

What Are Tribal 8(a)s?

To be classified as a Tribal 8(a) business, 51% or more Native American or Native Alaskan tribal owned businesses submit evidence of federal or state recognition of the tribe.

The [GAO recently studied](#) the Small Business Administration's (SBA) verification process, which is simply a multi-level eligibility review. If a business is owned by a person who claims to be a member of a tribe, the SBA will crosscheck the name of the tribe on that individual's tribal card against the federal Bureau of Indian Affairs' [list of federally recognized tribes](#). If listed, the SBA accepts the tribe's eligibility. If not listed, the SBA will crosscheck the name of the tribe with the state's list where the tribe or person is domiciled. A single recognized tribe can have multiple 8(a) businesses — each business must sell different products or services from the other businesses.

What Special Treatment Do Tribal 8(a)s Receive?

Tribal 8(a)s are presumed to be socially disadvantaged, a requirement to participate in the 8(a) program. The requirements to establish economic disadvantage — another requirement of the 8(a) program — are more lax; it can be done by presenting data related to the tribal unemployment rate, the number of tribal members, the per capita income of tribal members, and other similar data. See [13 C.F.R. 124.109\(b\)\(2\)](#). Tribal 8(a)s are also subject to the nine-year limitation on participation in the program; however, the tribe itself may own several different companies that participate in the 8(a) program.

Like other 8(a) companies, Tribal 8(a)s receive special opportunities in the form of set-aside contracts and sole source procurements. Unlike other 8(a) companies, Tribal 8(a)s can receive sole source procurements up to \$22 million for Tribal 8(a) program participants. See [13 C.F.R. 124.506](#).

How Tribal 8(a)s Can Impact a Non-8(a) Business

Companies can team with Tribal 8(a)s in teaming agreements, can enter into Mentor-Protégé agreements or Joint Venture arrangements with Tribal 8(a)s. Through these arrangements, non-Tribal 8(a)s can offer their business' expertise in program management and prime contracting support to relatively new tribal-owned 8(a) businesses. Tribal 8(a)s also seek out contractors who can offset any past performance concerns — such as a lack of past performance due to the novelty of the business or questionable past performance — that may weigh against the Tribal 8(a) in a proposal evaluation.

When searching for a way to award a sole source procurement above the general 8(a) thresholds, federal agencies are more likely to award the contract to Tribal 8(a)s because of the higher exemption amounts. Additionally, the presumption that a Tribal 8(a) is socially disadvantaged removes a potential bid protest ground that the business is not eligible for the program on that basis.

In short, creating an arrangement with a Tribal 8(a) can offer more contract opportunities for non-Tribal 8(a)s while providing a partner who can own multiple, separate 8(a) businesses. The expectation that there will be \$144 million in additional opportunities for Tribal 8(a) businesses only enhances the probability of success in these arrangements.

§ 124.109 Do [Indian tribes](#) and [Alaska Native Corporations](#) have any special rules for applying to and remaining eligible for the 8(a) BD program? [\(See Click Links #8 for additional information\)](#)

(a) *Special rules for ANCs.* Small business [concerns](#) owned and controlled by ANCs are eligible for participation in the 8(a) program and must meet the eligibility criteria set forth in [§ 124.112](#) to the extent the criteria are not inconsistent with this section. ANC-owned [concerns](#) are subject to the same conditions that apply to tribally-owned [concerns](#), as

described in paragraphs (b) and (c) of this section, except that the following provisions and exceptions apply only to ANC-owned **concerns**:

- (1) **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. Settlement common stock means stock of an ANC issued pursuant to 43 U.S.C. 1606(g)(1), which is subject to the rights and restrictions listed in 43 U.S.C. 1606(h)(1).
 - (2) An ANC that meets the requirements set forth in paragraph (a)(1) of this section is deemed economically disadvantaged under 43 U.S.C. 1626(e), and need not establish economic disadvantage as required by paragraph (b)(2) of this section.
 - (3) 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) program. 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.
 - (4) 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.
 - (5) Paragraphs (b)(3)(i), (ii) and (iv) of this section are not applicable to an ANC, provided its status as an ANC is clearly shown in its articles of incorporation.
 - (6) Paragraph (c)(1) of this section is not applicable to an ANC-owned **concern** to the extent it requires an express waiver of sovereign immunity or a “sue and be sued” clause.
 - (7) Notwithstanding § 124.105(i), where an ANC merely reorganizes its ownership of a **Participant** in the 8(a) BD program by inserting or removing a wholly-owned business entity between the ANC and the **Participant**, the **Participant** need not request a **change of ownership** from SBA. The **Participant** must, however, notify SBA of the change within 60 **days** of the transfer.
- (b) Tribal eligibility.** In order to qualify a **concern** which it owns and controls for participation in the 8(a) BD program, an **Indian Tribe** must establish its own economic disadvantaged status under paragraph (b)(2) of this section. Once an **Indian Tribe** establishes that it is economically disadvantaged in connection with the application for one Tribally-owned firm, it need not reestablish such status in order to have other businesses that it owns certified for 8(a) BD program participation, unless specifically requested to do so by the AA/BD. An **Indian Tribe** may request to meet with SBA prior to submitting an application for 8(a) BD participation for its first applicant firm to better understand what SBA requires for it to establish economic disadvantage. Each **Tribally-owned concern** seeking to be certified for 8(a) BD participation must comply with the provisions of paragraph (c) of this section.

(1) Social disadvantage. An **Indian tribe** as defined in § 124.3 is considered to be socially disadvantaged.

(2) Economic disadvantage. In order to be eligible to participate in the 8(a) BD program, the **Indian tribe** must demonstrate to SBA that the tribe itself is economically disadvantaged. This must involve the consideration of available data showing the tribe's economic condition, including but not limited to, the following information:

- (i) The number of tribal members.
- (ii) The present tribal unemployment rate.
- (iii) The per capita income of tribal members, excluding judgment awards.
- (iv) The percentage of the local Indian population below the poverty level.
- (v) The tribe's access to capital.

(vi) The tribal assets as disclosed in a current tribal financial statement. The statement must list all assets including those which are encumbered or held in trust, but the status of those encumbered or in trust must be clearly delineated.

(vii) A list of all wholly or partially owned tribal enterprises or affiliates and the [primary industry classification](#) of each. The list must also specify the members of the tribe who manage or control such enterprises by serving as officers or directors.

(3) Forms and documents required to be submitted. Except as otherwise provided in this section, the [Indian tribe](#) generally must submit the forms and documents required of 8(a) BD applicants as well as the following material:

(i) A copy of all governing documents such as the tribe's constitution or business charter.

(ii) Evidence of its recognition as a tribe eligible for the special programs and services provided by the United States or by its state of residence.

(iii) Copies of its articles of incorporation and bylaws as filed with the organizing or chartering authority, or similar documents needed to establish and govern a non-corporate legal entity.

(iv) Documents or materials needed to show the tribe's economically disadvantaged status as described in [paragraph \(b\)\(2\)](#) of this section.

(c) Business eligibility. In order to be eligible to participate in the 8(a) BD program, a [concern](#) which is owned by an eligible [Indian tribe](#) (or wholly owned business entities of such tribe) must meet the conditions set forth in paragraphs (c)(1) through (c)(7) of this section.

(1) Legal business entity organized for profit and susceptible to suit. The applicant or participating [concern](#) must be a separate and distinct legal entity organized or chartered by the tribe, or Federal or state authorities. Where an applicant or participating [concern](#) is owned by a federally recognized tribe, the [concern's](#) articles of incorporation, partnership agreement, limited liability company articles of organization, or other similar incorporating documents for tribally incorporated applicants must contain express sovereign immunity waiver language, or a "sue and be sued" clause which designates United States Federal Courts to be among the courts of competent jurisdiction for all matters relating to SBA's programs including, but not limited to, 8(a) BD program participation, loans, and [contract](#) performance. Also, the [concern](#) must be organized for profit, and the tribe must possess economic development powers in the tribe's governing documents.

(2) Size.

(i) A tribally-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](#).

(ii) A tribally-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.

(iii) In determining the size of a small business [concern](#) owned by a socially and economically disadvantaged [Indian tribe](#) (or a wholly owned business entity of such tribe) 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 tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally-owned business [concerns](#) have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(iv) In determining whether a [tribally-owned concern](#) has obtained, or is likely to obtain, a substantial unfair competitive advantage within an industry category, SBA will examine the firm's participation in the relevant six digit [NAICS code](#) nationally as compared to the overall small business share of that industry.

(A) SBA will consider the firm's percentage share of the national market and other relevant factors to determine whether the firm is dominant in a specific six-digit NAICS code with a particular size standard.

(B) SBA does not contemplate a finding of affiliation where a tribally-owned concern appears to have obtained an unfair competitive advantage in a local market, but remains competitive, but not dominant, on a national basis.

(3) Ownership.

(i) For corporate entities, a Tribe 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, a Tribe must unconditionally own at least a 51 percent interest.

(ii) A Tribe 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. For purposes of this paragraph, the same primary NAICS code means the six-digit NAICS code having the same corresponding size standard. A Tribe 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.

(A) 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 Tribe. However, a tribally-owned concern may receive a follow-on sole source 8(a) contract to a requirement that it performed through the 8(a) program (either as a competitive or sole source contract).

(B) If the primary NAICS code of a tribally-owned Participant is changed pursuant to § 124.112(e), the tribe can submit an application and qualify another firm owned by the tribe for participation in the 8(a) BD program under the NAICS code that was the previous primary NAICS code of the Participant whose primary NAICS code was changed.

EXAMPLE 1 TO PARAGRAPH (C)(3)(II)(B).

Tribe X owns 100% of 8(a) Participant A. A entered the 8(a) BD program with a primary NAICS code of 236115, New Single-Family Housing Construction (except For-Sale Builders). After four years in the program, SBA noticed that the vast majority of A's revenues were in NAICS Code 237310, Highway, Street, and Bridge Construction, and notified A that SBA intended to change its primary NAICS code pursuant to § 124.112(e). A agreed to change its primary NAICS Code to 237310. Once the change is finalized, Tribe X can immediately submit a new application to qualify another firm that it owns for participation in the 8(a) BD program with a primary NAICS Code of 236115.

(iii) The restrictions of § 124.105(h) do not apply to tribes; they do, however, apply to non disadvantaged individuals or other business concerns that are partial owners of a tribally-owned concern.

(iv) Notwithstanding § 124.105(i), where a Tribe merely reorganizes its ownership of a Participant in the 8(a) BD program by inserting or removing a wholly-owned business entity between the Tribe and the Participant, the Participant need not request a change of ownership from SBA. The Participant must, however, notify SBA of the change within 30 days of the transfer.

(4) Control and management.

(i) The management and daily business operations of a Tribally-owned concern must be controlled by the Tribe. The Tribally-owned concern may be controlled by the Tribe through one or more individuals who possess sufficient management experience of an extent and complexity needed to run the concern, or through management as follows:

(A) Management may be provided by committees, teams, or Boards of Directors which are controlled by one or more members of an economically disadvantaged tribe, or

(B) Management may be provided by non-Tribal members if the [concern](#) can demonstrate that the Tribe can hire and fire those individuals, that it will retain control of all management decisions common to boards of directors, including strategic planning, budget approval, and the employment and compensation of officers, and that a written management development plan exists which shows how Tribal members will develop managerial skills sufficient to manage the [concern](#) or similar [Tribally-owned concerns](#) in the future.

(ii) Members of the management team, business committee members, officers, and directors are precluded from engaging in any outside employment or other business interests which conflict with the management of the [concern](#) or prevent the [concern](#) from achieving the objectives set forth in its business development plan. This is not intended to preclude participation in tribal or other activities which do not interfere with such individual's responsibilities in the operation of the applicant [concern](#).

(iii) The individuals responsible for the management and daily operations of a [tribally-owned concern](#) cannot manage more than two Program [Participants](#) at the same time.

(A) An individual's officer position, membership on the board of directors or position as a tribal leader does not necessarily imply that the individual is responsible for the management and daily operations of a given [concern](#). SBA looks beyond these corporate formalities and examines the totality of the information submitted by the applicant to determine which individual(s) manage the actual [day-to-day operations](#) of the applicant [concern](#).

(B) Officers, board members, and/or tribal leaders may control a holding company overseeing several tribally-owned or ANC-owned companies, provided they do not actually control the day-to-day management of more than two current 8(a) BD Program [Participant](#) firms.

(C) Because an individual may be responsible for the management and daily business operations of two tribally-owned concerns, the full-time devotion requirement does not apply to tribally-owned applicants and Participants.

(5) Individual eligibility limitation. 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).

(6) Potential for success. A Tribally-owned applicant [concern](#) must possess reasonable prospects for success in competing in the private sector if admitted to the 8(a) BD program. A Tribally-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) or financial statements (either audited, reviewed or in-house as set-forth in § 124.602) for each of the two previous tax years showing operating revenues in the primary industry in which the applicant seeks 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 Tribe, a tribally-owned economic development corporation, or other relevant tribally-owned holding company vested with the authority to oversee tribal economic development or business ventures has made a firm written commitment to support the operations of the applicant [concern](#) and it has the financial ability to do so.

(7) Other eligibility criteria.

(i) As with other 8(a) applicants, a tribally-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 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.

(ii) The officers, directors, and all shareholders owning an interest of 20% or more (other than the tribe itself) of a tribally-owned applicant or **Participant** must demonstrate good character (*see* § 124.108(a)) and cannot fail to pay significant Federal obligations owed to the Federal Government (*see* § 124.108(e)).

[63 FR 35739, June 30, 1998, as amended at 74 FR 45753, Sept. 4, 2009; 76 FR 8255, Feb. 11, 2011; 81 FR 48580, July 25, 2016; 85 FR 66184, Oct. 16, 2020; 88 FR 26204, Apr. 27, 2023]

8-a Native American Diversification Click Links:

- 1.) BIA, US Department of Interior and Governmental Agencies Impacting Native American Projects:

<https://www.bia.gov/programs-services>

- 2.) Article: Tribal Executive Share Successful Diversification Strategies.

<https://www.minneapolisfed.org/article/2021/tribal-enterprise-executives-share-successful-diversification-strategies>

- 3.) Article: Top Native American Investment Professionals.

<https://www.investopedia.com/top-native-american-investment-professionals-6746277>

- 4.) Article: 7 Native American Entrepreneurs you should know.

<https://www.investopedia.com/7-native-american-entrepreneurs-you-should-know-5205052>

- 5.) AS-IA: (Please note, Director, Bryan Newland is from Michigan!)

<https://www.bia.gov/as-ia>

- 6.) Branch of Tribal Climate Resistance: This is perfect for Hydroponic Farms, Solar & Wind Farms....

<https://www.bia.gov/bia/ots/tcr>

- 7.) Where to go for Hydroponic Grants (and if they don't have them we will hire a great grant writer in Florida!)

<https://www.usda.gov/topics/urban/grants>

- 8.) Do Indian tribes and Alaska Native Corporations have any special rules for applying to and remaining eligible for the 8(a) BD program? 13CFR 124.109-

<https://www.law.cornell.edu/cfr/text/13/124.109>

9.) We have great grant writers Take Two: <https://www.take2services.com/>

STEPHANIE ARCELLA

Co-founder and lead fundraising counsel of TakeTwo Services, Stephanie is a MSW and a seasoned fundraiser—a unique professional combo. This gives her a deep understanding and knowledge of nonprofit work combined with twenty solid years of experience in successfully building and strengthening funding bases. Her expertise ranges from strategies to help small organizations grow their budgets beyond \$500,000 to working on teams charged with raising \$25 million for national and international organizations. She has done it all—grants management, online giving, event planning, and major gifts programs and campaigns.

10.)

Totals / Average

8(a) Average Sales this Industry				GSA Schedule Sales for a firm with an 8(a) in this Industry			Synergy (Generally adding an 8(a) to a GSA Creates More Sales than from the GSA Schedule Alone)			Synergy Ratio
8(a) Industry Grouping	Total 8(a) Federal Sales	Number of 8(a) Firms	Average 8(a) Sales	GSA Schedule Only Sales 8(a) Firms	Number of 8(a) Firms w/ GSA Schedule	Average 8(a) Sales Directly from the GSA Schedule System	Total Federal Sales 8(a) GSA Contract Holders	Number of 8(a) Firms w/ GSA Schedule	Average Total 8(a) Federal Sales for firms with a GSA Schedule	GSA Schedule Sales Advantage
Totals / Average	27,490,719,468	5739	4,790,342	2,401,228,158	1492	1,609,899	17,694,435,193	1492	11,863,199	2.5

Entity-owned firms (firms owned by Indian tribes, Alaska Native Corporations, or Native Hawaiian Organizations)

- The updated application process does not apply to entity-owned firms, such as firms owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations or Community Development Corporations. These firms will **not need** to submit narratives to apply for the 8(a) program.
- The Court's decision does not impact entity-owned firms, such as firms owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations. These firms will **not need** to submit social disadvantage narratives.
- All current entity-owned 8(a) participants received a direct communication from SBA on or about Monday, August 21, 2023 clarifying that the participant may proceed with federal contract awards. SBA posted the Social Disadvantage Qualification letter to the participant's documents in the Certify system. This letter affirms continued participation in the 8(a) program.
- Current 8(a) participants should continue to submit their annual review and continuing eligibility materials to SBA.