

Participation Agreement

In consideration of the benefits of participation in the Small Business Administration's Section 8(a) program, I/we agree to the following terms and conditions of program participation:

I. Financial Data

I/we agree to submit financial statements (balance sheet and profit and loss statements) as required by SBA. I/we acknowledge that submission of such statements is mandatory and a condition of program participation. The profit and loss statements shall indicate separately the amount of sales via 8(a) subcontracts and non-8(a) business. Statements shall be:

- a. Audited annual financial statements from a licensed independent public accountant for those concerns with actual receipts of more than \$10,000,000 or more. Statements must be submitted within 120 days after the close of the firm's fiscal year. Financial data must always be signed and dated by the C.E.O., President or sole owner.
- b. Reviewed annual financial statements from a licensed independent public accountant for those concerns with gross annual receipts of \$2,000,000 to \$10,000,000. Statements must be submitted within 90 days after the close of the firm's fiscal year.
- c. Annual statements verified as to accuracy by the proprietor or an authorized officer, for those concerns with actual gross annual receipts less than \$2,000,000.
- d. Quarterly un-audited statements when required, verified as to accuracy by the proprietor, a partner or an authorized officer regardless of amount of gross receipts, which may be prepared internally or by an independent qualified public accountant.
- e. Audited or reviewed annual and/or quarterly statements may be required from a licensed independent public accountant when the SBA decides it is vital to obtain a more thorough verification of a concern's financial position. Such as when a concern's capacity to perform specific 8(a) contract must be determined or when needed to determine continued program eligibility.
- f. Less than \$2,000,000 must submit prepared in-house or compiled statements. Statements must be submitted within 90 days of the close of the firm's fiscal year;
- g. Participants with gross annual receipts of more than \$10,000,000 which are owned by a Tribe, Alaska Native Corporation, Native Hawaiian Organization, or the Community Development Corporation may elect to submit unaudited financial statements within 120 days after the close of concern's fiscal year, provided the following additional documents are submitted simultaneously:
 - i. Audited financial statements for the parent company owner of the Participant, prepared by a licensed independent public accountant, for the equivalent fiscal year.
 - ii. Certification from the Participant's Chief Executive Officer and Chief Financial Officer (or comparable positions) that each individual has read the unaudited financial statements, affirms that the statements do not contain any material misstatements, and certifying that the statements fairly represent the Participant's financial condition and result in operations
- h. Participants owned by Tribes, ANCs, NHOs and CDCs may submit consolidated financial statements prepared by the parent entity that include schedules for each 8(a) Participant instead of separate audited financial statements for each individual 8(a) Participant. If one Participant must submit an audited financial statement, then the consolidated statement and the schedules for each 8(a) Participant must be audited.

I/we acknowledge that one cause for termination of an 8(a) concern in the program is failure or refusal to provide SBA with required quarterly and annual financial statements and reports within 90 days for compiled and reviewed statements and 120 days for audited statements after the close of the quarter and any other such reports as SBA may require.

2. Income Tax Returns:

I/we agree to submit copies of personal income tax returns for all persons upon whom eligibility is based as well as business income tax returns as required by SBA.

3. Criteria for program termination:

I/we agree that my (our) firm may be terminated from the 8(a) program upon the occurrence of one or more of the following:

- a. Failure by the concern to continue to maintain its eligibility for program participation.
- b. Failure by the concern to continue to maintain its status as a small business under the Small Business Act, as amended, and the regulations promulgated there under.
- c. Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by the person(s) who has (have) been determined to be socially and economically disadvantaged.

Participation Agreement

- d.** Failure by the concern to obtain prior written approval from SBA for any changes in ownership, business structure, management, or control.
- e.** Failure by the concern to disclose to SBA the extent to which non-disadvantaged persons or firms participate in the management of the section 8(a) business concern.
- f.** Failure by the concern or one or more of the concern's principals to maintain good character.
- g.** A demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner, including:
 - i.** Failure by the concern to provide SBA with annual financial statements or quarterly financial statements when required within 90 days of the close of the reporting period, or required audited financial statements within 120 days of the close of the reporting period. Failure to provide SBA with requested tax returns, reports, or other available data within 30 days of the date of request.
 - ii.** Failure by the concern to submit an updated business plan within 30 days of receipt of request, without an extension of time which has been approved by SBA.
 - iii.** Failure by the concern to provide documents or certifications of continuing eligibility or otherwise respond to requests for information relating to the section 8(a) program from SBA or other authorized government officials within the time frames provided for in the request.
- h.** Cessation of business operations by the concern.
- i.** Failure by the concern to pursue competitive and commercial business in accordance with its business plan, or failure in other ways to make reasonable efforts to develop and achieve competitive viability.
- j.** Failure by the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 8(a).
- k.** A pattern of inadequate performance of awarded section 8(a) procurement contracts and/or subcontracts by the concern.
- l.** Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.
- m.** Failure by the concern to obtain and keep current any and all required permits, licenses, and charters.
- n.** Diversion of funds or other assets from the section 8(a) business concern for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners which is detrimental to the achievement of the targets, objectives and goals contained in such Program Participant's business plan.
- o.** Unauthorized use of SBA direct, guaranty or immediate participation loan proceeds, or violation of an SBA loan agreement.
- p.** Failure by the concern to obtain prior SBA approval of any management agreement, joint venture agreement or other agreement relative to the performance of a section 8(a) subcontract or the day-to-day management of the participant. Violation of any requirement of a management, joint venture, or other agreement approved by SBA by either the section 8(a) concern or one of the joint venturers.
- q.** Violation by the concern of a section 8(a) subcontract provision which prohibits contingent fees and gratuities; or failure to disclose to SBA fees paid or to be paid, or costs incurred or committed to third parties, directly or indirectly, in the process of obtaining section 8(a) contracts or subcontracts.
- r.** Submission of false information to SBA on behalf of a section 8(a) business concern by its principals, officers, or agents, or by its employees, where the principal(s) of the section 8(a) concern knows or should have known such submission to be false.
- s.** Failure to report changes that adversely affect the program eligibility of an applicant.
- t.** Debarment, suspension, voluntary exclusion or ineligibility of the concern or its principals.
- u.** Conduct by the concern or any of its principals for any offense indicating a lack of business integrity including but not limited to:
 - i.** Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract there under, or in the performance of such contract or subcontract;
 - ii.** Violation of the Organized Crime Control Act of 1970 (Public Law 91-452; 84 Stat. 922);
 - iii.** Embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business

Participation Agreement

honesty which seriously and directly affects the question of present responsibility as a government contractor;

- iv. Violation of any Federal antitrust statute;
 - v. Commission of any felony not specifically listed above; or
 - vi. Violation of Subsection 16 of the Small Business Act, (15 U.S.C. § 645).
- v. Conviction of a non-disadvantaged owner or officer of the concern for any offense described above in reason “u”, provided that one or more disadvantaged owners or officers of the concern abetted, conspired with or otherwise acquiesced in the owner’s or officer’s commission of the offense.
- w. Willful failure on behalf of an 8(a) business concern to comply with applicable labor standards or obligations.
- x. Violation of any applicable and conditions of the 8(a) Program Participation Agreement.
- y. Willful violation by an 8(a) business concern, or any of its principals, of any rule or regulation of the Administration pertaining to material issues.
- z. Any ground for termination identified in 13 CFR. § 124.303 or any other regulation in 13 C.F.R. Part 124.

4. Discriminatory Prohibitions

I/we give assurance that the concern will comply with Sections 112 and 113 of Title 13 of the Code of Federal Regulations. These code sections prohibit discrimination on the grounds of race, color, sex, religion, marital status, handicap, age or national origin.

5. Access to Records

I/we agree to fully cooperate with any and all requests from authorized government officials (including auditors and investigators from SBA or other agencies) for examination of business records and any other information deemed necessary by such officials for legitimate program purposes. Furthermore, I/we agree to participate in any interviews which may be requested by such authorized government official(s).

6. Business Plan

I/we agree that the business plan submitted by this firm to the SBA will include specific targets, objectives and goals for the business development of the Program Participant (hereinafter referenced as “Development Goals”). These Development Goals must be based upon the industry mean for small businesses in the participant’s primary NAICS code in seven categories: total assets, current ratio, debt/net worth ratio, net worth, net sales, pre-tax profit, sales/working capital ratio, and determined to be satisfactory to SBA. I/we agree that SBA will determine that this firm has substantially achieved these Development Goals when the firm exceeds the industry mean for small businesses in four of these seven categories for two consecutive years. When SBA determines that the participant has substantially achieved its Development Goals, I further agree that SBA will graduate the firm from the 8(a) Business Development Program.

I have read and agree to abide by the 8(a) BD regulations, 13 C.F.R. § 124, which can be found at: <http://www.gpoaccess.gov/cfr/index.html>.

Acceptance of Participation Agreement:

Name of Concern:

Signature of Owner or Authorized Officer of Firm Title Date

Print Name