerns or non-profit organizations. The service providers, in turn, provide management and technical assistance to eligible 7(j) clients (beneficiaries).

### **2. What Kinds of Agreements Does SBA Enter Into With Providers of 7(j) Assistance?**

Assistance under the 7(j) program may be in the form of cooperative agreements, grants or contracts to qualified service providers who have the capability to provide business development assistance to eligible clients. While the 7(j) program permits contracts, they are rarely used. Therefore, this SOP primarily addresses procedures for grants and cooperative agreements. In the rare occasion where a Technical Representative is dealing with a 7(j) contract, the Technical Representative should consult the contracting officer for assistance.

### **3. Who is Responsible for Coordinating and Formulating Policies Relating to the Dissemination of 7(j) Assistance?**

The Assistant Administrator for Management and Technical Assistance (AA/MTA) is responsible for managing the 7(j) program.

### **4. Who is Eligible for Services under the 7(j) Program?**

In order to be eligible for 7(j) services, a client (beneficiary) must be:

- a. A socially and economically disadvantaged individual whose firm is a participant in the 8(a) Business Development (8(a) BD) Program;
- b. A socially and economically disadvantaged individual whose firm need not be a participant in the 8(a) BD Program, but who in good faith self-certifies (in writing) that his or her firm could meet the Agency's criteria for 8(a) certification, and that he or she is either a member of a

designated group listed in 13 CFR 124.103(b) or is currently certified by SBA as socially and economically disadvantaged;

- c. A business certified by SBA as a HUBZone concern;
- d. A firm located in a high unemployment or low income area, as defined in the U.S. Census Bureau's County and City Data Book and in the Poverty Guidelines issued by the U.S. Department of Health and Human Services (HHS); or
- e. A firm owned by a low-income individual, as defined in under HHS Poverty Guidelines.

**5. What Are the Procedures for Obtaining Management and Technical Assistance Services From Qualified Awardees/Recipients (Service Providers)?**

- a. Eligible clients (beneficiaries) who are interested in obtaining management and/or technical assistance must contact the SBA District Office in their area.
- b. Except for 8(a) certified firms, clients must certify, in writing, which of the 7(j) eligibility criteria (listed above under) they meet. The application and evaluation procedures depend on the particular type of 7(j) assistance requested and on the particular provider of that assistance.

**6. What Are 7(j) Competitive Awards?**

- a. 7(j) competitive awards are made as a result of SBA's evaluation of proposals submitted in response to solicitations issued by SBA.
- b. 7(j) competitive award solicitations are issued in Program Solicitation Announcements. The Program Solicitation Announcements include information on the types of assistance needed and how potential providers should apply. The announcement synopsis, published in the FedBizOpps web-site, includes the criteria for submitting proposals. Applicants must meet the standards described in the Program Solicitation Announcement. They must have been in business for at least one year prior to the release date of the Announcement, and must already have the staff capacity to perform at least 50 percent of the work.
- c. SBA chooses an awardee based on an evaluation of all the criteria listed in the solicitation.

## **7. What Is an Unsolicited Proposal?**

- a. A 7(j) unsolicited proposal is a written submission to the SBA for the purpose of obtaining a cooperative agreement, grant, or contract to provide management and technical assistance to strengthen the business development skills of the 7(j) eligible population.
- b. SBA accepts unsolicited proposals from qualified individuals and public and private entities that have innovative ideas for fostering minority business development. The unsolicited proposals that are accepted propose management and technical assistance that matches program office goals and objectives for development of small businesses. The proposals must be submitted according to the procedures listed in subpart 15.6 "Unsolicited Proposals" of the Federal Acquisition Regulations (FAR), 48 CFR subpart 15.6.
- c. Unsolicited proposals are considered for funding only after the Agency considers proposals made in response to Program Solicitation Announcements.
- d. Guidelines and procedures for submitting an unsolicited proposal may be obtained by contacting the District Office serving the area in which the individual or entity wishing to submit the proposal is located, or by contacting the Office of Management and Technical Assistance in SBA's Headquarters in Washington, DC.

## **8. To Which SBA Office Should An Unsolicited Proposal Be Sent?**

The geographical service area of the proposed effort determines where (to which SBA office) the unsolicited proposal application package must be submitted. If the geographical area to be served is contained within the jurisdiction of one SBA District Office, the proposal is submitted to the 8(a) Business Development Office of that District Office. (*See SBA Homepage for the addresses of the District Offices.*) If the proposed geographical area crosses District Office boundaries, the unsolicited proposal must be sent to the Office of Management and Technical Assistance (MTA) in Headquarters (Washington, DC). If the proposed geographical area to be served is nationwide, the proposal must be submitted to SBA's Office of MTA in Washington, DC.

## **9. What Procedures Apply for Evaluating Unsolicited Proposals?**

- a. Appropriate SBA staff will be assigned to review the unsolicited proposal. If the unsolicited proposal involves work covering one District Office, the ADD/8(a)BD will review the proposal. If the work covers two to four District Offices, the AA/MTA will assign a reviewer.

If the proposal is nationwide in scope, the initial review will take place in the Office of Management and Technical Assistance.

- b. The initial reviewer(s) will review the package to determine if: (1) the submission can be considered a valid unsolicited proposal as defined in Federal Acquisition Regulations subpart 15.6, and (2) the submission contains sufficient technical and budgetary detail for the purpose of evaluation. The application will be returned to the offeror with a brief letter of explanation if the proposed effort does not support the mission of the SBA and the 7(j) program, or is deemed inappropriate for further consideration. The application will also be returned to the offeror with a brief letter of explanation if all of the required information is not provided or if clarification is required from the offeror. Once all of the required preliminary conditions are met, SBA staff will review and evaluate the proposal.
- c. When the evaluation is completed by the initial reviewer, a recommendation for a 7(j) award is forwarded to the Office of Management and Technical Assistance (MTA) for final programmatic review and processing. If the AA/MTA agrees that the proposal should be accepted, he or she will then forward the proposal and required documents to the Associate Administrator for Business Development (AA/BD) for funding approval. If the AA/BD agrees the proposal should be funded, he or she forwards the package to the Office of Procurement and Grants Management (OPGM) for final cost negotiation with the individual or firm that submitted the proposal.
- d. The time frame to complete a cost audit is 90 days. OPGM may request pre-award cost proposal audit from the Office of the Inspector General. Awards will not be issued until all issues are resolved. The issues may include the following: an inadequate accounting system for Government contracts, outstanding funds from prior year grant awards where SBA has made final determination of disallowance, or lack of a final cost submission under a prior grant.

**10. How is the Grants Management Officer's Technical Representative Appointed?**

- a. The Technical Representative is nominated by an 8(a) Program official (*see* c. and d. of this Question) and appointed by the Grants Management Officer.
- b. The Grants Management Officer will notify the Technical Representative in writing of his or her appointment and will provide the Technical Representative with a copy of the Notice of Award.

- c. The AA/MTA will nominate a program analyst in the Office of Management and Technical Assistance (MTA) to serve as the Technical Representative for nationwide 7(j) awards.
- d. The Technical Representative for 7(j) awards that are not national in scope will be nominated by the cognizant 8(a) BD Program office in the field. The ADD/8(a)BD, with the concurrence of the District Director, will nominate the Technical Representative for District task order awards if the award covers only one District. If the award covers more than one District Office, the Technical Representative will be nominated by the AA/MTA.

#### **11. What Are the Responsibilities of the Technical Representative?**

- a. The Technical Representative is responsible for the technical sufficiency of work performed under 7(j) awards. He or she establishes and maintains a file for each award which includes the following:
  - (1) One copy of awardee's/recipient's proposal;
  - (2) One copy of the Notice of Award;
  - (3) One copy of all monitoring reports; and
  - (4) One copy of all other relevant correspondence.
- b. The Technical Representative performs the following functions:
  - (1) Monitors and evaluates performance of the 7(j) awardee/recipient to assure compliance with the technical requirements of the cooperative agreement.
  - (2) Notifies the awardee/recipient of deficient performance, recommends means of correcting deficiencies, and advises the awardee/recipient of the consequences of failure to correct deficiencies and/or improve performance.
  - (3) Notifies the Grants Management Officer, the AA/MTA, the assigned MTA Program Analyst, and ADD/8(a)BD (if appropriate) at the earliest opportunity when the awardee's/recipient's performance is unsatisfactory, to assist the Grants Management Officer to protect the Government's interest.
  - (4) Reviews and recommends approval or disapproval of financial and other reports requiring approval, notifies the Grants Management Officer if unsatisfactory reports have been rejected, advises the Grants Management Officer as to the appropriateness of payment

for services rendered, and recommends termination of award when appropriate.

- (5) Advises the awardee/recipient of award revision procedures, and reviews and recommends approval or disapproval of revisions of awards proposed by the awardee/recipient to the MTA Program Analyst and the Grants Management Officer through the appropriate individuals. *See* Question 12. The Technical Representative must also ensure that proposed revisions are not implemented by the awardee/recipient prior to written authorization by the Grants Management Officer.
- (6) Provides technical guidance to the awardee/recipient in the administration of the award.
- (7) Advises the Grants Management Officer, through the appropriate individuals, of any misunderstanding in communication with the awardee/recipient, or of any matter that has the potential to become the basis of a claim against the Government.
- (8) Conducts site visits to the awardee's/recipient's facilities, as appropriate, to insure that:
  - (a) Reported performance accurately reflects the actual accomplishment;
  - (b) Changes in financial condition that might impact technical performance or otherwise jeopardize service delivery under the award are identified; and
  - (c) The conditions of the award are met, through verification of work performance, number of employees charged to the award, and other expenses charged to the award.
- (9) Makes recommendations in all matters involving expenditure of 7(j) award funds to the appropriate official and forwards them for approval by the Grants Management Officer.
- (10) At the completion of the project, advises the approving official and the Grants Management Officer:
  - (a) Whether the performance under the award is satisfactory, and has been accepted;
  - (b) Whether the awardee/recipient has complied with rights in data, patent rights, and royalty clauses contained in the Notice of Award; and



- (c) Whether the disposition of any equipment supplied or purchased by the Government for the performance of a specific task is in compliance with appropriate Federal guidelines at the conclusion of the project period.
- c. The Technical Representative has no authority to bind the Government or change the contract. The Technical Representative must refrain from any statements that could be interpreted as promises.

**12. What Are the Procedures for Extensions, Revisions, and Modifications of 7(j) Contracts, Grants and Cooperative Agreements?**

- a. Awardees/recipients may request, in writing, extensions, revisions, and modifications of cooperative agreements, grants and contracts. Such requests must be submitted in writing to the Technical Representative.
- b. If the Technical Representative is in the District Office, he or she will review the request and forward it with a recommendation to the District Director through the ADD/8(a)BD. If the Technical Representative is in the Office of Management and Technical Assistance, he or she will forward it with a recommendation to the AA/MTA.
- c. The District Director or AA/MTA will forward the package, including a recommendation, to the AA/BD for approval. If the AA/BD approves the request, he or she will forward the package to the Office of Procurement and Grants Management (OPGM) for final approval.
- d. OPGM will take final action and, if required, issue a revised or amended Notice of Award to the awardee/recipient with a copy to the Technical Representative.

**13. What Are the Ethical and Other Considerations Governing Recipients, Clients and Subcontractors?**

- a. For 7(j) assistance to be fully effective, the integrity of the program must be preserved. 7(j) management and technical assistance services must be rendered to clients equitably and efficiently. Further, there must be neither a conflict of interest nor an appearance of a conflict of interest in program operations.
- b. Awardees/recipients of 7(j) grants, contracts, and cooperative agreements must be held fully responsible for all work performed by their subcontractors.
- c. Ethical violations will be referred to the Office of Inspector General. *See SOP 90 22.*

- d. The Agency's sole involvement in 7(j) awardees'/recipients' subcontract arrangements is its written approval, or disapproval, of each subcontractor. Therefore, the Agency will not become involved in any price negotiations or disputes between 7(j) awardees/recipients and their subcontractors. Any complaints received from subcontractors will be referred to the appropriate 7(j) awardee/recipient.

**14. How Are Protests Handled?**

- a. All protests arising from actions taken in connection with the acquisition, administration, or provision of 7(j) assistance, transmitted by the General Accounting Office (GAO) must be forwarded immediately to the Office of General Counsel for response and legal advice, with a copy to OPGM.
- b. All other protests must be forwarded immediately to OPGM for timely response.

**15. What Are the Agency Procedures for Issues Such as Suspension, Termination, and Resolution of Disputes With Regard to Grants and Cooperative Agreements?**

- a. Noted deficiencies in a service provider's (awardee's/recipient's) performance will be thoroughly documented by the Technical Representative, and immediately reported to the AA/BD through the District Director if the Technical Representative is in the District Office or through the AA/MTA if the Technical Representative is in the MTA office.
- b. Pursuant to Notice of Award, OPGM will take appropriate suspension or termination action upon notification by the AA/BD of deficient performance.
- c. Disputes arising pursuant to 7(j) awards will be resolved in accordance with the disputes resolution procedures of the SBA Grants/Cooperative Agreement Appeals Committee. These procedures are outlined in each Notice of Award issued by OPGM. *See* OMB Cir. A-110.

**16. What is the Executive Education Program?**

- a. The Executive Education Program (EEP) is a business development-training program that is funded by the SBA 7(j) appropriation.
- b. The EEP is designed for 8(a) firm owners and senior officers or executives to enable them to take part in week-long training sessions that

are conducted by business schools (service providers) that receive 7(j) cooperative agreements.

- c. Training sessions include, but are not limited to, marketing (domestic and international), cost control, cash flow management, accounting, finance, human resources, information technology, web-site design, international trade, taxation, strategic planning, insurance, and small business legal issues.
- d. A networking component has been built into each EEP Program to stimulate the development of strategic alliances among the small business and minority small business executives.

**17. Who Is Eligible to Participate in 7(j) Executive Education Programs?**

Nominees for participation in 7(j) Executive Education training must be either CEOs or Presidents of 8(a) certified firms or other 7(j) eligible clients.

**18. What Is the Process for Nominating a Firm for Participation in One of the Executive Education Programs?**

- a. SBA will issue an annual notice that provides schedules and other information about the Executive Education Program sessions.
- b. Each institution in the EEP will prepare and disseminate a detailed EEP information packet to each SBA District Office.
- c. The District Office will submit 8(a) firm nominations to the EEP coordinators at the EEP schools. Nominations will be based upon an executive from each firm meeting established Agency criteria, as well as criteria set forth by each institution.

**19. How Many Executive Education Programs May a Participant Attend Under SBA Sponsorship?**

SBA sponsored participation at EEP sessions is limited to two sessions per firm.

## CHAPTER 16: SURPLUS PROPERTY

### 1. **What is Surplus Property?**

If a federal agency no longer has a need for personal property, it declares the property excess property, and the property is then made available to all other federal agencies. If no federal agency claims the excess property within a certain amount of time, it is declared surplus property.

### 2. **Are 8(a) Participants Eligible to Receive Surplus Property?**

The Small Business Act provides that eligible 8(a) Program participants are qualified to receive federal surplus property on a priority basis. 15 U.S.C. § 636(j)(13)(F).

### 3. **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).

### 4. **What is a SASP?**

Every state has created a SASP, which is a state agency responsible for distributing surplus property to eligible recipients, monitoring its use, and managing the future return, transfer or disposal of the property, if appropriate.

### 5. **Do 8(a) Participants Receive Any Special Priority From the SASP?**

Although the Small Business Act provides that surplus property may be transferred to 8(a) participants on a priority basis," the SASP is responsible for equitably distributing property among all eligible recipients and does not afford 8(a) participants a priority. 15 U.S.C. § 636(j)(13)(F).

### 6. **How May Surplus Property Be Used?**

Property must be used by the 8(a) participant during the normal conduct of its business operations, and may not be sold or transferred to any other party, including affiliates, until one year after the concern graduates from the 8(a) Business Development (8(a) BD) Program. 15 U.S.C. § 636(j)(13)(F).

**7. What Surplus Property Is Available?**

An 8(a) participant can find out what surplus property is available by contacting the SASP in the state in which the participant's principal place of business is located.

**8. What Should an 8(a) Participant Do If It Identifies Surplus Property That It Wants?**

Once an 8(a) participant identifies surplus property it wishes to acquire, it should send a letter to the SASP identifying the desired property and specifying how it will use the property. The participant should also identify its servicing District Office. In the letter it must certify the following:

- a. That it is eligible to receive surplus property, and that the intended use of the property is consistent with the participant's business plan;
- b. That it will use the property in the normal conduct of its business operations, and that if it does not, it will be liable for the fair rental value of the property from the date of receipt;
- c. That it will not sell or transfer the property to any other party until one year after it graduates from the 8(a) BD Program, unless directed to do so by the SASP or SBA;
- d. That it will, at its own expense, return the property to the SASP or transfer it to another participant if directed to do so by the SASP or SBA;
- e. That it will return the property to the SASP or follow any other directions given by the SASP with regard to the disposition of the property if it is terminated from the 8(a) BD Program;
- f. That, should it breach its agreement not to sell or transfer the property without the written consent of the SASP or SBA prior to one year after graduation, it will be liable to the federal government for the established fair market value or the sale price of the property, whichever is greater; and
- g. That it will give SBA and the SASP access to inspect the property and all records pertaining to it.

**9. What Will the SASP Do When It Receives the Participant's Letter Requesting Surplus Property?**

Once the SASP receives the participant's letter, it will contact the servicing District Office for a written determination that the firm is an eligible 8(a)

participant and that the proposed use of the property is consistent with the participant's normal business operation and business plan.

**10. Who Decides Whether Certain Property Will Be Distributed to a Participant?**

The SASP is responsible for distributing property among eligible donees, including 8(a) participants.

**11. Who Decides Whether a Participant Is Eligible for Surplus Property?**

The Assistant District Director for 8(a) BD (ADD/8(a)BD) at the servicing District Office is the official responsible for deciding whether a participant is eligible for surplus property.

**12. What Date Is Used for Determining Eligibility?**

The proposed date of transfer, as specified by the SASP, is the date used for determining eligibility.

**13. What Should the ADD/8(a)BD Do If He or She Receives a Written Communication From a SASP Concerning a Proposed Surplus Property Transfer?**

Once the ADD/8(a)BD receives a written communication from a SASP concerning a proposed surplus property transfer, the ADD must:

- a. Determine whether the proposed transferee is an eligible 8(a) participant. The following participants are not eligible to receive surplus property:
  - (1) Participants that have been suspended or terminated from the 8(a) BD Program, or that are proposed for termination, suspension, or graduation;
  - (2) Participants that are not in compliance with SBA reporting requirements; and
  - (3) Participants that are debarred or suspended under the Federal Acquisition Regulations (FAR).
- b. Determine whether the proposed use of the property is consistent with the participant's normal business operation and business plan. This is accomplished by reviewing the participant's past business plans and annual reviews. If the ADD does not have a full understanding of what the property is, what it does, or how it is used, he or she should contact

the SASP and the 8(a) participant for clarification. If it is unclear how the participant will use the property in the normal conduct of its business operation, then the ADD should require the participant to submit a written explanation.

**14. What Should the ADD/8(a)BD Do If He or She Determines That a Participant Is Not Eligible to Receive Surplus Property?**

If the ADD/8(a)BD determines that a participant is not eligible to receive surplus property, the ADD must send the SASP a letter explaining why the participant is not eligible, with a copy to the 8(a) participant.

**15. What Should the ADD/8(a)BD Do If He or She Determines That a Participant Is Eligible to Receive Surplus Property?**

If the ADD/8(a)BD determines that a participant is eligible to receive surplus property, he or she must send the SASP a letter indicating the participant is eligible, with a copy to the 8(a) participant.

**16. What Happens After the Servicing District Office Has Verified That a Participant Is Eligible to Receive the Identified Surplus Property?**

Once eligibility is verified, the SASP and participant must agree on the fair market value of the property at the time of transfer. The SASP must provide SBA with a written record of the transfer, which must include the agreed fair market value. The participant must execute all SASP transfer documentation, and pay all associated transfer fees or costs.

**17. Should Any SBA Official Sign or Execute Any Form or Documentation That Gives SBA Title To or Responsibility For Surplus Property That Is to Be Used By an 8(a) Participant?**

Under no circumstances should any SBA official ever sign or execute any document that gives SBA title to or responsibility for surplus property that is to be used by an 8(a) participant.

**18. Who Has Title to Surplus Property That Has Been Transferred to an 8(a) Participant?**

Title passes from the SASP to the 8(a) participant when the participant executes the applicable SASP documentation and receives possession of the property. However title is conditional, and the 8(a) participant may not sell, transfer or otherwise dispose of the surplus property until one year after the participant

graduates from the 8(a) BD Program, unless directed to do so, in writing, by SBA or the SASP.

**19. What Is the Servicing District Office's Role After Property Has Been Transferred?**

On at least an annual basis, the servicing District Office must review whether the participant is using surplus property in accordance with all of the applicable terms and conditions. This review may include a site visit. In addition, if at any time the servicing District Office receives credible information that surplus property is not being used in accordance with the applicable terms and conditions, it must conduct an investigation to determine the validity of the information.

**20. What Should the Servicing District Office Do If a Participant No Longer Needs Surplus Property in its Possession?**

If a participant no longer needs surplus property in its possession, the servicing District Office should instruct the participant to immediately contact the SASP for instruction. The servicing District Office should not take possession of the property, nor should it assume any responsibility for the property. If the SASP does not request the participant to return the property, then the participant may sell, transfer, or otherwise dispose of the property.

**21. What Should the Servicing District Office Do If It Finds That Property Is Not Being Used in Accordance With Applicable Terms and Conditions?**

If the Servicing District Office finds that property is not being used in accordance with applicable terms and conditions, the District Office may:

- a. Require that the property be placed in proper use within a specified time;
- b. Require that the property be returned to the SASP, or be transferred to another participant;
- c. Initiate proceedings to recover the fair rental value of the property, if requested by the SASP; and/or
- d. Initiate proceedings to terminate the participant from the 8(a) BD Program.



**22. What Should the Servicing District Office Do If a Firm Sells or Disposes of Property in Violation of the Applicable Terms and Conditions?**

If a participant sells or disposes of property in violation of the applicable terms and conditions, the servicing District Office must immediately contact the SASP. In addition, it may:

- a. Initiate proceedings to recover the fair market value of the property at the time of transfer, or the sale price, whichever is greater, if requested by the SASP; and/or
- b. Initiate proceedings to terminate the participant from the 8(a) BD Program.

**23. What Happens to any Funds SBA Receives as a Result of the Participant's Misuse or Unauthorized Sale of Surplus Property?**

Any funds SBA receives as a result of the participant's misuse or unauthorized sale of surplus property must be remitted to the United States Treasury as miscellaneous receipts.

**LIST OF ACRONYMS**

Acronym	Definition
A/E	Architectural and Engineering
AA/BD	Associate Administrator for Business Development
AA/MTA	Assistant Administrator for Management and Technical Assistance
ADD	Assistant District Director
ANC	Alaska Native Corporation
BAT	Business Activity Target
BCR	Business Credit Report
BD	Business Development
BOS	Business Opportunity Specialist
CCR	Central Contractor Registration
CDC	Community Development Corporation
CEO	Chief Executive Officer
CFR	Code of Federal Regulations
CMR	Commercial Market Representative
COC	Certification of Competency
CODS	Central Office Duty Station
CPA	Certified Public Account
CTS	Certification Tracking System
DD	District Director
DFSC	Defense Fuel Supply Center
DO	District Office

DoD	Department of Defense
OCE	Office Certification and Eligibility
EEP	Executive Education Program
EPA	Environmental Protection Agency
FAR	Federal Acquisition Regulation
FBI	Federal Bureau of Investigation
FPDS	Federal Procurement Data System
GAO	General Accounting Office
GC	Government Contracting
GSA	General Services Administration
HUBZone	History Underutilized Business Zone
IG	Inspector General
IRS	Internal Revenue Service
JVA	Joint Venture Agreement
LAN	Local Area Network
LLC	Limited Liability Corporation
MTA	Management and Technical Assistance
NAICS	North American Industry Classification System
NHO	Native Hawaiian Organization
OCE	Office of Certification and Eligibility
OHA	Office of Hearing and Appeals
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OOPS	Office of Operations and Program

	Support
OPGM	Office of Procurement and Grants Management
PCR	Procurement Center Representative
RFP	Request for Proposal
RMA	Risk Management Association
SACS/MEDCOR	Servicing and Contracting System/Minority Enterprise Development Central Office Repository
SADBUS	Small and Disadvantaged Business Utilization Specialist
SAIC	Special Agent in Charge
SASP	State Agency for Surplus Property
SBA	Small Business Administration
SBDC	Small Business Development Centers
SBDC	Small Business Development Center
SBIR	Small Business Innovative Research
SCORE	Formerly the "Service Corps of Retired Executives," now known simply as SCORE
SDB	Small Disadvantaged Business
SOP	Standard Operating Procedures
SOW	Statement of Work
T4C	Termination for Cause
T4D	Termination for Default
WOB	Woman Owned Business

**OIG Note:**

This SOP does not contain updated information in the following critical program areas: (1) restructuring the program; (2) business development; (3) how to determine economic disadvantage; (4) how to determine whether a company should be graduated; (5) how to evaluate program implementation; and (6) value of sole source contracts. Details concerning these areas are being developed as quickly as possible and this SOP will be updated with this information as each area is addressed, with all areas being finalized no later than June 1, 2005. These are critical components needing revision to provide reasonable assurance that the 8(a) Business Development program is being carried out within the intent of the Small Business Act and in an efficient and effective manner.

**Forms**

### SBA Form 1790, Representatives Used

OMB Approval No.: 3245-0270  
Expiration Date: 12/31/2005

**REPRESENTATIVES USED AND COMPENSATION PAID FOR SERVICES  
IN CONNECTION WITH OBTAINING FEDERAL CONTRACTS**

Representative's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Amount Paid (If any) \$ \_\_\_\_\_

Amount Due (If any) \$ \_\_\_\_\_

Total Amount of Compensation \$ \_\_\_\_\_

Description of Services Provided: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Representative's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Amount Paid (If any) \$ \_\_\_\_\_

Amount Due (If any) \$ \_\_\_\_\_

Total Amount of Compensation \$ \_\_\_\_\_

Description of Services Provided: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The undersigned hereby certifies that the information for the six-month period ending \_\_\_\_\_, as provided above is accurate and complete. (If necessary, the statement of services may be continued on a separate page).

Name of 8(a) Participant Firm: \_\_\_\_\_

Principals' Printed Name: \_\_\_\_\_ 8(a) Case # \_\_\_\_\_

Principals' Printed Title: \_\_\_\_\_

Principals' Signature: \_\_\_\_\_ Date: \_\_\_\_\_

SBA Form 1790 (1-03) Previous Editions Obsolete

**SBA Form 1450, 8(a) Annual Update**

<b>8(a) ANNUAL UPDATE</b>		OMB APPROVAL NO. 3245-0205 Expiration Date: 08/31/2004
<b>1. <u>Business Information:</u></b>		Month / Day / Year
The following fields have been filled with information from SBA records, please review and correct the prefilled data and enter missing data as appropriate.		
Case No.:	PRO-Net ID:	PRO-Net Profile Last Updated:
8(a) Approval Date:	Transition Stage Date:	8(a) End Date:
Company Name: _____		
Address: _____		
City: _____	State: _____	ZIP: _____
E-mail Address: _____	Phone No.: _____	FAX No.: _____
<b>2. <u>Personal Financial Information:</u></b> A Personal Financial Statement, SBA Form 413, must be completed and submitted for each disadvantaged owner upon whom 8(a) certification was based. Each individual reporting must also include their most recent tax return, including all schedules, attachments and supporting 1099 forms. [13 CFR 124.112 (b) (3)]		
<b>3. <u>Annual Compensation Data:</u></b> A record of all payments, compensation, and distributions (including loans, advances salaries and dividends) made by the participant to each of its owners, officers or directors, or to any person or entity affiliated with such individuals. Use Individual Compensation Worksheet, Attachment A. [124.112 (b) (5)]		
<b>4. <u>Transferred Assets:</u></b> A record from each individual claiming disadvantaged status regarding the transfer of assets for less than fair market value to any immediate family member or to a trust any beneficiary of which is an immediate family member, within two years of the date of this annual review. [124.112 (b) (4)] Have any assets been transferred since last review. Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please explain on a separate sheet of paper.		
<b>5. <u>Business Tax Return:</u></b> A copy of the participant firm's most recent year-end business tax return including all schedules and attachments and a completed copy of IRS Form 4506, request for copy or transcript of Tax Form must be included with this 8(a) annual update. [124.112 (b) (7)]		
<b>6. <u>Business Structure/Ownership Changes:</u></b> Have there been any changes in the Partnership Agreement, Articles of Incorporation, By-Laws or stock issues since your firm was certified for 8(a) participation that have not been previously reported to SBA? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please submit information about those changes with this annual update. [124.112 (a)]		
<b>7. <u>Adverse Actions:</u></b> Are there any pending adverse actions (such as lawsuits, delinquent taxes, bankruptcy filings, creditor problems, contract disputes, etc.) which may affect your business operation? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please explain on a separate sheet of paper. [124.112 (b) (2)]		
<b>8. <u>Access to credit and Capital:</u></b> List all loans, lines of credit or other sources of capital available to the participant firm. [124.302 (b) (3)]		
<b><u>Loan(s):</u></b> Provide the following information for each loan.		
Source: _____	Date of Loan: _____	Month / Day / Year
Purpose of Loan: _____		
Original Amount: \$ _____	Balance: \$ _____	Status of Loan: _____
Secured by: _____		
Terms: _____		
SBA Form 1450 (8-03) Previous Editions Obsolete		
1 of 7		



8. Continued:

Line(s) of Credit: Provide the following information for each line of credit.

Source: \_\_\_\_\_ Date of Loan: \_\_\_\_\_  
Month / Day / Year

Purpose of Loan: \_\_\_\_\_

Original Amount: \$ \_\_\_\_\_ Balance: \$ \_\_\_\_\_ Status of Loan: \_\_\_\_\_

Secured by: \_\_\_\_\_

Terms: \_\_\_\_\_

9. Other Sources of Capital: Please list all other sources of capital available to participant firm.

Source: \_\_\_\_\_ Date of Loan: \_\_\_\_\_  
Month / Day / Year

Purpose of Loan: \_\_\_\_\_

Original Amount: \$ \_\_\_\_\_ Balance: \$ \_\_\_\_\_ Status of Loan: \_\_\_\_\_

Secured by: \_\_\_\_\_

Terms: \_\_\_\_\_

10. Bonding Information: If a construction firm, what is current bonding limit? [124.302 (b) (4)]

Single job: \$ \_\_\_\_\_ Aggregate: \$ \_\_\_\_\_

Individual Surety: \_\_\_\_\_ Corporate Treasury Listed Surety: \_\_\_\_\_

Is SBA guaranty required? \_\_\_\_\_  Yes  No  Sometimes

11. Business Activity Report: On a separate sheet of paper provide a report of all non-8(a) contracts, options and modifications affecting price executed during the program year. Indicate below, total of all non-8(a) revenue and 8(a) revenue earned during the program year. [124.509 (c) (ii)]

This report will be made for the program year starting on \_\_\_\_\_ and ending \_\_\_\_\_  
Month/ Day/ Year Month/ Day/ Year

Non-8(a) sales:	\$ _____	( _____ %)
8(a) sales	\$ _____	( _____ %)
Total sales	\$ _____	( _____ %)
for program year:	\$ _____	( 100 %)

How many competitive solicitations (private, federal, state or local) have you responded to within the last program year?

Commercial: \_\_\_\_\_ Local government: \_\_\_\_\_ State government: \_\_\_\_\_

Federal Non-8(a): \_\_\_\_\_ Federal 8(a): \_\_\_\_\_ Total: \_\_\_\_\_

Please explain on a separate sheet of paper the efforts made by your firm to pursue non-8(a) sales during the last program year.

12. Number of Employees: Please indicate how many employees you have.

Full time \_\_\_\_\_ Part time \_\_\_\_\_ as of \_\_\_\_\_  
Month/Day/Year

13. Mentor/Protégé: For the program year being reviewed were you a participant in a mentor/protégé agreement? [124.520(f)]  Yes  No If yes please complete Attachment "B" Mentor/Protégé Worksheet:

14. Joint Venture: Are you a participant in a joint venture (JV) agreement(s)? [124.513(h)]

Yes  No For each joint venture indicate:  
 JV Partner                      JV Name                      Award date                      Prime Contract #

15. Taxes: Indicate taxes your firm paid for fiscal year ending \_\_\_\_\_ by jurisdiction:

Federal: \$ \_\_\_\_\_  
 State: \$ \_\_\_\_\_  
 Local: \$ \_\_\_\_\_

16. Contract Forecast: Each participant must annually forecast its needs for contract awards for the next program year. The forecast must include the aggregate dollar value of 8(a) contracts broken down by sole source and competitive opportunities where possible; the aggregate dollar value of non-8(a) contract; the types of contract opportunities identified by product or service. [124.403 (b)]

	<u>8(a) Forecast</u>	<u>Non-8(a) Forecast</u>
Sole Source	\$ _____	\$ _____
Competitive	\$ _____	\$ _____
<b>Total</b>	\$ _____	\$ _____

**Total Forecast (includes both 8(a) and Non-8(a)):** \$ \_\_\_\_\_

**Briefly identify the types of contract opportunities sought.**

**Transition Management Plan**

Beginning in the first year of the transitional stage of program participation (years 5 through 9) each participant must annually submit a transition management strategy to be incorporated into its business plan. This transition management strategy must describe: 124.403 ©

**How you plan to meet the applicable non-8(a) business activity targets, imposed by 124.507 during the transitional stage. [124.403 (c) (1)]**

Indicate the specific steps you intend to take to continue business growth and promote profitable business operations after the expiration of your program term. [124.403 (c) (2)]

### CERTIFICATIONS

PARTICIPANT FIRMS OWNED BY INDIAN TRIBES, ALASKA NATIVE CORPORATIONS, NATIVE HAWAIIAN ORGANIZATIONS OR COMMUNITY DEVELOPMENT CORPORATIONS SHALL CERTIFY THEY MEET ALL THE 8(a) PROGRAM ELIGIBILITY REQUIREMENTS AS SET FORTH IN 13 CFR 124.112 TO THE EXTENT THAT THEY ARE NOT INCONSISTENT WITH 124.109, 110 AND 111.

PARTICIPANT FIRMS NOT OWNED BY THOSE ENTITIES SPECIFIED ABOVE SHALL CERTIFY THEY MEET THE REQUIREMENTS OF 13CFR 124.101 THROUGH 124.108.

I CERTIFY THAT ALL INFORMATION SUBMITTED IN THIS 8(a) ANNUAL UPDATE, ATTACHMENTS, AND THE PERSONAL FINANCIAL STATEMENT IS TRUE, CORRECT AND ACCURATE.

\_\_\_\_\_  
Signature of President, Partner or Proprietor

\_\_\_\_\_  
Date

Attachment A

**INDIVIDUAL COMPENSATION WORKSHEET**

**Annual Compensation Data:** To be provided for each proprietor, partner, officer, director, and each stock holder owning 10% or more of the company stock. Annual compensation includes all payments, compensation, and distributions, including loans, advances, salaries and dividends. Each individual reporting must include a signed and dated copy of their most recent tax return, including all schedules and attachments. In addition, all supporting 1099 forms must be provided. If a filing extension has been requested, provide a copy of IRS Form 4868, Individual extension request, and a copy of their most recently signed and dated tax return. Tax information provided may be verified with IRS. [124.112(b)(5)]

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Ownership % \_\_\_\_\_

Company Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

Loans: Does your firm have any outstanding loan(s) to you? Yes  No  If yes, please provide the following information for each loan.

Source: \_\_\_\_\_ Date of Loan: \_\_\_\_\_ Status: \_\_\_\_\_  
Month/Day/Year

Original Amount: \$ \_\_\_\_\_ Balance: \$ \_\_\_\_\_ Secured by: \_\_\_\_\_

Terms: \_\_\_\_\_ Purpose of Loan: \_\_\_\_\_

Annual Compensation:

Salary	\$ _____
Bonus(es)	\$ _____
Advances	\$ _____
Dividends	\$ _____
Distributions	\$ _____
Other compensation, please specify	\$ _____
_____	\$ _____
_____	\$ _____

Total Compensation for period of \_\_\_\_\_ Through \_\_\_\_\_ \$ \_\_\_\_\_  
Month/Day/Year Month/Day/Year

Total Compensation for previous year ending \_\_\_\_\_ \$ \_\_\_\_\_  
Month/Day/Year

Attachment B**MENTOR/PROTÉGÉ WORKSHEET**

Your firm participated in or continues to participate in a mentor/protégé agreement with whom:

Date this agreement was approved: \_\_\_\_\_ Period of agreement: \_\_\_\_\_

Is your firm the mentor  or the protégé ? If your firm is the protégé, the following information must be provided. [124.520 (f)]

List all technical and/or management assistance provided by the mentor to the protégé?

List all loans to and/or equity investments made by the mentor in the protégé?

List all subcontracts awarded to the protégé by the mentor and the value of each subcontract?

List all federal contracts awarded to the mentor/protégé relationship as a joint venture (designating each as an 8(a), small business set aside, or unrestricted procurement), the value of each contract, and the percentage of revenue accruing to each party to the joint venture?

Provide a narrative describing the success such assistance has had in addressing the developmental needs of the protégé and addressing any problems encountered?

The protégé must annually certify to SBA whether there has been any change in the terms of the agreement. If there were no changes, please state so, or if there were changes, please indicate.

PLEASE NOTE: The estimated burden for completing this form is 2 hours. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3<sup>rd</sup> St., S.W., Washington D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0205). **PLEASE DO NOT SEND FORMS TO OMB.**

SBA Form 1490 (8-03) Previous Editions Obsolete

# SBA Form 912, Statement of Personal History

Return Executed Copies 1, 2, and 3 to SBA

OMB APPROVAL NO.3245-0178  
Expiration Date:9/30/2006

 <p>United States of America <b>SMALL BUSINESS ADMINISTRATION</b> <b>STATEMENT OF PERSONAL HISTORY</b></p>		<p><b>Please Read Carefully - Print or Type</b></p> <p>Each member of the small business or the development company requesting assistance must submit this form in TRIPPLICATE for filing with the SBA application. This form must be filled out and submitted by:</p> <ol style="list-style-type: none"> <li>1. By the proprietor, if a sole proprietorship.</li> <li>2. By each partner, if a partnership.</li> <li>3. By each officer, director, and additionally by each holder of 20% or more of the ownership stock, if a corporation, limited liability company, or a development company.</li> </ol>	
Name and Address of Applicant (Firm Name)(Street, City, State, and ZIP Code)		SBA District/Disaster Area Office	
		Amount Applied for (when applicable)	File No. (if known)
1. Personal Statement of: (State name in full, if no middle name, state (NMN), or if initial only, indicate initial.) List all former names used, and dates each name was used. Use separate sheet if necessary.  First _____ Middle _____ Last _____		2. Give the percentage of ownership or stocked owned or to be owned in the small business or the development company  Social Security No. _____	3. Date of Birth (Month, day, and year)  4. Place of Birth: (City & State or Foreign Country)
Name and Address of participating lender or surety co. (when applicable and known)		5. U.S. Citizen? <input type="checkbox"/> YES <input type="checkbox"/> NO If No, are you a Lawful Permanent resident alien: <input type="checkbox"/> YES <input type="checkbox"/> NO If non-U.S. citizen provide alien registration number: _____	
6. Present residence address: From: To: Address:  Home Telephone No. (Include A/C): Business Telephone No. (Include A/C):		Most recent prior address (omit if over 10 years ago): From: To: Address:	
<p><b>PLEASE SEE REVERSE SIDE FOR EXPLANATION REGARDING DISCLOSURE OF INFORMATION AND THE USES OF SUCH INFORMATION.</b></p> <p><b>IT IS IMPORTANT THAT THE NEXT THREE QUESTIONS BE ANSWERED COMPLETELY. AN ARREST OR CONVICTION RECORD WILL NOT NECESSARILY DISQUALIFY YOU; HOWEVER, AN UNTRUTHFUL ANSWER WILL CAUSE YOUR APPLICATION TO BE DENIED.</b></p> <p><b>IF YOU ANSWER "YES" TO 7, 8, OR 9, FURNISH DETAILS ON A SEPARATE SHEET. INCLUDE DATES, LOCATION, FINES, SENTENCES, WHETHER MISDEMEANOR OR FELONY, DATES OF PAROLE/PROBATION, UNPAID FINES OR PENALTIES, NAME(S) UNDER WHICH CHARGED, AND ANY OTHER PERTINENT INFORMATION.</b></p>			
7. Are you presently under indictment, on parole or probation? <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, indicate date parole or probation is to expire.)			
8. Have you ever been charged with and or arrested for any criminal offense other than a minor motor vehicle violation? Include offenses which have been dismissed, discharged, or not prosecuted (All arrests and charges must be disclosed and explained on an attached sheet.) <input type="checkbox"/> Yes <input type="checkbox"/> No			
9. Have you ever been convicted, placed on pretrial diversion, or placed on any form of probation, including adjudication withheld pending probation, for any criminal offense other than a minor vehicle violation? <input type="checkbox"/> Yes <input type="checkbox"/> No			
10. I authorize the Small Business Administration Office of Inspector General to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, and the Small Business Investment Act.			
<p><b>CAUTION:</b> Knowingly making a false statement on this form is a violation of Federal law and could result in criminal prosecution, significant civil penalties, and a denial of your loan, surety bond, or other program participation. A false statement is punishable under 18 USC 1001 by imprisonment of not more than five years and/or a fine of not more than \$10,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.</p>			
Signature		Title	Date
Agency Use Only 11. <input type="checkbox"/> Fingerprints Waived <input type="checkbox"/> Fingerprints Required Date Sent to OIG _____			
_____ Date _____ Approving Authority		12. <input type="checkbox"/> Cleared for Processing Date _____ Approving Authority	
_____ Date _____ Approving Authority		13. <input type="checkbox"/> Request a Character Evaluation Date _____ Approving Authority (Required whenever 7, 8 or 9 are answered "yes" even if cleared for processing.)	
<p><small>PLEASE NOTE: The estimated burden for completing this form is 15 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd St. S.W., Washington D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval 3245-0178. PLEASE DO NOT SEND FORMS TO OMB.</small></p>			

SBA 912 (10-03) SOP 5010.4 Previous Edition Obsolete



This form was electronically produced by Elite Federal Forms, Inc.

**NOTICES REQUIRED BY LAW**

The following is a brief summary of the laws applicable to this solicitation of information.

**Paperwork Reduction Act (44 U.S.C. Chapter 35)**

SBA is collecting the information on this form to make a character and credit eligibility decision to fund or deny you a loan or other form of assistance. The information is required in order for SBA to have sufficient information to determine whether to provide you with the requested assistance. The information collected may be checked against criminal history indices of the Federal Bureau of Investigation.

**Privacy Act (5 U.S.C. § 552a)**


Any person can request to see or get copies of any personal information that SBA has in his or her file, when that file is retrievable by individual identifiers, such as name or social security numbers. Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act.

Under the provisions of the Privacy Act, you are not required to provide your social security number. Failure to provide your social security number may not affect any right, benefit or privilege to which you are entitled. Disclosures of name and other personal identifiers are, however, required for a benefit, as SBA requires an individual seeking assistance from SBA to provide it with sufficient information for it to make a character determination. In determining whether an individual is of good character, SBA considers the person's integrity, candor, and disposition toward criminal actions. In making loans pursuant to section 7(a)(6) the Small Business Act (the Act), 15 USC § 636 (a)(6), SBA is required to have reasonable assurance that the loan is of sound value and will be repaid or that it is in the best interest of the Government to grant the assistance requested. Additionally, SBA is specifically authorized to verify your criminal history, or lack thereof, pursuant to section 7(a)(1)(B), 15 USC § 636(a)(1)(B). Further, for all forms of assistance, SBA is authorized to make all investigations necessary to ensure that a person has not engaged in acts that violate or will violate the Act or the Small Business Investment Act, 15 USC §§ 634(b)(11) and 687b(a). For these purposes, you are asked to voluntarily provide your social security number to assist SBA in making a character determination and to distinguish you from other individuals with the same or similar name or other personal identifier.

When this information indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature, SBA may refer it to the appropriate agency, whether Federal, State, local, or foreign, charged with responsibility for or otherwise involved in investigation, prosecution, enforcement or prevention of such violations. See 56 Fed. Reg. 8020 (1991) for other published routine uses.



## SBA Form 1010, Application for 8(a) and SBA Certification



**Application for  
8(a) Business Development (8(a) BD) and  
Small Disadvantaged Business (SDB) Certification**

OMB Approval 3245-0331  
Expiration Date: 7/31/2004

*To be completed by SBA*

Date Received: \_\_\_\_\_

Tracking #: \_\_\_\_\_

*To be completed by Applicant*

**THIS APPLICATION IS FOR  8(a) \*  SDB only CERTIFICATION**

\*Firms that are 8(a) certified are certified as SDBs

*NOTICE: A firm and the socially and economically disadvantaged individuals of the firm can only participate as disadvantaged in the 8(a) program one time.*

*YOUR SIGNATURE ON THIS APPLICATION for the 8(a) program INDICATES THAT YOU FULLY UNDERSTAND THIS LIMITATION AND THAT YOU HAVE NOT PREVIOUSLY USED YOUR ELIGIBILITY. Any sensitive information collected in this application is necessary to determine if applicants comply with statutory and regulatory requirements.*

**SECTION I:  
Business Profile**

Name of Firm: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_ E-mail: \_\_\_\_\_ @ \_\_\_\_\_ FAX: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Primary NAICS Code: \_\_\_\_\_ PRONet® Identification No: \_\_\_\_\_  
(North American Industry Classification System) Mandatory for 8(a) Certification

This firm was established on: \_\_\_\_\_ I (We) have owned this firm since: \_\_\_\_\_  
mm/dd/yyyy mm/dd/yyyy

Duan Number: \_\_\_\_\_

This firm is (check all applicable):  A For-Profit Business  A Proprietorship  A Corporation  
 A Partnership  A Limited Liability Company  A Broker  
 Located in a HUBZone  DOT-Certified Disadvantaged Business Enterprise (DBE)

The average number of employees the firm (with its affiliates) had during the past 12 months was \_\_\_\_\_. The average annual revenues for the firm (and its affiliates) during the last three years was \$ \_\_\_\_\_. The percentage of the firm's revenues earned in the primary NAICS Code is \_\_\_\_\_ %.

**All applicants must attach a detailed explanation, including supporting documentation, noting the section and question number for each "Yes" response to the following questions:**

1. Is the firm delinquent in filing any applicable business tax returns? [ ] Yes [ ] No
2. Does the firm have any past due taxes or any other delinquent Federal, state or local financial obligations outstanding or liens filed against it? [ ] Yes [ ] No
3. Are there any lawsuits pending against the firm? [ ] Yes [ ] No
4. Does the firm have any existing management, joint venture, indemnity, consulting, distributorship, licensing or franchise agreements? [ ] Yes [ ] No
5. Have there been any changes in ownership in the past two years? [ ] Yes [ ] No
6. Does the firm have an ownership interest in any other firm? [ ] Yes [ ] No
7. Does any other business concern have an ownership interest in the firm? [ ] Yes [ ] No
8. Does the firm buy from, sell or use the services or facilities of any other firm in which a principal of the applicant firm has a financial or any other interest? [ ] Yes [ ] No
9. Has the firm or any principal of the firm previously applied for 8(a) or SDB certification? [ ] Yes [ ] No
10. Has the firm or any principal of the firm received an SBA loan? [ ] Yes [ ] No

SBA Form 1010 (3/03) Page 1

This form was electronically produced by the Federal Reserve, Inc.

**SECTION I  
Business Profile (continued)**

*Only 8(a) Applicants must answer the following questions and attach a detailed explanation, including supporting documentation, noting the section and question number for each "Yes" response:*

- 11. Has the firm ever been certified as an 8(a) BD Program participant or own any assets of a previously certified 8(a) BD Program participant?  Yes  No
- 12. Does the firm have a negative net worth or working capital position?  Yes  No
- 13. Has the firm earned revenues in its primary NAICS code for less than the immediate past two years?  Yes  No

**SECTION II  
Business Management and Administration**

*Please provide the following information on all owners, directors, management members, and officers (add additional pages if necessary):*

Name	Position in Firm	Percentage of Ownership Interest in Firm	Hours Devoted to the Management of firm	Access to firms Bank Account (Y/N)	Socially and Economically Disadvantaged (Y/N)

*All applicants must attach a detailed explanation, including supporting documentation, noting the section and question number and any supporting documents for each "Yes" response to the following questions:*

- 14. Does any non-disadvantaged individual or entity furnish a required license or professional certification?  Yes  No
- 15. Does any non-disadvantaged employee, owner, director, officer or management member receive compensation from the firm in any form, including dividends, that exceeds the compensation of the highest ranking officer of the firm?  Yes  No
- 16. Does any individual or entity other than the individual(s) claiming disadvantage provide financial or bonding support, office space, or equipment to the firm?  Yes  No
- 17. Is any owner, director, officer or management member a former employee or a principal of a former employer of any individual(s) claiming disadvantage?  Yes  No
- 18. Does any owner, director, officer or management member have an ownership interest in any other firm?  Yes  No
- 19. Is any owner, director, officer or management member currently a Federal employee or have a household member who is currently a Federal employee?  Yes  No
- 20. Does any owner, director, officer or management member have any delinquent Federal obligations, past due taxes or liens against him/her or his/her spouse?  Yes  No

**SECTION III  
Personal Information**

*Please provide the following information on all individual applicants who claim social and economic disadvantage  
(add additional pages if necessary):*

Name of Individual	Designated Group Membership or Basis of Disadvantage *	U.S. Citizenship Y/N	Place of Birth	Sex M/F	Veteran Y/N
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Each individual claiming disadvantage must submit a narrative statement describing his/her economic disadvantage. Applicants who are not members of a designated group must also submit a narrative statement detailing how he/she personally experienced social disadvantage in American society and any supporting evidence.

*Note: Applicants must attach a detailed explanation, including supporting documentation, noting the section and question number and any supporting documents for each "yes" response to the following questions in this section.*

*With respect to each individual claiming disadvantage:*

- 21. Is any individual delinquent in filing his/her personal Federal or local tax returns?  Yes  No
- 22. Has any individual transferred any personal assets during the last two years to any immediate family member for less than fair market value?  Yes  No

*Only with respect to each 8(a) individual claiming disadvantage (not SDB applicant):*

- 23. Has any individual previously used his/her eligibility to qualify a firm for 8(a) BD Program participation?  Yes  No
- 24. Does any individual own individually, or in aggregate with the applicant firm and/or immediate family members, more than a 20% ownership interest in a current 8(a) BD Program participant?  Yes  No
- 25. Does any individual's immediate family member own individually, or in aggregate with other immediate family members and/or the applicant firm, more than a 20% ownership interest in a current 8(a) BD Program participant?  Yes  No
- 26. Does the applicant firm have more than a 20% ownership interest in a current 8(a) BD Program participant?  Yes  No
- 27. Has any individual ever been arrested? (If Yes, submit a Fingerprint Card.)  Yes  No

*Only with respect to 8(a) applicants:*

- 28. Does any non-disadvantaged owner of the applicant firm own individually, or in the aggregate with immediate family members, more than 10% of a current 8(a) BD Program participant?  Yes  No
- 29. Does any non-disadvantaged firm in the same or similar line of business own more than a 10% interest in the applicant firm?  Yes  No

\* List of Designated Groups: (1)Black Americans, (2)Hispanic Americans, (3)Native Americans, (4)Asian Pacific Americans, and (5)Subcontinent Asian Americans

Under Title 18 U.S.C. § 1001 and Title 15 U.S.C. § 645, any person who misrepresents a firm's status as an 8(a) Program participant or SDB concern, or makes any other false statement in order to influence the certification process in any way, or to obtain a contract awarded under the preference programs established pursuant to section 8(a), 8(d), 9 or 15 of the Small Business Act, or any other provision of Federal Law that reference Section 8(d) for a definition of program eligibility shall be: (1) Subject to fines and imprisonment of up to 5 years, or both, as stated in Title 18 U.S.C. § 1001; subject to fines of up to \$500,000 and imprisonment of up to 10 years, or both, as stated in Title 15 U.S.C. § 645; (2) Subject to civil and administrative remedies, including suspension and debarment; and (3) Ineligible for participation in programs conducted under the authority of the Small Business Act.

I hereby certify that the information provided in this application and supporting documents relating to the applicant, to me personally, and to my disadvantaged status is true and accurate.

By: \_\_\_\_\_ Date \_\_\_\_\_  
President/CEO/Proprietor/Management Member/Partner

I hereby certify that the information provided in this application and supporting documents relating to my disadvantaged status and me is true and accurate.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

PLEASE NOTE: The estimated burden for completing this form is 2.5 hours per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd St., S.W., Washington, D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0331). PLEASE DO NOT SEND FORMS TO OMB.

**CHECKLIST FOR PREPARING YOUR APPLICATION**

(This checklist will provide basic guidelines on the attachments that you should submit with your application)  
*SBA will keep this information and the information provided on the application confidential to the extent required by the law.*

**SECTION I: Business Profile**

- A detailed explanation, including supporting documentation, for each "Yes" response to questions in Section I, if applicable.
- Copies of stock certificates, stock ledger, buy/sell agreements, transmutation agreements, voting agreements.
- Certificate of Good Standing (for Corporations).
- SBA Form 1623, Certification Regarding Debarment, Suspension, and other Responsibility Matters.

**Firms applying for 8(a) and SDB certification should submit:**

- balance sheets and profit and loss statements no older than 90 days and for the preceding three (3) fiscal year-end periods,
- along with copies of the last three years of applicant firm's tax returns and schedules and attachment, and
- an executed IRS Form 4506, Request for Copy or Transcript of Tax form for firm's taxes, and
- a Statement of Bonding limit from the firm's surety, if applicable.

**SECTION II: Business Management and Administration**

- A detailed explanation, including supporting documentation, for each "Yes" response to questions in Section II, if applicable.
- Articles of Incorporation, By-laws, Stockholder and Board member Meeting minutes, Partnership Agreement, Articles of Organization, and Bank signature cards.
- Copies of business and special licenses under which the firm operates.
- Copies of loan agreements, including lines of credit and shareholder loan(s).

**SECTION III: Personal Information**

**About each individual claiming social and economic disadvantage:**

- A detailed explanation, including supporting documentation, for each "Yes" response to questions in Section III, if applicable.
- A current Personal Finance Statement on SBA Form 413 (no older than 30 days) for applicant *and* spouse, dividing all assets and liabilities as appropriate. If you are married and live in a community property jurisdiction, please provide evidence of which assets and income are community property and which are separate.
- Narrative statement of economic disadvantage.
- Applicants who are not members of a designated group must submit supporting evidence of individual social disadvantage.
- Personal Resume, including the education, technical training and business and employment experience (employer's name, dates of employment and nature of employment), including the individual's current duties within the applicant firm.

**About each non-disadvantaged principal, including each owner of more than 10%, each director, each officer, each management member, each Partner and each agent or key employee:**

- Personal Resume, including the education, technical training and business and employment experience (employer's name, dates of employment and nature of employment), including the individual's current duties within the applicant firm.
- Copies of person income tax returns (including all schedules and W-2 forms) for the two years immediately preceding the application for the individual and spouse, and an executed IRS Form 4506, Request for Copy or Transcript of Tax Form.
- Applicants for 8(a) certification must submit an SBA Form 912, Statement of Personal History (include a Fingerprint Card if the SBA Form 912 reflects an arrest).

### DEFINITIONS

**Immediate Family Member** means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, and mother-in-law.

**NAICS** is the North American Industry Classification System. It replaces the old Standard Industrial Classification (SIC) System. You may learn more about NAICS by accessing the Census Bureau's NAICS Internet site at: [www.census.gov/naics](http://www.census.gov/naics)

**PRONet®** is the U.S. Small Business Administration's Procurement Marketing & Access Network. It is an on-line, interactive, electronic gateway of procurement information – for and about small businesses. To register for PRONet® go to: <http://pronet.sba.gov>, select the *Register* bar and follow the instructions.

### Where to Apply for Certification

For the **SDB** Certification:

U.S. Small Business Administration  
Office of Small Disadvantaged Business Certification & Eligibility  
409 Third Street, S.W., MC 8800, SDB 8th Floor  
Washington, D.C. 20416

For **8(a)** certification, if your business is located in the following area:


Colorado, Connecticut, Delaware, Maine, Maryland, Massachusetts, Montana, New Hampshire, North Dakota, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, D.C. West Virginia and Wyoming

**Please send your package to:** Small Business Administration  
Division of Program Certification and Eligibility  
Robert N.C. Nix Federal Building  
900 Market Street, 5th Floor  
Philadelphia, PA 19107

Alabama, Alaska, Arizona, Arkansas, California, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Puerto Rico, South Carolina, Tennessee, Texas, Virgin Islands, Washington and Wisconsin

**Please send your package to:** Small Business Administration  
Division of Program Certification and Eligibility  
455 Market Street, 6th Floor  
San Francisco, CA 94105

**SBA Form 413**

	OMB APPROVAL NO. 3245-0188 EXPIRATION DATE: 11/30/2004				
<b>PERSONAL FINANCIAL STATEMENT</b>					
U.S. SMALL BUSINESS ADMINISTRATION <span style="float: right;">As of _____, _____</span>					
Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.					
Name	Business Phone				
Residence Address	Residence Phone				
City, State, & Zip Code					
Business Name of Applicant/Borrower					
<b>ASSETS</b> (Omit Cents)	<b>LIABILITIES</b> (Omit Cents)				
Cash on hand & in Banks ..... \$ _____	Accounts Payable ..... \$ _____				
Savings Accounts ..... \$ _____	Notes Payable to Banks and Others ..... \$ _____				
IRA or Other Retirement Account ..... \$ _____	(Describe in Section 2)				
Accounts & Notes Receivable ..... \$ _____	Installment Account (Auto) ..... \$ _____				
Life Insurance-Cash Surrender Value Only ..... \$ _____	Mo. Payments \$ _____				
(Complete Section 6)	Installment Account (Other) ..... \$ _____				
Stocks and Bonds ..... \$ _____	Mo. Payments \$ _____				
(Describe in Section 3)	Loan on Life Insurance ..... \$ _____				
Real Estate ..... \$ _____	Mortgages on Real Estate ..... \$ _____				
(Describe in Section 4)	(Describe in Section 4)				
Automobile-Present Value ..... \$ _____	Unpaid Taxes ..... \$ _____				
Other Personal Property ..... \$ _____	(Describe in Section 6)				
(Describe in Section 5)	Other Liabilities ..... \$ _____				
Other Assets ..... \$ _____	(Describe in Section 7)				
(Describe in Section 5)	Total Liabilities ..... \$ _____				
Total ..... \$ _____	Net Worth ..... \$ _____				
Total ..... \$ _____	Total ..... \$ _____				
<b>Section 1. Source of Income</b>	<b>Contingent Liabilities</b>				
Salary ..... \$ _____	As Endorser or Co-Maker ..... \$ _____				
Net Investment Income ..... \$ _____	Legal Claims & Judgments ..... \$ _____				
Real Estate Income ..... \$ _____	Provision for Federal Income Tax ..... \$ _____				
Other Income (Describe below)* ..... \$ _____	Other Special Debt ..... \$ _____				
Description of Other Income in Section 1.					
*Alimony or child support payments need not be disclosed in "Other income" unless it is desired to have such payments counted toward total income.					
<b>Section 2. Notes Payable to Banks and Others.</b> (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)					
Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)					
Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value
Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)					
	Property A	Property B	Property C		
Type of Property					
Address					
Date Purchased					
Original Cost					
Present Market Value					
Name & Address of Mortgage Holder					
Mortgage Account Number					
Mortgage Balance					
Amount of Payment per Month/Year					
Status of Mortgage					
Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)					
Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)					
Section 7. Other Liabilities. (Describe in detail.)					
Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)					
I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).					
Signature:		Date:	Social Security Number:		
Signature:		Date:	Social Security Number:		
PLEASE NOTE: The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-D188), Office of Management and Budget, Washington, D.C. 20503. PLEASE DO NOT SEND FORMS TO OMB.					







