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SOURCE: 63 FR 35739, June 30, 1998, unless otherwise noted.


Subpart A—8(a) Business Development

PROVISIONS OF GENERAL APPLICABILITY

§ 124.1 What is the purpose of the 8(a) Business Development program?

Sections 8(a) and 7(j) of the Small Business Act authorize a Minority Small Business and Capital Ownership Development program (designated the 8(a) Business Development or “8(a) BD” program for purposes of the regulations in this part). The purpose of the 8(a) BD program is to assist eligible small disadvantaged business concerns compete in the American economy through business development.

§ 124.2 What length of time may a business participate in the 8(a) BD program?

A Participant receives a program term of nine years from the date of SBA’s approval letter certifying the concern’s admission to the program. The Participant must maintain its program eligibility during its tenure in the program and must inform SBA of any changes that would adversely affect its program eligibility. The nine year program term may be shortened only by termination, early graduation (including voluntary early graduation) or voluntary withdrawal as provided for in this subpart.

[76 FR 8253, Feb. 11, 2011]

§ 124.3 What definitions are important in the 8(a) BD program?

Alaska Native, as defined by the Alaska Native Claims Settlement Act (43 U.S.C. 1602), means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakta Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation or ANC means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 161, et seq.)

Bona fide place of business, for purposes of 8(a) construction procurements, means a location where a Participant regularly maintains an office which employs at least one full-time individual within the appropriate geographical boundary. The term does not include construction trailers or other temporary construction sites.

Community Development Corporation or CDC means a nonprofit organization responsible to residents of the area it serves which has received financial assistance under 42 U.S.C. 9805, et seq.

Concern is defined in part 121 of this title.

Days means calendar days unless otherwise specified.

Day-to-day operations of a firm means the marketing, production, sales, and administrative functions of the firm.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, and mother-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern.”

NAICS code means North American Industry Classification System code.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.
Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Negative control is defined in part 121 of this title.

Non-disadvantaged individual means any individual who does not claim disadvantaged status, does not qualify as disadvantaged, or upon whose disadvantaged status an applicant or Participant does not rely in qualifying for 8(a) BD program participation.

Participant means a small business concern admitted to participate in the 8(a) BD program.

Primary industry classification means the six digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the 8(a) BD applicant or Participant. The NAICS code designations are described in the North American Industry Classification System book published by the U.S. Office of Management and Budget. SBA utilizes § 121.107 of this chapter in determining a firm’s primary industry classification. A Participant may change its primary industry classification where it can demonstrate to SBA by clear evidence that the majority of its total revenues during a three-year period have evolved from one NAICS code to another.

Principal place of business means the business location where the individuals who manage the concern’s day-to-day operations spend most working hours and where top management’s business records are kept. If the offices from which management is directed and where the business records are kept are in different locations, SBA will determine the principal place of business for program purposes.

Program year means a 12-month period of an 8(a) BD Participant’s program participation. The first program year begins on the date that the concern is certified to participate in the 8(a) BD program and ends one year later. Each subsequent program year begins on the Participant’s anniversary of program certification and runs for one 12-month period.

Regularly maintains an office means conducting 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 routinely transact business with a Participant at a location within a particular geographical area. Such evidence includes lease agreements, payroll records, advertisements, bills, correspondence, 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. Although a firm would generally be required to have a license to do business in a particular location in order to “regularly maintain an office” there, the firm would not be required to have an additional construction license or other specific type of license in order to regularly maintain an office.

Same or similar line of business means business activities within the same four-digit “Industry Group” of the NAICS Manual as the primary industry classification of the applicant or Participant. The phrase “same business area” is synonymous with this definition.

Self-marketing of a requirement occurs when a Participant identifies a requirement that has not been committed to the 8(a) BD program and, through its marketing efforts, causes the procuring activity to offer that specific requirement to the 8(a) BD program on the Participant’s behalf. A firm which identifies and markets a requirement which is subsequently offered to the 8(a) BD program as an open requirement or on behalf of another Participant has not “self-marketed” the requirement within the meaning of this part.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

Unconditional ownership means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing
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§ 124.102 What size business is eligible to participate in the 8(a) BD program?

(a)(1) An applicant concern must qualify as a small business concern as defined in part 121 of this title. The applicable size standard is the one for its primary industry classification. The rules for calculating the size of a tribally-owned concern, a concern owned by an Alaska Native Corporation, a concern owned by a Native Hawaiian Organization, or a concern owned by a Community Development Corporation or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.


§ 124.4 What restrictions apply to fees for applicant and Participant representatives?

(a) The compensation received by any packager, agent or representative of an 8(a) applicant or Participant for assisting the applicant in obtaining 8(a) certification or for assisting the Participant in obtaining 8(a) contracts, or any other assistance to support program participation, must be reasonable in light of the service(s) performed by the packager, agent or representative.

(b) In assisting a Participant obtain one or more 8(a) contracts, a packager, agent or representative cannot receive a fee that is a percentage of the gross contract value.

(c) For good cause, the AA/BD may initiate proceedings to suspend or revoke a packager’s, agent’s or representative’s privilege to assist applicants obtain 8(a) certification, assist Participants obtain 8(a) contracts, or any other assistance to support program participation. Good cause is defined in §103.4 of these regulations.

(1) The AA/BD may send a show cause letter requesting the agent or representative to demonstrate why the agent or representative should not be suspended or proposed for revocation, or may immediately send a written notice suspending or proposing revocation, depending upon the evidence in the administrative record. The notice will include a discussion of the relevant facts and the reason(s) why the AA/BD believes that good cause exists.

(2) Unless the AA/BD specifies a different time in the notice, the agent or representative must respond to the notice within 30 days of the date of the notice with any facts or arguments showing why good cause does not exist.

The agent or representative may request additional time to respond, which the AA/BD may grant in its or her discretion.

(3) After considering the agent’s or representative’s response, the AA/BD will issue a final determination, setting forth the reasons for this decision and, if a suspension continues to be effective or a revocation is implemented, the term of the suspension or revocation.

(d) The AA/BD may refer a packager, agent, or other representative to SBA’s Suspension and Debarment Official for possible Government-wide suspension or debarment where appropriate, including where it appears that the packager, agent or representative assisted an applicant to or Participant in the 8(a) BD program submit information to SBA that the packager, agent or representative knew was false or materially misleading.

[76 FR 8253, Feb. 11, 2011]

ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN THE 8(a) BUSINESS DEVELOPMENT PROGRAM

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

Generally, a concern meets the basic requirements for admission to the 8(a) BD program if it is a small business which is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of and residing in the United States, and which demonstrates potential for success.

[76 FR 8254, Feb. 11, 2011]

§ 124.102 What size business is eligible to participate in the 8(a) BD program?

(a)(1) An applicant concern must qualify as a small business concern as defined in part 121 of this title. The applicable size standard is the one for its primary industry classification. The rules for calculating the size of a tribally-owned concern, a concern owned by an Alaska Native Corporation, a concern owned by a Native Hawaiian Organization, or a concern owned by a Community Development Corporation