Bristol Bay Native Corporation

# INTRODUCTION TO SBA 8(A) PROGRAM & NATIVE 8(A) PROGRAM

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# 8(A) PROGRAM BASICS

- 1 Purpose
- 2. Benefits
- 3. Eligibility
- 4. Program Term
- 5. Application

8(a) refers to Section 8(a) of the Small Business Administration Act.

# PURPOSE

The 8(a) Program is a business development program—its Purpose is to assist eligible disadvantaged small businesses compete in the American economy through business development.


Available to small businesses owned by socially and economically disadvantaged individuals as well as Tribes, Alaska Native Corporations (ANCs) and Native Hawaiian Organizations (NHOs)

# BENEFITS

Federal acquisition (purchasing) policies encourage federal agencies to award a certain percentage of their contracts to small business including 8(a) firms


***Update***: SBA announced in July 2022 that Federal Contracting awarded 27.2% to SBCs ($154.2 Billion)
SDB reached 11%
SDVOSB reached 4.%


Federal Government’s goal is to award at least 5% of Prime Contracts to small disadvantaged business which include 8(a) program participants.

The government issues billions of dollars of awards annually to 8(a) participants through sole-source awards and set asides

# ELIGIBILITY

In general, a business must be small under its primary NAICS code, and be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character.

There are separate requirements for businesses owned by Indian Tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), and Community Development Corporations (CDCs)

8(a) Program participation is a one-time program. If your business has previously participated in the 8(a) Program, or if you’re a disadvantaged individual that has already participated, the SBA will not allow you to participate again—although Tribes, ANCs, NHOs and CDCs have some different rules.

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# PROGRAM TERM

A business concern may participate in the SBA 8(a) Program for no more than 9 years. But this term can be shortened by the participant or the SBA—if, for example, the concern is successful enough to graduate from the Program (sized out) or fails to maintain its eligibility. SBA can initiate this or the concern can (a strategic consideration). The term cannot be lengthened.


# APPLICATION

Applications must be submitted electronically to the SBA at certify.sba.gov and must include any supporting information requested by the SBA (like corporate organization documents and personal and business tax returns).

# NATIVE 8(A) PROGRAM

# WHAT IS THE NATIVE 8(A) PROGRAM

The Native 8(a) contracting program in the Small Business Administration, permits enterprises owned by Federally Recognized Tribes, Alaska Native Corporations, and Native Hawaiian Organizations to be certified under Section 8(a) of the SB Act to participate in the SBA 8(a) Business Development Program as a path toward economic success and self-sufficiency.

In 1982, the SB Act was amended to permit Tribal enterprises to enter into a negotiated sole-source contract beyond traditional program limits. As community-owned Native organizations, Alaska Native Corporations were included in the Program in 1988 and Native Hawaiian Organizations followed in 2002

# SPECIAL SBA RULES FOR TRIBALLY OWNED CONCERNS

- SBA’s regulations define “Tribe” broadly to include Alaska Native Corporations.
- There are a few important areas where the SBA Rules for Tribes, ANCs and NHOs differ.
- ANCs can own more than one subsidiary at a time in the 8(a) program (subject to limitations)
- ANCs can receive sole-source contracts of any value however contracts over $25M require additional J&A under FAR Part 6
- ANCs can have “common management” of their 8(a) subsidiaries
- ANCs can engage in shared services arrangements (subject to limitations) to support their 8(a) and small businesses

# SOCIAL DISADVANTAGE

Individuals in the following groups are “presumed” to be socially disadvantaged:

Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans

Tribes, ANCs, NHOs, and CDCs are presumed to be socially disadvantaged

An individual is presumed socially disadvantaged if holds himself or herself out as a member of a presumed group and is currently identified by others as a member of the presumed group

# SPECIAL SBA RULES FOR TRIBALLY OWNED CONCERNS CONTINUED…

- ANC-owned firms are deemed by law to be “socially” and “economically” disadvantaged (Other participants have to prove these elements e.g., Tribes must prove economic disadvantage) *13 CFR § 124.109 (b)*

- Similarly, any subsidiary, joint venture, partnership of an ANC where ANC has majority voting power – will be considered to be a “minority and economically disadvantaged business enterprise.

# MUST BE A SMALL BUSINESS IN PRIMARY INDUSTRY (NAICS)

- SBA has Size standards for hundreds of industries defined by NAICS Codes.
- Services are based on 5-year average revenues. Manufacturing – average employees over 24-month period.
- All revenue receipts count for size not just Primary NAICS revenue
- All Prime and subcontracted work/receipts count. JVs slightly different
- Size is defined by size standards associated with each NAICS code.
- Each Government Contract RFP is assigned a NAICS code.
- Size is relevant for 8(a) program eligibility

# AFFILIATION

- General Rule: SBA applies the concept of "affiliation" when 2 or more entitles are subject to common control and aggregates their size for small business eligibility purposes 13 CFR 121.103

- SBA will find common control (and affiliation) where there is common ownership common management, an extensive contractual relationship, economic dependence, an "identity of interest" as well as other circumstances

- ANCs (and Tribes) have exemptions from "affiliation" *in certain circumstances.* Subsidiaries of ANCs are exempt from general affiliation between their parent and other sister subsidiaries and holding companies. Generally interpreted very broadly.

- Affiliation can be found for other reasons

# ELIGIBILITY – POTENTIAL FOR SUCCESS

- General: 8(a) applicant (not the parent) must have been in business for two (2) years and have proof of operations (financials, tax returns, contracts
- Can request a 2-year waiver
- 8(a)'s have one-time eligibility – assets of a current or previous 8(a) participant may not be used in some cases.


- **<u>TRIBES/ANCs</u>**
- In business at least 2 years
- Manager/GM controlling daily business operations has substantial technical and management experience and successful performance in Primary NAICS
- Parent commitment to support operations and financial ability to do so.

# CERTIFY.SBA.GOV

Entity Owned Firms (Tribes, ANCs, NHOs and CDCs have their own special applications and processes.

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- Smartsheet templates
- 8(a) application process is constantly changing and we evolve our processes as quickly as those changes roll out

# ANC PARTICIPATION RULES

- May own multiple 8(a)’s so long as each is separate, small and in a different NAICS from any other sister subsidiary
- NAICS may change during life/term of entity in 8(a) program
- Separate status but may collaborate
- Tribes must own a majority of the participant (51% or more)
- Tribes limited to one 8(a) in a given NAICS code (includes cooling off)
- Individuals responsible for management and daily operations of tribally owned concern cannot manage more than two 8(a) program participants at the same time
- Once an 8(a) participant graduates, there is a 2-year waiting period before another 8(a) applicant may use the same primary NAICS

# COMPLIANCE: MAINTAINING 8(A) PROGRAM PARTICIPATION ELIGIBILITY

- Continue to meet all eligibility criteria

- Inform SBA of any changes in circumstances

- Make annual submissions supporting continued eligibility. SBA Annual Update includes SBA Benefits Report. Eligibility Reviews

- Maintain a balance between commercial and government business

- Limit on the total dollar value of sole-source contracts that may be received while in Program

# IMPACT OF THE 8(A) PROGRAM FOR TRIBE/ANC/NHO COMMUNITIES?

- The Native 8(a) Program is a hand up, not a hand out. This non-appropriated opportunity fulfills the Federal government’s unique obligations to Native Americans by enabling profits to be returned to the Native communities they serve.
- Economic development is difficult, if not impossible in many Native communities due to the location and the difficulties in building viable businesses on a reservation, rural Alaska Native village, or Hawaiian Homeland.
- Unemployment and Poverty

# IMPACT OF THE 8(A) PROGRAM FOR TRIBE/ANC/NHO COMMUNITIES CONTINUED

- Participation in Federal contracting allows Native Enterprises to develop successful businesses within or outside their Native community.
- Native enterprises receive less than 1.5% of total U.S. procurement (an approximately $500 billion industry), this small market share creates employment and educational opportunities to Native community members, housing for elders and other Tribal members, preservation of Native culture and language, funding for governmental services such as police officers, court systems, health care facilities, and scholarships

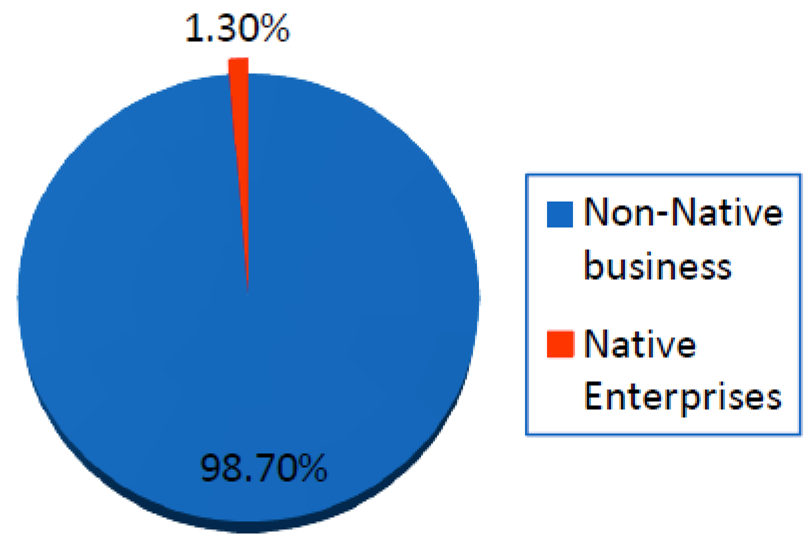


Diagram courtesy Native American Contractors Association (NACA)

# GOVERNMENT VALUE AND QUALITY SERVICE

Participants in the Native 8(a) program -- Tribes, Native Hawaiian Organizations and Alaska Native Corporations deliver value and top-quality services to the Federal Government

### NATIVE 8(A) BUSINESSES BRINGS CHOICE AND COMPETITION TO THE CONTRACTING PROCESS

Federal contracting is a highly concentrated market dominated by a handful of large companies. Despite the successes of a handful of Native 8(a) companies, many Tribes, Alaska Native Corporations, and Native Hawaiian Organizations are still struggling to break into the Federal procurement market.

*QUESTIONS?*

*THANK YOU*

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