(1) It has been in business for at least two years, as evidenced by income tax returns (individual or consolidated) for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification; or

(2) The individual(s) who will manage and control the daily business operations of the firm have substantial technical and management experience, the applicant has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category, and the applicant has adequate capital to sustain its operations and carry out its business plan as a Participant; or

(3) The NHO has made a firm written commitment to support the operations of the applicant concern and it has the financial ability to do so.

§ 124.111 Do Community Development Corporations (CDCs) have any special rules for applying to the 8(a) BD program?

(a) Concerns owned at least 51 percent by CDCs (or a wholly owned business entity of a CDC) are eligible for participation in the 8(a) BD program and other federal programs requiring SBA to determine social and economic disadvantage as a condition of eligibility. These concerns must meet all eligibility criteria set forth in §124.101 through §124.108 and §124.112 to the extent that they are not inconsistent with this section.

(b) A concern that is at least 51 percent owned by a CDC (or a wholly owned business entity of a CDC) is considered to be controlled by such CDC and eligible for participation in the 8(a) BD program, provided it meets all eligibility criteria set forth or referred to in this section and its management and daily business operations are conducted by one or more individuals determined to have managerial experience of an extent and complexity needed to run the concern.

(c) A concern that is at least 51 percent owned by a CDC (or a wholly owned business entity of a CDC) must qualify as a small business concern as defined in part 121 of this title. The size standard corresponding to the primary industry classification of the applicant concern applies for determining size. SBA will determine the concern’s size independently, without regard to its affiliation with the CDC or any other business enterprise owned by the CDC, unless the Administrator determines that one or more such concerns owned by the CDC have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(d) A CDC cannot own 51% or more of another firm which, either at the time of application or within the previous two years, has been operating in the 8(a) program under the same primary NAICS code as the applicant. A CDC may, however, own a Participant or an applicant that conducts or will conduct secondary business in the 8(a) BD program under the same NAICS code that a current Participant owned by the CDC operates in the 8(a) BD program as its primary SIC code. In addition, once an applicant is admitted to the 8(a) BD program, it may not receive an 8(a) sole source contract that is a follow-on contract to an 8(a) contract that was performed immediately previously by another Participant (or former Participant) owned by the same CDC. For purposes of this paragraph, the same primary NAICS code means the six digit NAICS code having the same corresponding size standard.

(e) SBA does not deem an individual involved in the management or daily business operations of a CDC-owned concern to have used his or her individual eligibility within the meaning of §124.108(b).

(f) An applicant concern owned by a CDC must possess reasonable prospects for success in competing in the private sector if admitted to the 8(a) BD program. An applicant concern owned by a CDC may establish potential for success by demonstrating that:

(1) It has been in business for at least two years, as evidenced by income tax returns (individual or consolidated) for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification; or
§ 124.112 What criteria must a business meet to remain eligible to participate in the 8(a) BD program?

(a) Standards. In order for a concern (except those owned by Indian tribes, ANCs, Native Hawaiian Organizations or CDCs) to remain eligible for 8(a) BD program participation, it must continue to meet all eligibility criteria contained in § 124.101 through § 124.108. For concerns owned by Indian tribes, ANCs, Native Hawaiian Organizations or CDCs to remain eligible, they must meet the criteria set forth in this § 124.112 to the extent that they are not inconsistent with § 124.109, § 124.110 and § 124.111, respectively. The concern must inform SBA in writing of any changes in circumstances which would adversely affect its program eligibility, especially economic disadvantage and ownership and control. Any concern that fails to meet the eligibility requirements after being admitted to the program will be subject to termination or early graduation under §§ 124.302 through 124.304, as appropriate.

(b) Submissions supporting continued eligibility. As part of an annual review, each Participant must annually submit to the servicing district office the following:

1. A certification that it meets the 8(a) BD program eligibility requirements as set forth in § 124.101 through § 124.108 and paragraph (a) of this section;

2. A certification that there have been no changed circumstances which could adversely affect the Participant’s program eligibility. If the Participant is unable to provide such certification, the Participant must inform SBA of any changes and provide relevant supporting documentation.

3. Personal financial information for each disadvantaged owner;

4. 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 the annual review. The record must provide the name of the recipient(s) and family relationship, and the difference between the fair market value of the asset transferred and the value received by the disadvantaged individual.

5. 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;

6. If it is an approved protege, a narrative report detailing the contracts it has had with its mentor and benefits it has received from the mentor/protege relationship. See § 124.520(b)(4) for additional annual requirements;

7. A listing of any fees paid to agents or representatives to assist the Participant in obtaining or seeking to obtain a Federal contract;

8. A report for each 8(a) contract performed during the year explaining how the performance of work requirements are being met for the contract, including any 8(a) contracts performed as a joint venture;

9. IRS Form 4506, Request for Copy or Transcript of Tax Form;

10. Such other information as SBA may deem necessary. For other required annual submissions, see §§ 124.601 through 124.603.

(c) Eligibility reviews. (1) Upon receipt of specific and credible information alleging that a Participant no longer meets the eligibility requirements for continued program eligibility, SBA will review the concern’s eligibility for