

**NON-NATIVE MANAGERS SECURED
MILLIONS OF DOLLARS FROM 8(A) FIRMS
OWNED BY ALASKA NATIVE
CORPORATIONS THROUGH UNAPPROVED
AGREEMENTS THAT JEOPARDIZED THE
FIRMS' PROGRAM ELIGIBILITY**

*Report Number: 8-14
Date Issued: August 7, 2008*

**Prepared by the
Office of Inspector General
U. S. Small Business Administration**

[Editorial Notes

A. In compliance with the provisions of the Privacy Act and the Freedom of Information Act mentioned below, we have made the following changes to this publicly-released version of this audit report:

- 1. We have omitted original signatures, to reduce the possibility of identity theft. FOIA Ex. 2 & 6.*
- 2. We have substituted the pseudonyms "Mr. A," "Mr. B" and "Mr. C" for the real names of three individuals. FOIA Ex. 6.*
- 3. We have redacted some administrative material (phone numbers). FOIA Ex. 2.*
- 4. This September 22 revised version of the report is the same as the one publicly released on August 12, except that we have corrected a footnote numbering error, and redacted the name of the audit manager responsible for the report.]*



U.S. Small Business Administration
Office Inspector General

Memorandum

To: Joseph Loddo
Director, Office of Business Development

Date: August 7, 2008

William Manger
Associate Administrator, Office of Field Operations

From: Debra S. Ritt
Assistant Inspector General for Auditing

Subject: Non-Native Managers Secured Millions of Dollars From 8(a) Firms
Owned by Alaska Native Corporations Through Unapproved
Agreements that Jeopardized the Firms' Program Eligibility
Project No. 8-14

The purpose of this report is to notify you of two 8(a) participants owned by Alaska Native Corporations (ANC) — APM, LLC (APM) and Goldbelt Raven, LLC (Goldbelt) — who did not comply with the terms and conditions of their Participation Agreements, creating grounds for their termination from the 8(a) program. APM is owned by Cape Fox Corporation, and Goldbelt is owned by Goldbelt, Inc. We believe these concerns merit your immediate attention as APM and Goldbelt entered into unapproved agreements that resulted in millions of dollars in 8(a) revenues being paid to companies owned by their two managers. These managers were non-Alaska natives (hereafter referred to as non-natives), who had significant ownership interests in the 8(a) firms. In addition, affiliations may have been created, jeopardizing the eligibility of APM and Goldbelt for 8(a) contracts.

We identified these issues during an ongoing audit of SBA's oversight of ANC-owned firms in the 8(a) program. Based on concerns raised by the Government Accountability Office (GAO) and Congress that ANC-owned firms may be serving as conduits for large businesses, the audit is examining the percentage of 8(a) contract revenue reaching Alaska natives.

In developing the information presented in this report, we reviewed participants' records, including their annual audited financial statements, documentation from 8(a) files, and various web-based documents. We interviewed personnel in two

SBA district offices and Headquarters, including SBA's General Counsel and Deputy Associate Administrator for Government Contracting and Business Development. We also reviewed Title 13 of the Code of Federal Regulations (CFR) and SBA's Standard Operating Procedure (SOP) 80 05, *8(a) Program*. Detailed information concerning our methodology can be found in Appendix I. Our audit was conducted between May 2007 and June 2008 in accordance with *Government Auditing Standards* prescribed by the Comptroller General of the United States.

BACKGROUND

The 8(a) program was created to help small business concerns owned and controlled by socially and economically disadvantaged individuals compete in the American economy and access the Federal procurement market. Firms owned by ANC's are also eligible to participate in the 8(a) Program under certain conditions.¹

Under the program, socially and economically-disadvantaged firms can be awarded Federal contracts on a sole-source basis. Generally, sole-source 8(a) contracts must be valued under \$5.5 million for goods and services associated with manufacturing, or under \$3.5 million for all other contracts.² However, this restriction does not apply to participants owned by ANC's, which can receive sole-source Federal contracts of any value.³

To be accepted into the 8(a) program, SBA must make an initial size determination and certify the firm as a small business. SBA has established industry-specific criteria for determining whether a company is considered a small business based upon the firm's revenues or employees.⁴ In determining size, Agency regulations state that the revenues or employees of all of the firms' affiliates must be considered collectively with the company's in determining whether the firm meets the applicable size standard. Affiliates include companies that have common management, or a common business interest in the firm.⁵ Once approved, businesses, including ANC-owned firms, sign Participation Agreements accepting the terms and conditions of the program in exchange for its benefits. Failure or refusal to abide by the Participation Agreement is cause for termination from the 8(a) program. The agreement stipulates, among other things, that all management agreements, joint venture agreements and other agreements

¹ 13 CFR 124.109.

² Federal Acquisition Regulations (FAR) 19.805-1(a)(2) and FAR 19.805-1(b)). Contract awards above these thresholds must generally be competed.

³ Indian Tribe Exemption, 15 U.S.C. § 637, notes; § 602, P.L. 100-656; 13 CFR 124.506(b).

⁴ 13 CFR 121.103.

⁵ Firms owned by ANC's or tribes are not considered to be affiliates in determining the ANC-owned 8(a) firm's size; 13 CFR 121.103(b)(2), 124.109(c)(2).

relative to the performance of 8(a) contracts⁶ must be pre-approved by SBA. In addition, participants are required to be truthful in their dealings with the Agency. SBA's review of the business agreements is essential to reduce the potential for program abuse and to ensure participants do not create affiliations that impact their size and, therefore, eligibility for 8(a) contracts. Continued eligibility in the 8(a) program is dependent upon the participant's submission of semi-annual reports and annual updates, including a record of all payments, compensation and distributions made to each of its owners, officers or directors, or to any person or entity affiliated with them.⁷

SBA conducts annual reviews of 8(a) participants to ensure that they continue to be eligible for the program, and to monitor participant progress in meeting their business plan goals. SBA is also required to review a participant's self-certification of its size when contemplating award of sole-source 8(a) contracts.⁸ Finally, protests may be filed challenging a participant's size for 8(a) awards above the \$3.5 million and \$5.5 million thresholds, which trigger a size determination by the applicable SBA government contracting area office.⁹ In those cases, protests serve as both a remedy and a deterrent against improper conduct in procurements, making size regulations self-enforcing. However, the size status of a participant for sole-source contracts cannot be protested.

As of May 31, 2008, the 8(a) program had 8,430 participants, of which 187 were ANC-owned. Between fiscal years (FY) 2000 and 2006, nearly \$13 billion in Federal contracts¹⁰ was reportedly awarded to 96 ANC-owned firms. Of this amount, about \$2.2 billion was awarded in FY 2006.

APM was accepted into the program in November 2003 with five original owners, including its parent company, Cape Fox Corporation, which held a 55-percent majority interest in APM. By the end of 2004, four of APM's owners had been replaced by Mr. A, who had been managing APM since March 2004, and had purchased their interests. Mr. A owned a firm that had graduated from the 8(a) program in 1994, which was in the same line of business as APM. In December 2004, Mr. A resigned as APM's manager and his brother was immediately hired in his place. In January 2005, Mr. A sold his interest in APM to Cape Fox.

⁶ Contracts are actually referred to as subcontracts in the Participation Agreements. 15 U.S.C 637(a) (Section 8(a) of the Small Business Act) authorizes SBA to enter into all types of contracts with other agencies and to let related subcontracts to firms eligible for participation. SBA's subcontractors are referred to as "8(a) contractors."

⁷ 13 CFR 124.112(b)(5).

⁸ 13 CFR 124.501(h).

⁹ 13 CFR 121.1002.

¹⁰ \$13 billion represents the total award amount for contract actions reported by the ANC-owned participants, including the base year and all options.

Goldbelt entered the 8(a) program in April 2002 with three original owners, including its parent company, Goldbelt, Inc., which held an 80-percent interest in Goldbelt. One of Goldbelt's owners, Mr. B, who was not a U.S. citizen, was managing the firm. He also owned another company that was in the same line of business as Goldbelt. In June 2003, he transferred his interest in Goldbelt to his sister while he obtained citizenship. The sister formed a company (Federal Systems) to hold Mr. B's interest, which then grew to 44 percent by the end of 2005. This interest then reverted back to Mr. B, when he assumed ownership of Federal Systems, Inc.

APM and Goldbelt received a combination of sole-source and competitively-awarded 8(a) contracts between FYs 2003 and 2006 that were valued at more than \$833 million.¹¹ APM was awarded more than \$383 million, which is detailed in Appendix III. Goldbelt was awarded nearly \$450 million, which is detailed in Appendix IV. APM was serviced by SBA's Santa Ana District Office, and Goldbelt by the Alaska District Office. Both participants were required to certify their size at the time of 8(a) award.

RESULTS IN BRIEF

APM and Goldbelt violated the terms of their 8(a) Participation Agreements by not submitting management agreements and other agreements associated with their 8(a) contracts to SBA for approval. Under these unapproved agreements, APM and Goldbelt paid or were obligated to pay businesses owned by Messrs. A and B, their non-native managers, more than \$23 million from 8(a) contracts over a 3-year period. The agreements also guaranteed these individuals a significant share of future 8(a) revenues.

For example, multiple unapproved agreements entitled firms separately owned by Mr. A up to 7.5 percent of APM's 8(a) contract billings, plus 45 percent of APM's future net income from over \$340 million in 8(a) contracts. As of December 2006, APM had paid or owed these companies \$7.5 million from 8(a) revenues. Goldbelt's unapproved agreement resulted in Mr. B's company, being paid \$16.1 million from 8(a) revenues as of April 2006, and entitled the company to receive significant payments from nearly \$385 million in projected 8(a) contract revenues.

Neither APM nor Goldbelt obtained SBA's required approval of these agreements, preventing the Agency from determining whether there were affiliation issues that would jeopardize their program eligibility. APM misrepresented its ownership structure and its relationship with three companies owned by Mr. A, which

¹¹ This amount represents the total contract award value for base years and all option years.

prevented SBA from properly determining APM's true size. It also did not inform its servicing office of an ongoing contract dispute about its size, and provided the Agency with a false document to support a \$1.9 million loan from the non-native manager. Goldbelt did not disclose an agreement with Mr. B's company, obscuring its true size. It also repeatedly failed to comply with Agency requests for full disclosure of changes to its business ownership.

Violating any one clause in the Participation Agreement, such as failing to obtain pre-approval of business agreements or submitting false information, is cause for termination from the 8(a) program. Because APM and Goldbelt repeatedly violated their Participation Agreements, we recommended their immediate suspension from the 8(a) Program, and SBA's initiation of termination proceedings. We also recommended that SBA establish additional procedures requiring disclosure of business agreements in annual updates and closer review of participant financial statements to identify relationships that could affect participant size and eligibility. Finally, SBA should review other 8(a) companies owned by Cape Fox and Goldbelt, Inc. for compliance and affiliation issues.

On August 5, 2008, the Associate Administrator for Government Contracting and Business Development provided comments on the draft report, agreeing with the findings and recommendations. We have summarized management's comments at the end of this report and included the complete response in Appendix V.

RESULTS

Companies Owned by Non-Native Individuals Were Paid Millions of Dollars from 8(a) Revenues Through Unapproved Agreements

After being admitted into the 8(a) program, APM and Goldbelt did not seek SBA's approval of agreements with companies owned by non-native individuals that purchased ownership in the 8(a) firms and provided management or other services associated with the performance of APM's and Goldbelt's 8(a) contracts. Under these agreements, APM and Goldbelt paid or were obligated to pay more than \$23 million of 8(a) revenues to these companies over a 3-year period. This compensation included a percentage of the firms' 8(a) contract billings and certain profits, and income earned from a preferred subcontracting arrangement. Because these relationships may still be in effect, any additional 8(a) contracts that were awarded to the participants since October 1, 2006, may also be subject to the terms of these unapproved agreements.

Companies Owned by APM's Non-Native Manager Were Paid \$7.5 Million and Promised a Percentage of Future 8(a) Revenues

In March 2004, 4 months after APM was admitted to the 8(a) program, a non-native individual, Mr. A, was appointed manager of APM. As APM's manager, he immediately negotiated a management services agreement between APM and one of his companies, Sanders Engineering Company, Inc. This agreement allowed his company to provide APM financial management services in exchange for 2.75 percent of the participant's 8(a) contract billings, which was worth about \$1 million at the end of 2006.

By December 2004, Mr. A had purchased a 45-percent ownership in APM. As an owner of a former 8(a) company, this level of ownership was in violation of SBA's regulation, which limits such ownership to 20 percent.¹² In addition, the change of ownership was not submitted to SBA for prior approval, as required by regulations.¹³ On December 31, 2004, he resigned as manager of APM and his brother, Mr. C, assumed the duties of manager. At or around the same time, Mr. A transferred his 45-percent ownership to Advanced Business Management Services, Inc. (ABMS), another one of his companies and, on January 1, 2005, this company sold its ownership back to Cape Fox, the parent company, in exchange for a management services agreement, entitling it to 45 percent of APM's future net income.

In March 2005, Mr. C, now manager of APM, entered into a third agreement for management and marketing services, entitling Butler Marketing and Consulting Group, Inc., a third company owned by Mr. A, to 4.75 percent of APM's 8(a) contract billings (totaling over \$2 million by the close of 2006), and an undisclosed share of APM's profits.

In addition to revenues obtained from the three agreements, APM paid Sanders Engineering another \$4 million for subcontracted labor. None of these agreements were submitted to SBA for approval, as required by the Participation Agreement.

¹² 13 CFR 124.105(h)(2).

¹³ 13 CFR 124.105(i).

Table 1 below summarizes the 8(a) revenues obtained by the former non-native manager's companies between 2004 and 2006.

Table 1.
8(a) Revenues from APM

Year	8(a) Contract Revenue	2.75 Percent of Contract Billings	4.75 Percent of Contract Billings	45 Percent of Net Income	Subcontract Labor	Total to Companies
2004	\$1,056,000	\$28,000	\$0	\$0	\$0	\$28,000
2005	\$9,505,000	\$194,000	\$410,000	\$126,000	\$850,000	\$1,580,000
2006	\$32,392,000	\$856,000	\$1,614,000	\$218,000	\$3,238,000	\$5,926,000
Total	\$42,953,000	\$1,078,000	\$2,024,000	\$344,000	\$4,088,000	\$7,534,000

Source: APM's Financial Statements and 8(a) Annual Updates obtained from SBA's Santa Ana District Office

As the table shows, during the first 3 years of APM's participation in the 8(a) program, a total of \$7.5 million¹⁴— or 18 percent — of \$42.9 million in 8(a) contract revenues was paid or owed to Mr. A's companies. A summary of APM's agreements is provided in Appendix II.

Finally, APM further violated its Participation Agreement by providing false and misleading information to SBA about a \$1.9 million loan from its non-native manager, which it reported in an annual update. When questioned by SBA, APM admitted that the note submitted as evidence for the loan was actually a false document. Despite the issuance of a warning to APM to be forthright in its future dealings with the Agency, APM continued to submit misleading information. For example, APM submitted 2005 tax returns and audited financial statements that did not properly identify its ownership.

Goldbelt Paid Companies Owned by its Non-Native Manager More Than \$16 Million in Subcontracting Fees and Promised Payment of Future 8(a) Revenues

Goldbelt was organized in 2002 with Mr. B, a non-native individual, as its manager. On January 1, 2003, Goldbelt entered into a management and subcontracting agreement with Cambridge, a company owned by Mr. B. Goldbelt never obtained SBA approval of this agreement. The agreement contained several provisions for compensation to be paid to the manager's company, including:

¹⁴ 8(a) revenues are estimated based on APM's financial statements and annual reports.

- A 1-percent incentive fee on revenue generated by business leads provided by Cambridge to Goldbelt;
- Revenues resulting from management and support services provided to Goldbelt;
- An 80-percent share of net income from products purchased by Goldbelt on behalf of the Government through vendors arranged by Cambridge; and
- Subcontract revenues from 8(a) contract work and the right of first refusal for work subcontracted by Goldbelt.

Table 2 summarizes 8(a) contract-related compensation that Goldbelt paid under this agreement between May 1, 2003 and April 30, 2006.

Table 2.
8(a) Revenues from Goldbelt

Fiscal Year	8(a) Contract Revenue	Incentives	Services	80 Percent Share of Net Sales	Subcontracts	Total to Company
2004	\$14,039,000	\$336,000	\$1,087,000	\$112,700	\$1,786,000	\$3,321,700
2005	\$20,368,000	\$193,000	\$1,450,000	\$414,900	\$2,917,000	\$4,974,900
2006	\$31,219,000	\$283,000	\$1,342,000	\$2,312,700	\$3,914,000	\$7,851,700
Totals	\$65,626,000	\$812,000	\$3,879,000	2,840,300	\$8,616,000	\$16,148,300

Source: Goldbelt's Audited Financial Statements obtained from SBA's Alaska District Office.

As the table illustrates, Goldbelt paid more than \$16 million, or almost 25 percent, of the \$65.6 million in 8(a) revenues it earned over a 3-year period.

SBA Could Not Properly Conduct Size Determinations to Determine Eligibility for Over \$800 Million in 8(a) Contract Awards

In making a size determination, SBA's regulations state that the revenues or employees of all of a firm's affiliates must be considered collectively in determining whether the firm meets the applicable size standard.¹⁵ Firms are required to self-certify their size status when bidding for 8(a) contracts. SBA procedures require the Agency to verify participants' size for each 8(a) sole-source

¹⁵ 13 CFR 121.103.

award using available records including annual updates.¹⁶ Therefore, knowledge of the APM and Goldbelt agreements, discussed above, was critical for SBA to properly determine the size of these firms for 18 sole-source awards. However, because neither APM nor Goldbelt obtained SBA approval of these agreements, the Agency was precluded from considering the impact that these relationships had on the eligibility of the two participants for approximately \$833 million in awards.¹⁷

To illustrate the importance of considering business relationships, such as these, in size matters, the San Francisco Government Contracting Area Office ruled in a size protest that Sanders Engineering and ABMS were affiliated with APM. Because affiliation was found in the protest, the agreements that APM entered without SBA approval may have affected its eligibility for both competitive and sole-source awards. We identified over \$136 million in 8(a) contracts that were awarded to APM since the protest was decided.

Goldbelt's failure to disclose a long-term subcontracting agreement with Cambridge, a company owned by its non-native manager, Mr. B, also prevented SBA from being able to consider whether the companies were affiliated. A prime and subcontractor may be affiliated if the prime is unusually reliant on the subcontractor for contract performance.¹⁸ Based on Goldbelt's financial statements, it appeared that in one of the 8(a) contracts awarded to Goldbelt, Mr. B's company performed virtually all of the work. In allowing the subcontractor to perform the majority of the work, Goldbelt may have violated performance of work restrictions in SBA regulations. SBA was unable to verify Goldbelt's size and compliance for nearly \$450 million of 8(a) contracts between fiscal years 2003 and 2006. All but \$1.1 million of these contracts could not be protested because they were sole-sourced and, therefore, the need for SBA to have accurate size information for these contracts was even more critical.

Further, since 2003, Goldbelt has not complied with the Agency's requests for full disclosure of its business ownership structure. Despite repeated requests by SBA, Goldbelt has failed to produce updated ownership information. As a result, SBA has not been able to adequately verify Goldbelt's ownership to determine the firm's continued program eligibility.

¹⁶ SOP 80 05.3.

¹⁷ These awards were made over a 3-year period.

¹⁸ 13 CFR 121.103(h).

Closer Review of ANC-owned 8(a) Participant Financial Statements and Better Coordination between SBA Offices Is Needed to Strengthen SBA's Oversight

The OIG identified the unapproved agreements discussed above through its reviews of the participants' audited financial statements and income tax returns submitted with the annual updates, and business records obtained from applicable Secretaries of State. These documents presented information that allowed us to determine the nature and extent of the non-native managers' influence within the firms. For example, notes to the financial statements disclosed the existence of agreements between APM and Goldbelt and the firms owned by these managers. We requested the agreements from the participants, reviewed them and confirmed that SBA had never received them.

The financial statements and income tax returns were submitted to the Agency as part of annual reports filed by the ANC-owned firms. As a result, SBA should have detected and requested copies of these agreements to determine how they impacted the participants' continued eligibility in the 8(a) program and eligibility for contract awards. Both the Santa Ana¹⁹ and Alaska district office staff acknowledged that they should have identified these agreements. Also, the Alaska district office, which services most of the ANC-owned participants in the 8(a) program, has two full-time and one part-time Business Development Specialists, who are responsible for reviewing and processing 218 participants among other duties. We question whether this is a sufficient staffing level to handle the volume of contract actions and annual reviews for the current level of participants.

As discussed previously, the area government contracting office reviewed a size protest of APM and found that it was affiliated with other companies. However, the area office neither asked the servicing district office for information that related to the size determination, nor informed the servicing office that affiliations existed. This occurred because SBA does not have a requirement that area contracting offices coordinate with district offices that are servicing 8(a) firms when reviewing a size protest involving an 8(a) company.

The Agency needs to develop ways to (1) strengthen its reviews of participants' financial statements, (2) ensure that eligibility can be properly determined, and (3) prevent abuses that could result in termination from the program. SBA also needs to ensure that the area government contracting offices coordinate their actions with the servicing district office assigned to monitor the firm. Improved

¹⁹ Santa Ana District Office only has one ANC-owned participant to service.

communications between these offices is needed on size determinations and verifications of 8(a) participant self-certifications.

Other Matters

As the majority owners of the 8(a) companies, parent ANCs have a responsibility to ensure that their participants are complying with 8(a) program requirements. In the case of both APM and Goldbelt, the Chief Executive Officers of the parent companies were involved in the execution of two of the agreements that we reviewed. Therefore, these ANCs should have ensured that their 8(a) firms were in compliance. Since these ANCs own other 8(a) companies, it is possible that there are additional compliance and affiliation issues with those companies. SBA should review their other 8(a) companies for compliance and affiliation issues.

RECOMMENDATIONS

We recommend the Director for the Office of Business Development:

1. Immediately initiate actions to suspend and terminate the two participants from the 8(a) program based on their repeated non-compliance with their participation agreements, and ongoing refusal to provide truthful and complete information.
2. Advise procuring agencies of the suspensions so that 8(a) contract awards to APM and Goldbelt can be averted until terminations are final.
3. Establish additional procedures requiring: (a) disclosure of management and other agreements in annual updates, and (b) Business Development Specialists, as part of annual reviews, to examine closely all documents provided, including a review of the notes of participants' financial statements to identify business relationships that could affect the participant's size and eligibility for the 8(a) program and contract awards.
4. Review the other 8(a) companies owned by Cape Fox Corporation and Goldbelt, Inc. for compliance and affiliation issues.

We also recommend the Associate Administrator for Field Operations:

5. Perform a workforce analysis to determine whether staffing levels for the Alaska District Office are adequate, and take action as appropriate.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

On July 2, 2008, we provided the Agency with the draft report for review and comment. On August 5, 2008, the Associate Administrator for GCBD provided formal written comments, concurring with all five recommendations. The full text of management's comments can be found in Appendix V.

The Associate Administrator stated that she has initiated actions to terminate and suspend the two ANC-owned 8(a) firms, which she expects to be completed by August 8, 2008, and will notify procuring agencies of the suspensions. Within 30 days she will issue a Procedural Notice that requires disclosure of management and other agreements in annual updates, and a careful examination of data submitted during annual updates to identify business relationships impacting participant size and eligibility.

The Agency will also review all other 8(a) companies owned by the two parent ANCs to determine their continued eligibility in the 8(a) program. Finally, the Agency will continue to assess the number of Business Development Specialists and skills needed to annually review ANC-owned 8(a) firms. SBA expects to use the results of its assessment to make FY 2009 budget execution decisions by March 31, 2009.

We consider the actions proposed by management to be responsive to the report findings and recommendations, and commend the Agency for taking prompt action to terminate and suspend the two ANC-owned firms reviewed.

We appreciate the courtesies and cooperation of the Small Business Administration representatives during this audit. If you have any questions concerning this report, please call me at (202) [REDACTED].

APPENDIX I. SCOPE AND METHODOLOGY

The issues discussed in the report were identified during an ongoing audit of SBA's oversight of ANC-owned firms in the 8(a) program. Based on concerns raised by the Government Accountability Office (GAO) and Congress that ANC-owned firms may be serving as conduits for large businesses, the audit is examining the percentage of 8(a) contract revenue reaching Alaska natives.

The scope of our audit was limited to contracting activity by APM and Goldbelt that occurred between fiscal years 2000 through 2006, which we identified through a survey of ANC-owned firms that we conducted in October 2006. We also used the survey for the firms' contract award data.

Because APM entered the 8(a) program in November 2003, we examined dealings that took place with its non-native manager, Mr. A, between November 2003 and September 2006. Goldbelt entered the 8(a) program in April 2002. Therefore we examined dealings it had with its non-native manager, Mr. B, between April 2002 and September 2006. To determine the business and ownership changes, we reviewed APM's and Goldbelt's records, including their annual audited financial statements, tax returns, records filed with the Secretaries of State, and minutes from member meetings.

Because APM's financial statements reported only the total revenues owed or paid to its non-native manager, we estimated the 8(a) portion of these revenues based on information submitted to SBA in APM's annual updates. Using the annual update percentage of total revenues associated with APM's 8(a) contracts, we applied this percentage to the total revenues (disclosed in APM's financial statements) that were owed or paid to companies owned by Mr. A.

We also obtained information concerning APM's size protest, and SBA affiliation concerns from SBA's San Francisco Government Contracting Area Office, and Santa Ana District Office. Finally, to gain an understanding of Agency processes concerning the oversight of ANC-owned participants, we reviewed 13 CFR 121 and 124, and Standard Operating Procedure 80 05 3, *8(a) Program*. We also held discussions with SBA personnel in Headquarters, and the Santa Ana and Alaska district offices, and San Francisco Government Contracting Area Office.

The audit related to this report was performed between May 2007 and June 2008, in accordance with the *Government Auditing Standards* prescribed by the Comptroller General of the United States.

APPENDIX II. SUMMARY OF AGREEMENTS BETWEEN APM, LLC AND ITS NON-NATIVE MANAGER

	Date of Execution:	Agreement 1 3/4/04	Agreement 2 1/1/05	Agreement 3 3/1/05
	Fee:	2.75% of Revenues	45% of Profits	4.75% of Revenues*
	Services:	Financial Recording & Reporting	Management Services	Strategic Alliance
Obligations				
Reorganize company structure.		X		
Set up financial accounting – Timberline System		X		
Exchange performance, sales, financial, systems, and procedures information		X		
Administration & financial management		X		
Financial planning, sales forecasts, and budget		X		
Maintain accounting & implement controls of direct and indirect costs & expenses		X		
Financial presentations – banks, bonding companies, and government agencies		X		
Establish and manage all bank accounts		X		
Audit by mutually agreed upon CPA		X		
Financial Services			X	
Human Resources			X	
Management Support			X	
Legal Support			X	
IT Support			X	
Marketing			X	
Contract Administration				X
Team in Acquiring & Performing All Construction Contracts				X
Based on Sanders Management Services handling “Books of Accounts: Audits”				X

* 2% Marketing/Consulting & 2.75% Management Fee

Source: Agreements obtained from Chief Executive Officer, Cape Fox Corporation.

APPENDIX III. CONTRACTS AWARDED TO APM, LLC

Award Dates	Contract No.	Award Amount	Contract Type
2/23/2004	NNK05100204R	\$10,000,000	8(a) set aside, IDIQ
9/17/2004	W9124B-04-M-0443	\$3,350,000	*SABRE
9/30/2004	FA4417-04-D-0003	\$30,000,000	SABRE
1/24/2005	FA8501-04-D-0006	\$28,000,000	SABRE
3/16/2005	FA2517-05-D-5002	\$150,000,000	SABRE
5/23/2005	W9124M-05-C-0032	\$200,000	8(a) sole-source
8/22/2005	N68711-05-R-2204	\$2,382,000	8(a) sole-source
8/26/2005	FA4427-05-D-0102	\$6,000,000	SABRE
9/29/2005	FA4686-05-D-0005	\$10,000,000	SABRE
9/29/2005	FA4877-05-R0017	\$2,500,000	8(a) sole-source
9/30/2005	FA4600-05-D-0006	\$40,000,000	SABRE
3/20/2006	FA4407-06-D-0001	\$50,000,000	SABRE
6/14/2006	FA9302-06-P-E111	\$29,745	8(a) sole-source
9/11/2006	TOS06-TBAR-001	\$52,225	8(a) sole-source
9/29/2006	W912EK-06-C-056	\$196,629	8(a) sole-source
10/1/2006	FA4830-06-D-6009	\$25,000,000	SABRE
Undated	RMS-WERC-006	\$344,055	8(a) set aside
Undated	Individual Contracts	\$25,000,000	SABRE
TOTAL		\$383,054,654	

* SABRE: Simplified Acquisition of Base Engineering Requirements

Source: OIG Survey conducted in October 2006.

APPENDIX IV. CONTRACTS AWARDED TO GOLDBELT RAVEN, LLC

Award Dates	Contract No.	Award Amount	Contract Type
12/24/2002	DAMD17-03-0056	\$799,110	8(a) sole-source
7/14/2003	N68096-03-M-7071	\$87,500	8(a) sole-source
7/28/2003	N68096-03-M-7076	\$2,490	8(a) sole-source
8/22/2003	DAMD17-03-D-0007	\$30,000,000	8(a) sole-source
10/21/2003	C-DEN-01811	\$1,627,116	8(a) sole-source
12/4/2003	1435-04-04-CT-32814	\$50,000,000	8(a) sole-source
1/15/2004	M67854-04-C-1017	\$882,228	8(a) sole-source
7/26/2004	W81XWH-04-D-0019	\$323,419,670	8(a) sole-source
12/7/2004	N68096-05-M-7537	\$16,800	8(a) sole-source
9/19/2005	W91Y TZ-06-P-0029	\$469,962	8(a) sole-source
9/30/2005	W9113M-05-C-0223	\$38,883,960	8(a) sole-source
8/14/2006	HU0001-06-M-0507	\$1,146,660	8(a) competitive
8/28/2006	W81XWH-06-P-0829	\$243,595	8(a) sole-source
9/22/2006	GD133E06CN0268	\$2,177,919	8(a) sole-source
TOTAL		\$449,757,011	

Source: OIG survey conducted in October 2006.

APPENDIX V. AGENCY COMMENTS



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

MEMORANDUM

Date: August 5, 2008

To: Debra S. Ritt
Assistant Inspector General for Auditing

Thru: Fay E. Ott *L* *Ex. 2, 6*
Associate Administrator for
Government Contracting and Business Development

Subject: Response to Final Draft ANC Audit Report No. 7024

Thank you for your memorandum dated June 30, 2008, regarding the notification of two 8(a) participants owned by Alaska Native Corporations (ANCs) – APM, LLC and Goldbelt Raven, LLC who failed to comply with the terms and conditions of their Participation Agreements, creating grounds for termination from the 8(a) Program.

The Office of Business Development is pleased to provide a response to the draft audit report entitled, "Non-Native Managers Secured Millions of Dollars From 8(a) Firms Owned by Alaska Native Corporations Through Unapproved Agreements that Jeopardized the Firms' Program Eligibility."

Based on discussions between our staff, we have modified our previous responses to provide clarification on a number of issues.

Attached is our response to the draft IG Audit Recommendations.

Please feel free to contact me if you have any questions or require additional information.

Attachments

Recommendation Number 1:

Immediately initiate actions to suspend and terminate the two participants from the 8(a) program based on their repeated non-compliance with their participation agreements, and ongoing refusal to provide truthful and complete information.

SBA's Response:

The SBA has initiated actions to terminate and suspend APM, LLC and Goldbelt Raven, LLC from the 8(a) Program. These actions will be completed by Friday, August 8, 2008. We would like to note that the Alaska Native Claims Settlement Act states, in pertinent part:

- (e) Minority and economically disadvantaged status
 - (1) For all purposes of Federal law, a Native Corporation shall be considered to be a corporation owned and controlled by Natives and a minority and economically disadvantaged business enterprise if the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock and by Natives and descendants of Natives, represents a majority of both the total equity of the corporation and the total voting power of the corporation for the purposes of electing directors.
 - (2) For all purposes of Federal law, direct and indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation qualifying pursuant to paragraph (1) shall be considered to be entities owned and controlled by Natives and a minority and economically disadvantaged business enterprise if the shares of stock or other units of ownership interest in any such entity held by such Native Corporation and by the holders of its Settlement Common Stock represent a majority of both—(A) the total equity of the subsidiary corporation, joint venture, or partnership; and (B) the total voting power of the subsidiary corporation, joint venture, or partnership for the purpose of electing directors, the general partner, or principal officers.

43 U.S.C. §1626; see also 13 C.F.R. § 124.109. The SBA will review the documents and all pertinent law when making its decision.

Recommendation Number 2:

Advise procuring agencies of the suspensions so that 8(a) contract awards to APM and Goldbelt can be averted until terminations are final.

SBA's Response:

The SBA concurs. Pursuant to 13 C.F.R. § 124.305(b)(3), awards of competitive and non-competitive contracts can not be made during the suspension of an 8(a) Participant (with one exception). Thus, SBA will advise procuring agencies of any suspensions.

Recommendation Number 3:

Establish additional procedures requiring: (a) disclosure of management and other agreements in annual updates, and (b) Business Development Specialists, as part of annual reviews, to examine closely all documents provided, including a review of the notes of participants' financial statements to identify business relationships that could affect the participant's size and eligibility for the 8(a) program and contract awards.

SBA's Response:

The SBA concurs and will issue a Procedural Notice within 30 days reinforcing and reiterating to field personnel the requirements described in the recommendation which will result in more effective oversight. Additionally, we have already begun conducting training for field personnel on topics that address proper review/analysis of financial statements and other supporting documentation.

Actions Taken to Address this Recommendation:

On June 25, 2008, the SBA conducted training on *Business Plan Review and Financial Analysis* via Ready Talk conferencing for Business Development Specialists. This training covered those documents that must be analyzed (including the notes on 8(a) participant's financial statements) to identify business relationships that could adversely affect size and 8(a) eligibility.

The SBA conducted training July 15 -17, 2008, in Dallas/ Ft. Worth, Texas. This training is targeted at Business Development Specialists that service ANC-owned 8(a) firms. This training discussed business relationships that could affect the participant's size and eligibility for the 8(a) program.

The SBA will issue a procedural notice to all District Offices reiterating the Annual Update requirements, which requests from the 8(a) firm in Item #6 of SBA Form 1450, 8(a) Annual Update, "any changes in the Partnership Agreement, Articles of Incorporation, By-Laws or stock issues since the firm was certified for 8(a) participation that have not been previously reported to SBA."

Business Development Specialists will be reminded, effective immediately, as part of annual reviews, to closely examine all documents provided, including a review of the notes of participants' financial statements to identify business relationships that could affect the participant's size and eligibility for the 8(a) program and contract awards.

Recommendation Number 4:

Review the other 8(a) companies owned by Cape Fox Corporation and Goldbelt, Inc. for compliance and affiliation issues.

SBA's Response:

The SBA concurs. Pursuant to 13 C.F.R. § 124.112(c)(1), the Agency will ensure that the cognizant SBA district office conducts a review of the financial statements and other relevant information of the 8(a) companies owned by Cape Fox Corporation and Goldbelt, Inc. to determine their continuing eligibility for the 8(a) BD Program. By the end of the calendar year, the SBA will have developed an action plan that will include a notification to all 8(a) companies; a review of subsidiary files; and identification of additional staff training needs.

Recommendation Number 5:

Perform a workforce analysis to determine whether staffing levels for the Alaska District Office are adequate, and take action as appropriate.

SBA's Response:

With regards to staffing levels in the Alaska District Office, the SBA will continue to assess the number of Business Development Specialists and skills needed to perform ANC annual reviews based on the size of the ANC portfolio and take appropriate action. The SBA anticipates using the results of its analysis to make FY 2009 budget execution decisions by approximately March 31, 2009.