

## **SBA Regulations: Technical Summary of Selected Reforms**

### **Increased Transparency and Oversight of Native 8(a) Program**

#### **Limits on Sole Source Work** (*13 C.F.R. § 124.109(c)(3)(ii)*)

- Prohibits Tribes and ANCs from receiving a sole source 8(a) contract immediately after another 8(a) subsidiary of the same Tribe/ANC/NHO held the contract.

#### **Requirements to Remain Small** (*13 C.F.R. §§ 124.102(a)(2) and 124.302(c)*)

- Limits all 8(a) firms, including Native 8(a) firms, from exceeding the size of a small business during its participation in the 8(a) program.

#### **Excessive Withdrawals Limitation** (*13 C.F.R. § 124.112(d)*)

- Prohibits Native 8(a) firms from “excessive withdrawals” that are deemed not to benefit the Tribe, ANC, NHO, or Native community. This includes non-disadvantaged executive compensation that exceeds specific withdrawal thresholds.

#### **Restrictions on Fees for Agents or Representatives of 8(a) Firms** (*13 C.F.R. § 124.4*)

- Restricts agents or representatives of 8(a) firms from receiving unreasonable compensation for services performed, such as assisting in obtaining 8(a) certification or 8(a) contracts.

#### **Benefits to Shareholders Must be Reported Annually** (*13 C.F.R. § 124.604*)

- Requires Tribes, ANCs, and NHOs to report benefits provided to their Native communities from 8(a) profits. Examples of benefits include funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services to the community.
- Implementation has been delayed until September 9, 2011, giving Native communities six months to consult with SBA on how to best apply this rule.

#### **Proving Economic Disadvantage For NHO Firms and Limitations on Ability to Participate** (*13 C.F.R. § 124.110(c)(1)*)

- Establishes economic disadvantage criteria for NHO-owned firms that are more stringent than the economic disadvantage requirements for other Native 8(a) firms. This significantly affects NHOs’ ability to participate in the 8(a) Program.

#### **Native Hawaiian Community Benefits Reporting when Applying to the 8(a) Program** (*13 C.F.R. § 124.110(c)(2)*)

- Requires NHO 8(a) applicants to describe any activities they have done to benefit Native Hawaiians, identify benefits Native Hawaiians will receive, and write plans to show how profits earned by the NHO will principally benefit Native Hawaiians.

#### **Limitations on Joint Ventures** (*13 C.F.R. §§ 124.513(d)(1) and (2)(i)*)

- Requires 8(a) partners to perform more work (at least 40%) for unpopulated joint venture partnerships (i.e. a joint venture populated only with administrative personnel).
- Also requires 8(a) partners to demonstrate how they will benefit in their populated joint venture before being approved by the SBA.

**Demonstrating 8(a) Control of the Joint Venture (13 C.F.R. § 124.513(c)(2))**

- Requires the 8(a) partner of an unpopulated joint venture to designate one of its own employees as project manager in order to demonstrate control, thus clarifying past rules.
- Also requires the 8(a) partner of a populated joint venture to “demonstrate” how performance of the contract is controlled by the 8(a) managing venture partner.

**Demonstrating Performance of Work Requirements Are Met (13 C.F.R. § 124.513(i)(1) and (2))**

- Adds an additional reporting requirement for 8(a) firms to fully explain how they met their performance of work requirements in 8(a) contracts. This allows SBA to more closely monitor the work completed by 8(a) firms in their joint venture work.

**Administrative Requirements for Native 8(a) Firms**

**Audit Requirements (13 C.F.R. § 124.602)**

- Requires Native 8(a) firms or their parent companies, with gross annual receipts of \$10 million or more, to submit audited financial statements annually to the SBA.

**Native Management of Tribal 8(a) Firms (13 C.F.R. § 124.109(c)(4))**

- Provides Tribal 8(a) firms the flexibility to choose qualified Native Americans as managers regardless of whether those managers are members of the specific Tribe applying for the program.

**Potential for Success Requirement (13 C.F.R. §§ 124.109(c)(6) and 124.110(g)(3))**

- Eases Native 8(a) applicants’ ability to qualify for the 8(a) Program by allowing a Native-owned 8(a) applicant to demonstrate its potential for success where the ANC/Tribe/NHO has made a firm written commitment to support the operations of the 8(a) applicant and has the financial ability to do so.

**Determination of Whether A Tribe Is Economically Disadvantaged (13 C.F.R. § 124.109(b))**

- Clarifies that a Tribe is not required to demonstrate its economic disadvantage as part of every tribal 8(a) application, thus ensuring that Tribes will not be subject to a burdensome process.

**Prohibition Against Subcontracting to Non-8(a) Joint Venture Partners in Populated Joint Ventures (13 C.F.R. § 124.513(d)(2)(ii))**

- Prohibits all non-8(a) populated joint venture partners from acting as a subcontractor to the joint venture itself, thus allowing for flexibility as to how joint ventures are structured and also striking a balance between helping the business development needs of the 8(a) firm and providing enough incentive for the non-8(a) partner to participate.

**Consequences for Mentors Failing to Provide Assistance (13 C.F.R. § 124.520(h))**

- Seeks to ensure accountability by providing severe consequences for a mentor that fails to provide the agreed-upon assistance to its protégé, including termination of the mentor protégé relationship or even government-wide suspension and debarment.

**Mentor Protégé Joint Venture Flexibility for Federal Subcontracts (13 C.F.R. § 124.520(d)(1))**

- Enables all mentor protégé joint ventures to increase business by allowing the joint ventures to be small for federal subcontracts, instead of only federal prime contracts.