



by Kip Ritchie

## Government Contracting: Tribal Consultation on Proposed Regulations

The Forest County Potawatomi dug our way out of poverty through our casino business. It was critical to our tribe's survival and success. As we have grown in gaming we recognize that diversifying our business is vital to the future of our tribal economy. A diversified business provides more opportunity for growth and ultimately more long-term stability in the event Indian gaming becomes threatened or goes away entirely.

We have recently turned to acquiring businesses that are active in federal government contracting and the Small Business Administration (SBA) 8(a) program, a tool used by several tribes, Alaska Native Corporations (ANCs) and Native Hawaiian Organizations (NHOs) to access government contracts. Some have already reaped success through this program.

Congressional scrutiny of Native 8(a)s has been intense since 2004, including congressional hearings, reports, and numerous attempts at sweeping legislative reforms. In 2009 alone the Native American Contractors Association (NACA), working jointly with organizations like NCAI, has fought off half-a-dozen amendments slipped into must pass legislation. All of the amendments were aimed at severely limiting – and some, for all intents and purposes, would have killed – tribal, ANC, and Native Hawaiian participation in the 8(a) program.

While staving off repeated attacks on Capitol Hill we also face regulatory reforms through the SBA. In October 2009, the SBA published a series of proposed reforms to the 8(a) program. These regulatory reforms have been under development for several years and are broad in scope. Most address issues with individually-owned 8(a) businesses, while others address concerns with Native 8(a)s. The proposed regulations specific to Native 8(a)s address several issues – too many to discuss here.

However, some of the most interesting changes include amending how the SBA determines whether a tribe is economically disadvantaged. Another would limit the type of work that an ANC and tribal 8(a) could perform in the 8(a) program to ensure multiple 8(a) companies owned by the same ANC/tribe would not be operating in the same line of business.

The SBA proposed regulations would permit any tribal member to participate in the management of a tribal 8(a) without having to prove economic disadvantage. Further the change would eliminate the requirement that directors and officers must submit copies of their individual tax returns

to establish their economic disadvantage. The SBA is also proposing to permit members of any tribe to serve as managers of a tribally-owned 8(a), rather than requiring managers to be members of the tribe that owns the 8(a).

The SBA would like to require ANCs, tribes, and NHOs to report annually to the SBA on benefits provided to tribal members and Native communities as proof that benefits are in fact reaching tribal members.

The SBA is also proposing the removal of a restriction currently imposed on Native Hawaiian Organizations only, which limits the amount of 8(a) contract dollars that they may receive on a sole source basis.

The SBA has been very good to work with over the years. In 2007 the SBA held a series of tribal consultations to hear concerns and recommendations on potential regulatory changes. NACA, NCAI and others from the Native 8(a) community testified. Some of the positive changes above are a result of those consultations. Others are an outcropping of long existing issues or concerns raised by members of Congress, federal agencies, or the media.

Some of the proposed regulations are extremely beneficial to our Native 8(a)s, others are harmful. The SBA is holding a tribal consultation in Albuquerque, New Mexico, January 14. This is your opportunity to voice your concerns and be heard. Come. Participate. Engage. Voice your support for the proposed regulations that are helpful and oppose those that are not. The SBA must hear Indian Country's voice. Regardless of the outcome, I appreciate the SBA's willingness to engage the tribal community in a dialogue, to hear our concerns and recommendations, and to discuss solutions.

If you would like to learn more about the 8(a) program and the regulatory and legislative issues facing 8(a)s, consider attending the NACA presentations on 8(a) during the CNIGA Conference in Palm Springs, California (January 12-14, 2010), at RES 2010 in Las Vegas, Nevada (February 21-24, 2010), and at the Business Development in Indian Country Conference in Phoenix, Arizona (March 8-12). ♣

*To learn more about NACA, visit [www.nativecontractors.org](http://www.nativecontractors.org). Kip Ritchie is Senior Vice President of Potawatomi Business Development Corporation, serves on the Native American Contractors Association Board of Directors, and is a member of the Forest County Potawatomi Tribe. He can be reached by calling (262) 366-8272 or email [kritchie@potawatombdc.com](mailto:kritchie@potawatombdc.com).*