I May be Eligible, but Am I Ready for the 8(a) Program?

Overview of 8(a) Business Development (BD) Program

What is the 8(a) Business Development Program?

- The Law: Began as a public law – named after Section 8(a) of the Small Business Act 1953 (Public Law 95-507 & 100-656)
  - [http://www.sba.gov/content/small-business-act](http://www.sba.gov/content/small-business-act) – full copy of the Small Business Act
- SBA Regulations: Governed by 13 CFR §124
  - [www.ecfr.gov](http://www.ecfr.gov) – click on “Title 13” and then “Part 124”
- Additional Federal Regulations: Incorporated in the Federal Acquisition Regulations (FAR), under Part 19, Small Business Programs
  - [www.ecfr.gov](http://www.ecfr.gov) – click on “Title 48” and then “Part 19”

What are the objectives of the 8(a) Business Development Program?

- “To promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals…”
- “To promote the competitive viability of such [firms]…”
- “To clarify and expand the program for procurement by the United States…”
- This is what Congress intended

What are the benefits of the 8(a) Business Development Program?

- Obtain management and technical assistance through the 7(j) Management and Technical Assistance Services Program
  - Receive counseling and training in areas: financing, management, accounting, marketing, etc.
  - Identify and develop business opportunities
- May be able to receive sole-source contracts
- Form joint ventures and teams via Mentor-Protégé Program

What are the goals and requirements of the 8(a) Business Development Program?

- Goal: To graduate 8(a) firms that will go on to thrive in a competitive business environment
- Requirements:
  - Maintain a balance between commercial and government business
  - Limit on the total dollar value of sole-source 8(a) contracts
8(a) Program Eligibility

What length of time may a business participate in the 8(a) Business Development Program?

- Year 1-4: Developmental Stage
- Year 5-9: Transitional Stage
- A participant receives a one-time only program term of nine years from the date of the 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 the SBA of any changes that would adversely affect its program eligibility
- The nine-year program term may be shortened only by termination, early graduation or voluntary withdrawal

8(a) Business Development Eligibility Requirements

SBA Regulations – 8(a) BD Eligibility Requirements

- U. S. Citizens: 13 CFR § 124.101
  - Individuals claiming disadvantage not born in the U.S. must provide proof of U.S. citizenship
  - Must submit clear and legible copies of a U.S. passport or Certificate of Naturalization

- Size: 13 CFR § 124.102
  - Firms, including alleged affiliates, must be small based on the applicant firm’s primary NAICS Code
  - Size is determined either by:
    - Average annual receipts, averaged for 3 to 5 years or
    - Number of employees (manufacturers, dealers, wholesalers)
  - If the SBA determines that the applicant may not qualify as small, it may:
    - Deny an application for 8(a) BD program admission
    - Or, return the application to gain additional information
    - Note: the SBA may request a formal size determination during processing

- Social Disadvantage: 13 CFR § 124.103
  - Individuals are presumed to be socially disadvantaged if they are U.S. citizens and members of one of the following groups:
8(a) Program Eligibility
ACVBA Presentation

- **Black American**
- **Hispanic American**
- **Native American** (Alaska Natives, Native Hawaiians, or enrolled members of Federally or State recognized Indian Tribe)
  - If not an enrolled member of a Federally or State recognized Indian Tribe an individual must meet the Preponderance of the Evidence standard.
- **Subcontinent Asian American** (Individuals with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal)
  - Persons *not* members of the presumed groups must establish their individual social disadvantage by a preponderance of the evidence
  - The disadvantage may stem from race, ethnic origin, gender, physical handicap, long-term environmental isolation, or other similar causes
  - The applicant must have personally suffered disadvantage in the United States
  - The disadvantage must be chronic and substantial
  - The discrimination must have negatively impacted business advancement
  - What is preponderance? Generally, preponderance is evidence of a quality and quantity which leads the decision maker to objectively conclude that the existence or truth of the facts asserted is more probable than not
  - Types of evidence for preponderance: SBA will consider any relevant evidence in assessing a claim of social disadvantage. In every case, however, SBA will consider the experiences of the individual, where applicable, in education, employment and business history to see if the totality of the circumstances shows disadvantage in entering or advancing in the business world. Evidence relating to all three areas should be addressed, if applicable, to the individual’s case, and each circumstance should demonstrate how it has affected the individual’s entrance into and advancement in the business world

- **Economic Disadvantage: 13 CFR § 124.104**
  - Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit
  - Individuals who are economically disadvantaged must have:
8(a) Program Eligibility

ACVBA Presentation

- A personal net worth of less than $250,000;
- Total assets that do not exceed $4M; and
- An average three years personal income that does not exceed $250,000

• Ownership: 13 CFR § 124.105
  - Direct Ownership: At least 51% unconditional direct ownership by the disadvantaged individual(s). Ownership through another entity is not direct
  - Examples:
    - Mr. A owns 100% of firm B. Firm B owns 75% of Applicant firm, Mrs. A owns 25% of Applicant firm. Applicant firm would not be eligible for 8(a) participation
    - Mr. A owns 100% of Revocable Trust and is the grantor, trustee, and sole current beneficiary. Revocable Trust owns Applicant Firm. Applicant Firm may be eligible
  - Partnerships: Agreements must reflect unconditional ownership. Each class of interest must be at least 51% owned by disadvantaged individual(s)
  - Limited Liability Company: Disadvantaged individuals must own at least 51% of each class of member interest
  - The SBA will look at the:
    - Partnership agreement or operating agreement (if LLC)
    - IRS 1040 Schedule E, if applicable
    - Firm's tax returns

• Control and Management: 13 CFR § 124.106
  - A disadvantaged individual must
    - Hold the position of President or Chief Executive Officer, Managing/ General Partner, or LLC Managing Member;
    - Be physically located in the U.S.;
    - Be the highest compensated individual;
    - Can Hire and Fire;
    - Set Policies;
    - Can commit firm to contracts;
    - Can control Budget and Financial Disbursement

• Potential for Success: 13 CFR § 124.107
  - Factors considered:
8(a) Program Eligibility

ACVBA Presentation

- Proof of two years operation in the firm’s primary industry as verified by revenues reported in business tax returns, **NOT** the applicant’s anniversary date
- Financial capability: Sufficient capitalization, financial performance, bonding capacity, manageable debts
- Managerial and Technical capability: Performance on previous contracts, firm has the necessary personnel, licenses, certifications, facilities, prior experience
- Management capability: Education, experience and training of CEO and other managers, magnitude and complexity of past/current jobs, management systems
- Qualifications for ability to perform on Federal contracts: relevant contracting experience, ability to meet Federal procurement policies
  - Waiver of the two-year rule: The two-year waiver requirements are not applicable to firms in the 8(a) Business Development Program
  - The SBA may waive the two-year rule if:
    - The *individual or individuals upon whom eligibility is based* have substantial and demonstrated business management experience
    - The *applicant firm* has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success if admitted to the 8(a) BD Program
    - The *applicant firm* has adequate capital to carry out its business plan as a Participant
    - The *applicant firm* has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category;
    - The *applicant firm* has, or can demonstrate its ability to timely obtain the personnel, facilities, equipment, and any other requirements needed to perform such contracts as a Participant

- **Ineligible Business & Individual Disqualification**
  - Ineligible businesses: Brokers; debarred or suspended persons or concerns; nonprofit organizations. Franchises may be allowed contingent upon SBA’s review of the franchise agreement
    - A broker is a concern that adds no material value to an item being supplied to procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities
  - A business may participate only once. Even if ownership and control has completely changed, firm may not re-apply
  - Any person who has used his/her disadvantaged status to qualify another firm shall be regarded as non-disadvantaged
• Good Character, One-Time eligibility, Federal Financial Obligations: 13 CFR § 124.108
  o What indicates lack of good character?
    ▪ Adverse information regarding possible criminal conduct by the applicant or its principals
    ▪ Violations of any SBA regulations
    ▪ Debarred or suspended individuals or firms
    ▪ Applicant firms and principals that lack business integrity as shown by an indictment, guilty plea, or civil judgment
    ▪ Any principal who is incarcerated or on parole or probation
    ▪ Evidence that the firm knowingly submitted false information during the application process
    ▪ Any firm or any of its principals that fail to pay financial obligations to the Federal Government

Questions?

Email: 8aquestions@sba.gov

Local contact: SBA District Offices

www.sba.gov/tools/local-assistance/districtoffices@sba.gov