

Alaska Native Corporations (ANC)

Frequently Asked Questions

What is an Alaska Native Corporation (ANC)?

An 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. 1601, et seq.)

What CFR outlines the requirements for ANCs?

13 CFR 124.109 outlines the initial eligibility requirements for ANCs and Tribes.

An 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.

ANC-owned concerns are subject to the same conditions that apply to tribally-owned concerns, unless specified.

How do you determine an entity is an ANC?

An entity's status as an ANC must be clearly shown in its articles of incorporation.

How does an ANC establish social disadvantage?

An Indian Tribe as defined in 124.3 is considered to be socially disadvantaged. By statute, ANCs are deemed to be socially disadvantaged.

What documents must be submitted for the ANC?

Copies of the Articles of Incorporation and Bylaws, along with all amendments are required.

How does an ANC establish economic disadvantage?

By statute, ANCs are deemed to be economically disadvantaged under 43 U.S.C. 1626(e). The Alaska Native Claims Settlement Act provides that a concern which is majority owned by an ANC shall be deemed to be both owned and controlled by Alaska Natives and an economically disadvantaged business. Alaska Natives and descendants of Natives must own a majority of both the total equity of the ANC and the total voting powers to elect directors of the ANC through their holdings of settlement common stock.

Does the ANC-owned concern need to be organized for profit?

Even though an ANC can be either for profit or non-profit, a small business concern owned and controlled by an ANC must be for profit to be eligible for the 8(a) BD program.

What is the unconditional ownership requirement for an ANC-owned concern?

The Alaska Native Claims Settlement Act provides that a concern which is majority owned by an ANC shall be deemed to be both owned and controlled by Alaska Natives and an economically disadvantaged business. Therefore, an individual responsible for control and management of an ANC owned applicant or Participant need not establish personal social and economic disadvantage.

The concern will be deemed owned and controlled by the ANC where both the majority of stock or other ownership interest and total voting power are held by the ANC and holders of its settlement common stock.

For corporate entities, an ANC must unconditionally own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock. For non-corporate entities, an ANC must unconditionally own at least a 51 percent interest.

Can the ANC-owned concern be owned by a subsidiary of the ANC?

The Small Business Act permits an ANC-owned concern to be owned through a wholly owned holding company of the ANC.

Can the ANC-owned concern be owned by the ANC through multiple levels of subsidiaries?

The Alaska Native Claims Settlement Act supplies the controlling test for ANC ownership. The small business concern indirectly owned by an ANC through multiple levels of subsidiaries of the ANC may qualify for the 8(a) BD program based on ANC ownership.

Are there any ownership restrictions governing an ANC-owned concern?

An ANC may not 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. An ANC may, however, own a Participant or other applicant that conducts or will conduct secondary business in the 8(a) BD program under the NAICS code which is the primary NAICS code of the applicant concern.

The restrictions of §124.105(h) do not apply to ANCs; they do, however, apply to nondisadvantaged individuals or other business concerns that are partial owners of an ANC-owned concern.

How does SBA define “same primary NAICS code” for the purposes of the above paragraph discussing ownership restrictions?

For purposes of the paragraph discussing ownership restrictions, the same primary NAICS code means the six digit NAICS code having the same corresponding size standard.

Are companies recently acquired by an ANC eligible for the 8(a) BD program?

The ANC must unconditionally own at least 51% of the company. SBA will assess whether the acquisition was an arm's length transaction and whether the ANC paid adequate consideration for its ownership interest. The consideration paid should have a reasonable relationship to an objective valuation or appraisal of the company in order to be deemed an arm's length transaction. SBA will review the purchase/sale agreement, terms of the purchase, derivation of the purchase price, etc.

Can an ANC finance the purchase of a company with a promissory note?

Financing the purchase price with a promissory note may be acceptable if payment is triggered by some independent event not controlled by the holder of the note. A demand note would be unacceptable because the holder may be found to have negative control over the ANC. However, a note with repayment terms based on the ANC's share of contract revenues may be acceptable. Payment of some cash consideration is always more desirable than executing a note for 100% of the purchase price.

What are the control and management criteria governing an ANC-owned concern?

The Alaska Native Claims Settlement Act provides that a concern which is majority owned by an ANC shall be deemed to be both owned and controlled by Alaska Natives.

Does SBA deem an individual involved in the management of the daily business operations to have used his or her eligibility?

No, SBA does not deem an individual involved in the management or daily business operations of a tribally-owned concern to have used his or her individual eligibility within the meaning of §124.108(b).

What is the potential for success requirement for an ANC-owned concern?

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

- (i) 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
- (ii) 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

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

Does buy support apply to an ANC-owned concern?

As with other 8(a) applicants, an ANC-owned applicant concern shall not be denied admission into the 8(a) program due solely to a determination that specific contract opportunities are unavailable to assist in the development of the concern unless: a) The Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or b) the purchase of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other program participants providing the same or similar items or services.

Does SBA's good character requirement apply to ANC-owned concerns and its principals?

The ANC-owned concern and its principals must demonstrate good character, as noted in 124.108(a).

Do the Size Regulations apply to an ANC-owned concern?

An ANC-owned applicant concern must qualify as a small business concern as defined for purposes of Federal Government procurement in part 121 of this title. The particular size standard to be applied is based on the primary industry classification of the applicant concern.

An ANC-owned Participant must certify to SBA that it is a small business pursuant to the provisions of part 121 of this title for the purpose of performing each individual contract which it is awarded.

In determining the size of a small business concern owned by an ANC (or a wholly owned business entity of such ANC) for either 8(a) BD program entry or contract award, the firm's size shall be determined independently without regard to its affiliation with the ANC, any entity of the ANC, or any other business enterprise owned by the ANC, unless the Administrator determines that one or more such ANC-owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

Can an ANC-owned concern receive an 8(a) sole source contract that is a follow-on contract to an 8(a) contract performed by another Participant or former Participant?

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 ANC.

Is the ANC-owned concern required to report benefits to the SBA after entry in the 8(a) BD Program?

As part of its annual review submission, each Participant owned by an ANC must submit to SBA information showing how the ANC has provided benefits to native members and/or native member community due to the ANC's participation in the 8(a) BD program through one or more firms. This data includes information relating to funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services provided by the ANC to the affected community.