



Working to enhance the economic self-sufficiency of America's indigenous peoples
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January 26, 2010

VIA FEDERAL EXPRESS

Mr. Joseph Loddo
Associate Administrator
Small Business Administration
Office of Business Development
409 Third Street, SW
Mail Code 6610
Washington, DC 20416

Re: Comments on Small Business Administration's Proposed Rule, RIN: 3245-AF53

Dear Mr. Loddo:

I. Introduction

The Native American Contractors Association ("NACA"), is pleased to submit these comments in response to the Small Business Administration's ("SBA") October 28, 2009 proposed rule to amend the small business and 8(a) Business Development Program ("8(a) Program") regulations. See Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations, 74 Fed. Reg. 55694 (October 28, 2009).

NACA was formed in 2003 to promote the common interests of its members – Alaska Native Corporations ("ANCs"), Native Hawaiian Organizations ("NHOs") and Tribes doing business with the federal government and participating in the SBA's 8(a) Program (hereinafter collectively "Native-owned 8(a) firms," unless otherwise noted). Collectively NACA's members perform government contracts in all 50 states, several U.S. territories and foreign countries, employing thousands and bringing the benefits back to their Native communities, serving some of the poorest most under represented people in America.

The 8(a) Program is very valuable to NACA members and has helped stimulate economic development within Native communities that have been plagued by many social ills, including staggering poverty and unemployment rates. Unlike 8(a) companies owned by disadvantaged individuals, the benefits of the 8(a) Program for Native-owned firms have the potential to reach hundreds, and even thousands, of shareholders and tribal members. NACA's members are seeing the intended benefits of the 8(a) Program, as they strive to achieve their full competitive potential.



NACA and SBA have always maintained an open dialogue concerning programmatic issues and NACA appreciates the SBA's willingness to consider the concerns shared by our membership in the past and in connection with the proposed rule. NACA supports the SBA's efforts to modernize and streamline its regulations. We appreciate the fact that the proposed rule will codify many current practices and policies which are not reflected in current regulations. Overall, NACA believes that the changes will be positive, will provide flexibility in admitting Native-owned entities into the 8(a) Program, and ensure accountability with respect to current 8(a) participants ("Participants").

While NACA welcomes implementation of many of the proposed changes, several will be burdensome for Native-owned 8(a) firms and will have an adverse impact on how these firms successfully position themselves to start new companies and develop their existing businesses. Others may adversely impact non-Native-owned 8(a) firms as well. Accordingly, NACA urges the SBA to reassess these particular proposed regulations and consider either abandoning them or adopting the alternatives proposed herein.

NACA also requests tribal consultations once SBA has had an opportunity to review the comments and prior to issuance of a final rule.

II. COMMENTS ON PROPOSED REGULATIONS

A. The SBA's Determination of Whether A Tribe Is Economically Disadvantaged **Applicable Regulation: 13 C.F.R. § 124.109(b)(2)**

NACA disagrees with the requirement that Tribes must establish economic disadvantage in order to participate in the Section 8(a) program. Because of provisions in the Alaska Native Claims Settlement Act, ANCs enjoy a presumption of economic disadvantage. There is no comparable statute for Tribes and NACA intends to ask Congress to make this change so that Tribes may also enjoy the presumption. We understand that SBA cannot make this change through regulations but it can improve upon the criteria and guidance it provides to Tribes seeking certification.

The SBA is considering whether to amend 13 C.F.R. § 124.109(b)(2)(i-vii), which currently instructs the SBA to consider certain factors in determining whether a Tribe is economically disadvantaged. Such factors include, but are not limited to: (1) the number of Tribal members; (2) the recent Tribal unemployment rate; (3) the per capita income of Tribal members; (4) the percentage of the local Indian population below the poverty level; (5) the Tribe's access to capital; (6) the Tribal assets as disclosed in a current financial statement; and (7) a list of wholly or partially owned Tribal enterprises or affiliates and the primary industry classification of each. See 13 C.F.R. § 124.109(b)(2)(i-vii).

NACA would oppose any bright line net worth or assets test. It would be difficult to structure a bright line test suited to all Tribes, given the vast differences among Tribes as to the



number of Tribal members, number of members living on the Tribal land, and other demographics, such as average age of the membership. The current regulation allows for a more appropriate review that can accommodate these differences. Tribes have relied upon the current rule to demonstrate the myriad of challenges they face developing diversified, sustainable economies. A bright line test would not allow the SBA to obtain a clear picture of these challenges. For example, a Tribe may have rich natural resources, suggesting that a Tribe has significant assets, but it may have no capital or infrastructure to allow it to tap into those resources. Similarly, a Tribe may have high revenues from gaming, but still have high unemployment or other social ills that could be ameliorated by diversifying the economic base of the Tribe. Because a bright line test could automatically disqualify such Tribes from participating in the 8(a) Program, even though they may have high unemployment or poverty rates, NACA does not believe a net worth or assets test would serve to meet the true goals of the 8(a) Program. A more rigid measure may disqualify many deserving Tribes from participating in the 8(a) Program.

While the factors set forth in the current regulation may capture an accurate picture of some Tribes, it is an inadequate measure for others. For example, some Tribes that have no land have difficulty with the data collection requirements or simply do not have access to some or most of the information requested. We submit that the SBA could develop different tests of economic disadvantage and work with a Tribe to determine which measure is best suited to that Tribe's specific situation. For example, for a very small Tribe with no reservation, the Tribe should be allowed to establish economic disadvantage by showing that the 8(a) applicant's principle place of business is located within a historically underutilized business zone ("HUBZone"), and that the majority of the Tribal members reside in a HUBZone. This fairly simple test could be used as an alternative where the data currently required by the SBA is not available or doesn't suit the situation. We also recommend that SBA meet with Tribal representatives prior to the Tribe filing an initial 8(a) application so that the Tribe and the SBA can review which information would best assist the SBA with its economic disadvantage determination. Tribes are often confused or uncertain as to what data to submit to satisfy the SBA's current regulatory requirement and expend valuable resources in making submissions that are incomplete or simply wrong. More meaningful guidance would be extremely beneficial as would an alternative test for establishing economic disadvantage.

The SBA has also asked whether it makes sense to require a Tribe to demonstrate its economic disadvantage only once. NACA would like to see the requirement eliminated altogether and for the reasons set forth above, believes that the SBA should only require a review in connection with the initial 8(a) application. The 8(a) application process is time consuming and costly. Each application is treated differently, making the process very frustrating and lengthy. The resubmission of data to demonstrate economic disadvantage not only creates the potential for delay in the certification process, but also unnecessary paper work for both the Tribe and over-burdened SBA officials.

Further, a Tribe's economic condition is not likely to change dramatically after one of its 8(a) subsidiaries has received one or more 8(a) contracts. If SBA's intention in requiring multiple demonstrations of a Tribe's economic condition is to determine whether the Tribe has



achieved permanent economic stability, it does not make sense for the SBA to consider a Tribe's short-term successes. Stimulating economic development within a Tribe can take years, and requires an infusion of substantial capital to create a stable, sustainable economy.

In short, requiring Tribes to demonstrate economic disadvantage every time a subsidiary applies for the 8(a) Program or every few years would not only be burdensome, but also would not serve any useful purpose. Having demonstrated that it is economically disadvantaged for its first 8(a) subsidiary, a Tribe should not have to go through the same exercise again.

B. Limits on the Type of Work a Tribally-Owned Entity May Perform

Applicable Regulation: 13 C.F.R. § 124.109(c)(3)(ii)

NACA is opposed to amending 13 C.F.R. § 124.109(c)(3)(ii) to limit the type of work that an ANC or Tribally-owned entity may perform in the 8(a) Program. Specifically, NACA opposes the SBA's proposal to prohibit a newly certified ANC or Tribally-owned 8(a) firm from receiving an 8(a) contract in a secondary NAICS code that is the primary NAICS code of its sister entity. NACA understands that this rule would be applicable for two (2) years from the date of admission into the 8(a) Program. Similarly, NACA objects to the SBA's alternative proposal to restrict the applicant from performing such secondary work on a limited basis (e.g., no more than 20% or 30% of its 8(a) work could be in a NAICS code that is the primary NAICS code of a sister entity) for two years from the date of admission into the 8(a) Program.

NACA believes that both of these proposed amendments would have a significant adverse impact on ANCs and Tribally-owned firms. Such a rule would only serve to stymie the growth of ANCs and Tribally-owned companies. If the proposed rule is implemented, it would make it more difficult for ANCs and Tribes to start new businesses, and build on the existing infrastructure, past performance and resources of sister companies. It is during the developmental stage in the program that growing ANCs and Tribally-owned entities need the contract backlog provided by secondary sources of business to service government clients and better compete with large businesses. The proposed regulation makes that transition exceedingly difficult, if not impossible. It also deprives ANCs and Tribes of the ability to leverage their resources from one company to another, in contravention of the business development goals of the 8(a) Program.

NACA understands that the proposed regulation seeks to prevent a firm from entering the 8(a) Program under one primary NAICS code and then immediately transitioning to the performance of work under another NAICS code, effectively assuming a sister entity's 8(a) business after that entity graduates. However, this proposed rule is certain to have an adverse unintended consequence for ANCs and Tribes. Therefore, NACA strongly urges the SBA to abandon, or consider a different alternative to, this proposed rule change.

At the very least, NACA supports allowing an applicant to perform 50% or less of its 8(a) work in a NAICS code that is the primary NAICS code of a sister entity for two years from the date of admission into the 8(a) Program. Such a rule would provide applicants and Participants with more flexibility to meet the demands of the marketplace.



Another possible alternative would be for the SBA to simply implement the proposed change to 13 C.F.R. § 124.3, which would amend the definition of “primary industry classification” to specifically recognize that a Participant may change its primary NAICS code where it can demonstrate that the majority of its revenues during a two-year period have evolved from its former primary code to another code. But see section Q (urging the SBA to refine proposed 13 C.F.R. § 124.3). The proposed rule would also add a provision to permit a Participant to request a change in its primary NAICS code.

The change to the definition of “primary industry classification” would enable the SBA to terminate ANC or Tribally-owned Participants if they start doing too much work in a NAICS code that is the primary NAICS code of a sister 8(a) entity. If the ANC or Tribally-owned Participant’s revenues have evolved from one primary NAICS code to another, it will have to change its primary NAICS code. If it begins to operate in the 8(a) Program under the same NAICS code as its sister 8(a) entity, it would be in violation of 13 C.F.R. § 124.109(c)(3)(iii) as it currently reads. Because changing the definition of “primary industry classification” would provide the SBA with the means to terminate the 8(a) certification of ANCs or Tribally-owned Participants who are operating in the 8(a) Program under the same NAICS code as a sister 8(a) concern, there is no reason for the proposed rule change to 13 C.F.R. § 124.109(c)(3)(ii).

NACA suggests that the SBA has sufficient oversight over the contracts offered to Participants to determine whether these Participants are merely passing on previous work to sister entities. For example, if the SBA sees that a sister entity has been offered a sole source contract by the same agency, in the same geographic location, this might signal to SBA that the sister entity is not using the 8(a) Program as it was intended. However, if a Participant is located in an entirely different geographic area than its sister company, and has been offered a contract by an agency that its sister company has not contracted with, the fact that the work it has been offered falls under its sister company’s primary NAICS code should be seen as inconsequential.

C. Management of Tribally-Owned Firms
Applicable Regulation: 13 C.F.R. § 124.109(c)(4)

1. Economic Disadvantage Requirements for Tribal Members

NACA supports the SBA’s proposal to permit any Tribal member to participate in the management of a Tribally-owned firm regardless of whether these Tribal members individually qualify as economically disadvantaged.

This rule will enable Tribes to attract the most qualified and talented Tribal members to assist in running Tribal businesses and allow them to assist in economic and community development for the Tribe through their Tribally-owned concerns. This rule would also increase employment opportunities for Tribal members throughout the country. It would bring more talent into Indian country that may be utilized to address a variety of tribal concerns. The more people exposed to Native businesses, and Native issues, the better. Finally, this rule will level



the playing field for Tribally-owned firms, since NHOs and ANCs do not currently have the same economic disadvantage requirements.

Further, NACA agrees with the SBA's proposal to eliminate the requirement that directors and officers must submit copies of their individual tax returns to establish their economic disadvantage. This requirement has been applied inconsistently by different SBA offices and discouraged qualified people from serving on the boards of Tribal 8(a) firms. Thus, NACA believes that eliminating this requirement will be beneficial for Tribes.

2. Membership in the Tribe

NACA supports the SBA's proposal to permit members of any Tribe to serve as managers of a Tribally-owned concern, rather than requiring managers to be members of the Tribe that owns the concern. The 8(a) Program is designed to stimulate economic development in Native communities. The proposed rule furthers this goal by enhancing the ability of Tribes to attract the most talented individuals to qualify for 8(a) certification.

However, NACA submits that this proposed rule should also allow Tribes to hire United States citizens, regardless of their race or ethnicity, to serve as managers of 8(a) entities owned by Tribes. Without this change, Tribes which are already disenfranchised cannot avail themselves of the opportunity to hire the best managers for the position -- an opportunity that is available to every other non-Tribal entity. Limiting the pool of eligible and capable managers that Tribally-owned 8(a) firms can hire only serves to stymie the growth of these entities, and hinders their ability to compete against other companies with more resources.

Unfortunately, Tribes, especially the smaller tribes, often lack a significant number of Natives that are both qualified and available to assist in the development of Tribal entities that are struggling to compete in the government contracting arena. Enabling Tribes to hire experienced and knowledgeable individuals who can assist 8(a) Tribal entities in business development would benefit not only the 8(a) Tribal entities, but the Tribal community as well. Such individuals can be invaluable in empowering Tribes to overcome economic disadvantage. If Tribally-owned 8(a) companies are allowed to hire managers without regard to race or ethnicity to achieve their business development goals, the Tribes should see the benefits in the employment of Tribal members in the long run. With successful businesses creating income and job opportunities for Tribal entities, Tribes should be better able to attract Tribal members to assume key management positions in the future.

Moreover, because the prohibition against hiring non-Natives as managers does not apply to ANCs or NHOs, restricting Tribes in this way is unfair and arbitrary. While the SBA's regulations currently allow 8(a) applicants owned by Tribal firms to hire non-Tribal members, this is only possible if the SBA determines that such management is required to assist the concern's development. Furthermore, the SBA requires the Tribe to create a written management plan which shows how Tribal members will develop the managerial skills to manage the concern or similar Tribally-owned concerns in the future. In effect, non-Tribal members are used to build up the 8(a) entities and then are essentially forced to leave these



companies to be replaced by those that they have mentored. Needless to say, such an arrangement does not create incentives for non-Tribal members to assist in the development of 8(a) concerns owned by Tribes.

In short, while NACA supports the SBA's efforts to expand the pool of eligible managers to assist in the development of 8(a) entities owned by Tribes, NACA submits that the SBA should expand the reach of this amendment to enable Tribes to hire United States citizens, regardless of their race or ethnicity, to serve as managers of 8(a) entities owned by Tribes. This extra step will further empower these entities to succeed.

D. Potential for Success Requirement

Applicable Regulation: 13 C.F.R. § 124.109(c)(6)

NACA supports the SBA's proposal to amend 13 C.F.R. § 124.109(c)(6) to permit the SBA to find that an ANC or Tribally-owned firm has the potential for success where the ANC or Tribe has made a firm written commitment to support the operations of the applicant concern and the ANC or Tribe has the financial ability to do so.

NACA believes that the impact of this rule change should be positive. The SBA has properly recognized that, unlike a firm owned by disadvantaged individuals, an ANC or Tribal 8(a) concern's viability is not dependent only on its profitability. A Tribe or ANC might support an 8(a) business that appeared to be less than profitable at the outset. For example, an ANC may choose to start a company that focuses on wholesale foods for the purpose of gaining expertise in the food service industry so that it can eventually operate a grocery store in a village. Under these circumstances, requiring the firm to have been in business for two years and show financial viability or stability may not make sense, as the business has a different purpose. Thus, NACA submits that if an ANC or Tribe pledges to use its resources to support the company until it becomes successful on its own, this factor should be taken into account. This should make it easier for ANCs and Tribally-owned firms to qualify for the 8(a) Program.

Finally, NACA notes that the SBA has not proposed a similar change for NHOs. NACA believes the SBA should propose similar regulations for NHOs as there is no reason for NHOs to be treated differently.

E. Annual Reviews

Applicable Regulation: 13 C.F.R. § 124.112(b)

NACA opposes the SBA's burdensome and unreasonable proposed rule to require Native entities, during their annual reviews, to provide information on the extent to which benefits are reaching Natives or Native communities. NACA understands that the SBA is concerned about providing transparency on the benefits of the 8(a) Program for lawmakers, shareholders and the public, NACA is concerned that this rule will be difficult to implement and prove unduly onerous and unworkable for Native-owned 8(a) firms for a number of reasons.



First, the benefits of the 8(a) Program are often intangible and difficult to quantify. For example, profits earned by Native enterprises provide job training programs, scholarships, healthcare clinics, social service programs and cultural programs for their communities. While these activities positively enhance economic development within Native communities, it is difficult to capture the precise benefits that have been realized and attribute these benefits to a specific 8(a) subsidiary. Similarly, many Native-owned 8(a) firms use their profits to increase their employees' compensation in order to encourage loyalty and devotion to the company. Other firms use the profits to reinvest in their companies, which enables these firms to build infrastructure, and acquire new equipment and other resources, ultimately making them more competitive in the long-term. Similar reinvestment by non-Native firms has been appropriately encouraged by SBA through its proposed change to the excessive withdrawal rule. See 74 Fed. Reg. at 55702 (discussing proposed 13 C.F.R. § 124.112(d)). NACA does not understand why SBA would encourage non-Native firms to reinvest in their 8(a) companies but discourage Native-owned 8(a) firms from doing the same, especially since the goal of the 8(a) Program is to develop profitable, competitive companies.

Second, many Native-owned 8(a) firms may not have this information readily available, and given that the benefits of the 8(a) Program reach hundreds, if not thousands, of Natives, it will be a very costly and lengthy process to compile this information. Such information is often maintained exclusively by the Tribe which does not share with its 8(a) managers the exact path that the 8(a) subsidiary's profits have taken once they are passed on to the Tribe.

Further, it will be difficult to segregate the benefits that come specifically from 8(a) contracts, especially when a Tribe has multiple 8(a) firms receiving a mix of 8(a) and non-8(a) work.

Additionally, NACA submits that this new rule leaves open more questions than it answers. As a threshold matter, is there a specific format that Participants should follow? How will Tribes report intangible benefits such as those described above? For example, is the SBA expecting an excel spreadsheet or will the SBA accept an informal, general summary of the multitude of ways that the 8(a) Program has benefited the Native community? Perhaps the SBA could require a one page form that provides employment statistics (much of what should be able to be gleaned from affirmative action reports), dividend per share, shareholder's equity, and a narrative section describing other benefits and organizational priorities?

Will this information be kept confidential? Or will it be released to the public?

Further, how will the SBA interpret and assess this information? Will the SBA be using any specific criteria? NACA submits that it is not SBA's role to determine what benefits should or should not be provided to the Native Communities. Further, what if the Company has not been successful, making no benefit available for distribution? What would the consequence be? Would this make them automatically ineligible for continuing 8(a) Participation? With no specific benefit about which to report, lawmakers and/or the public might get the misguided impression that Native-owned 8(a) firms are failures or perhaps even abusing the Program.



Additionally, what if a Tribe has more than one 8(a) Participant? Will the Tribe be required to parse out the benefits provided by each firm? Such a requirement could prove to be extremely burdensome if not impossible to meet.

Accordingly, NACA encourages the SBA to consider assembling a task force, including Native leaders, to tackle the unanswered questions provided above. Alternatively, NACA is willing to assemble its own working group to solicit ideas from its members regarding these issues. NACA would compile this information for the SBA into a comprehensive recommendation on how to report these benefits.

Moreover, NACA urges the SBA to consider including such a rule under the SBA's Miscellaneous Reporting Requirements (see 13 C.F.R. §§ 124.601-603), rather than under 13 C.F.R. §§ 124.112. This option would mandate compliance without impacting the continued 8(a) eligibility of these firms.

Further, NACA requests that the SBA set a delayed effective date for any new reporting requirements given that most companies will need a significant amount of time to gather and synthesize this data.

F. Joint Ventures

1. Populated versus Unpopulated Joint Ventures **Applicable Regulation: 13 C.F.R. § 121.103(h)**

We understand that the new regulation requiring a joint venture to be populated if it exists as a separate legal entity is designed to clear up the confusion that currently exists regarding structuring joint ventures. However, we believe that this new regulation will unintentionally deprive joint venture partners of the opportunity to structure the joint venture as an LLC.

By definition, a populated joint venture is performing the work with its own employees, not through subcontracts to the joint venture owners. As currently drafted, the regulations recognize unpopulated joint ventures, but really have not been amended to reflect the realities of a populated joint venture. For example, in an 8(a) joint venture, the regulations require the project manager to be an employee of the 8(a) firm. Further, the regulations require that the 8(a) company perform "a significant portion of the work of the joint venture." 13 C.F.R. § 124.510. Many of our small business clients prefer to use an unpopulated joint venture as it builds direct past performance and infrastructure.

We agree that the SBA should allow firms to make a business decision as to whether or not to populate the joint venture. However, we fail to see the logic behind the distinction being proposed. Use of an LLC provides an extra level of protection for the small business joint venture partners (as well as large business partners) against suits from a third party, an employee, etc. In an unpopulated joint venture, each owner performs a specific percentage of work. If one partner has a problem during performance, for example a construction accident resulting in



personal injury, the LLC insulates the non-performing partner from liability. A lawsuit in this scenario would likely only result in damages due from the LLC and/or the partner causing the accident. The second partner would only be at risk up to that company's ownership interest in the LLC. In contrast, under that same fact pattern, each partner in the joint venture would be jointly and severally liable without the protection afforded by the LLC. In some industries, such as construction and environmental remediation, this additional protection is essential. We submit that the SBA should allow the firms to choose the appropriate joint venture vehicle depending on the industry and the requirements of the specific solicitation—not because of an arbitrary SBA restriction on unpopulated LLCs.

Moreover, because the current provisions concerning performance of work and the program manager residing on the 8(a) company's payroll are really inapplicable to populated joint ventures, we suggest that these business entities should be governed by separate provisions. Specifically, the 8(a) company should receive the majority of the profits from a populated joint venture since the employees should reside in the joint venture. Further, the 8(a) firm should manage and control the populated joint venture and be ultimately responsible for the books and records. Finally, subcontracts to the non-8(a) partner should be prohibited for populated joint ventures. Subcontracting by a populated joint venture should be reserved for necessary third parties.

2. Joint Venture Contracts

Applicable Regulation: 13 C.F.R. § 121.103(h)

NACA requests the SBA to more clearly define what qualifies as a "contract" for purposes of the "3 in 2" requirement. Specifically NACA requests the SBA to specifically state that a contract is only one awarded and kept. Otherwise a contract that has been won, and then protested and subsequently lost by the awardee, will be counted as a "contract," even when the joint venture does not ultimately perform or ultimately benefit from this contract. The SBA surely does not want firms to lose joint venture opportunities because they are tied up on a protest.

3. Subcontracting to Non-8(a) Joint Venture Partners

Applicable Regulation: 13 C.F.R. § 124.506(b)

NACA opposes the SBA's proposal to modify 13 C.F.R. § 124.506(b) to provide that non-8(a) joint venture partners may not be subcontractors to the joint venture on 8(a) sole-source contracts. As noted above, the SBA should distinguish between populated and unpopulated joint ventures. NACA agrees that in a populated joint venture, the non-8(a) joint venture partner should not benefit from a separate subcontract. However, in unpopulated joint ventures, by definition, both partners will be subcontractors. This concept is applicable to all joint ventures regardless of whether the 8(a) partner is tribal or an 8(a) company owned by a disadvantaged individual. NACA believes that populated joint ventures should be treated in an identical fashion regardless of the identity of the 8(a) owner.



As drafted, the rule would have the effect of eliminating unpopulated joint ventures which, as discussed, require subcontracts to the joint venture partners. Unpopulated joint ventures are valuable in that the 8(a) partner is actually in control and performing a substantial amount of the work with its own employees, increasing past performance and infrastructure for the 8(a) company. Populated joint ventures simply bring profits to the bottom line. Moreover, this rule would effectively prohibit 8(a) joint venture partners from subcontracting to themselves, since all their employees would be working for the joint venture entity.

While NACA understands that this proposed rule is meant to address perceived abuses by large mentors, NACA believes the blanket prohibition goes too far and undermines the utility of the SBA's Mentor-Protégé program. Rather than a blanket prohibition on subcontracting to non-8(a) joint venture partners on 8(a) sole-source contracts, the SBA could simply increase oversight of joint ventures and mentor protégé agreements to thwart potential abuses. For example, the SBA could require quarterly reports to SBA by joint venture partners explaining the subcontracting efforts. Increased oversight would deter mentor companies from exploiting their respective partners for their 8(a) status. The SBA should also consider alternatives such as requiring that a specific percentage of work on sole source 8(a) contracts be performed by the 8(a) firm. For example, the SBA could require the 8(a) firm to perform no less than 50% of the costs associated with direct labor costs being performed by the unpopulated joint venture. This would represent a 10% increase from the amount currently proposed that an 8(a) firm must perform when joint venturing. See 74 Fed. Reg. 55707 (discussing proposed 13 C.F.R. § 124.513(d), which would require the 8(a) partner(s) to a joint venture to perform at least 40% of the work performed by the joint venture). Such performance of work requirements could be incorporated into mentor-protégé agreements.

As an aside, NACA also requests the SBA to consider providing more transparency regarding 8(a) mentor-protégé acceptance rates as well as the average length of time it takes the SBA to approve these agreements. NACA's members have reported that it has taken a significant amount of time for the SBA to approve their mentor-protégé agreements, and they miss out on numerous opportunities in the meantime. Providing information regarding the SBA's approval process will enable 8(a) firms to make informed business decisions regarding whether and when to develop a mentor-protégé relationship. The SBA should consider establishing a reasonable timeframe within which SBA District Offices must make recommendations to SBA Headquarters and enforce it on pending mentor-protégé agreements.

G. Sole Source Limits for NHO-Owned Concerns
Applicable Regulation: 13 C.F.R. § 124.519

NACA supports the SBA's proposal to amend 13 C.F.R. § 124.519 to exempt NHOs from the limits on the amount of 8(a) contract dollars that an 8(a) Participant may receive on a sole source basis. Currently, ANCs and Tribally-owned concerns are exempted from this rule but NHOs are not. NACA agrees that there is no reason why NHOs should be treated differently than ANCs or Tribally-owned concerns, and this rule levels the playing field. Therefore, NACA submits that this rule, if implemented, will be a positive change.



H. Considering Information Requested by SBA but not Submitted by the 8(a) Applicant as Adverse to the Applicant
Applicable Regulation: 13 C.F.R. § 124.204(c)

NACA opposes the proposed rule to add a new paragraph to 13 C.F.R. § 124.204, clarifying that the burden of proof to demonstrate 8(a) eligibility is on the applicant, and permitting the SBA to assume that any information requested of the applicant, but not submitted, is adverse to the applicant. Applying for 8(a) certification is a lengthy, tedious, and costly process. While the 8(a) Program is designed to stimulate economic development within Native communities and Native enterprises, these entities often lack the resources to compile an exhaustive 8(a) application. Penalizing these firms for their lack of resources seems unfair and counterintuitive to the spirit of the 8(a) Program.

Further, NACA submits that abuses of the 8(a) Program are the exception, not the rule. What may appear to be a refusal to provide information may be merely a manifestation of confusion on the applicant's end as to what information the SBA has requested. Because this rule change will effectively discourage many young Native enterprises from applying to the 8(a) Program for fear that they will expend time and expense on their application only to learn that one mistake has cost them their certification, NACA urges the SBA to abandon this proposed regulation. Rather than over-regulating the application process, the SBA could offer more training and support to 8(a) applicants before they submit their applications. Such assistance would help these firms understand the type of documentation the SBA requires.

We understand that the SBA may believe that they lack meaningful remedies when they encounter intentional stonewalling from a Participant. However, NACA submits that this proposed rule is not the answer. As an alternative, NACA suggests that SBA could increase its suspension and debarment jurisdiction; it could request a stop work order on existing contracts; or it could impose a financial penalty. Such mechanisms would be affective deterrents and would avoid punishing those applicants who simply lack the understanding or sophistication to comply with the SBA's requests.

I. Administrative Change
Applicable Regulation: 13 C.F.R. § 124.204(a)

NACA strongly opposes the proposed rule to change the location of the SBA's review of the 8(a) applications of ANCs from the Alaska District Office to the San Francisco Division of Program Certification and Eligibility ("DPCE"). NACA disagrees that the San Francisco DPCE is better-suited to receive and review applications from ANC applicants, and questions the SBA's belief that the San Francisco DPCE has knowledge of issues specific to ANCs. Further, this rule will make the SBA less accessible to ANCs.

NACA submits that the Alaska District Office is best-suited to receive and review applications from ANC-owned applicants for completeness. Being situated in the state and for many years having responsibility for evaluating and advising on 8(a) applications and Program eligibility, the Alaska District Office has acquired an intimate understanding of the state politics,



laws, economy, landscape, business climate, culture, as well as the resources available to challenges facing small businesses in Alaska. In addition, the Alaska District Office is familiar with the challenges that face Alaska Natives and the community at large. It would take a significant amount of time and SBA resources for San Francisco DPCE to acquire sufficient institutional knowledge and understanding to tackle the issues that are particular to ANCs.

Moreover, this proposed rule, if implemented, will cause ANCs to incur significant travel expenses in transit from Alaska to California when they are in their most vulnerable state of business development—the beginning. Even a trip to Anchorage can be long and expensive for many ANCs; a trip to San Francisco would be even more expensive. ANCs often do not have the resources available to make these trips, and the consequence will be that these firms will be unable to receive the attention, advice and support that they need to understand the SBA's requirements and complete their respective 8(a) applications. The unfairness of this proposed rule cannot be understated.

To make matters worse, the San Francisco DPCE is already overburdened with 8(a) applications. It is taking many, many months for the SBA's San Francisco DPCE to process 8(a) applications. Oftentimes applications are being returned as incomplete, when the requested information was clearly provided. Requiring even more applications to be processed by the SBA San Francisco office will only exacerbate the problem.

Finally, imposing this rule will limit the one-on-one, direct interaction between ANC applicants and the SBA that is valuable to the growth and development of ANCs. ANCs have come to depend on the SBA's guidance and advice, and depriving them of this resource would be unreasonable and would not make sense.

Accordingly, NACA proposes the following - all ANC 8(a) applications should continue being administered from the Alaska District Office before being sent on to the Director, Office of Business Development for processing. With the SBA's Alaska District Office able to review and receive these applications, there is no reason for the rule change. At a minimum, NACA urges the SBA to not codify this proposed rule at this time, so that it can further consider the issues posed herein and leave its options open.

In addition, NACA requests the SBA to consider designating District Offices that serve only NHO and tribally-owned firms, respectively. Currently, the San Francisco DPCE serves NHOs, and both the San Francisco DPCE and Philadelphia District Offices serve tribally-owned firms. NACA also believes the Hawaii District Office should be designated to serve NHOs and one office within the continental United States should be responsible for Tribal 8(a) applications. The distance between the current administering District Offices and the respective Native-owned firms in their portfolios has made it difficult for the SBA to become familiar with these firms, the way they are structured, the culture of these Native populations, and the challenges they face. Further, these firms incur significant financial expense and spend valuable company time traveling to their current District Offices, particularly those that are located across the country. In addition, the distance limits the direct SBA interaction that is so valuable for these firms. Adoption of this proposed organizational structure will aid in building depth of



knowledge within each assigned office and promoting efficiency within the SBA to better address those issues facing Native 8(a) applicants and Participants.

J. Requiring a Firm to Stay Small Under its Primary NAICS Code
Applicable Regulations: 13 C.F.R. §§ 124.102(a)(2), 124.302(c)

NACA strongly opposes the proposed changes to 13 C.F.R. §§ 124.102(a)(2) and 124.302(c) that would require an 8(a) firm to remain small for its primary NAICS code during its term of participation in the 8(a) Program, and would allow the SBA to consider, in determining whether to early graduate the firm, when that firm exceeds the size standard corresponding to its primary NAICS code for two successive Program years.

As a threshold matter, a firm's revenues are only one measure of its success. A couple of contracts could throw a firm over a larger size standard, but that does not mean that the firm has achieved long-term success. For example, a firm could be generating high revenues for two years due to a large contract. However, in the third year, the options on that contract may not be renewed. At that point, the firm could be generating significantly less revenues. However, under the proposed rule, the SBA would be able to consider the last two years of revenue as evidence that this firm is able to compete in the marketplace without assistance under the 8(a) Program.

Moreover, these proposed rules are counter-intuitive in that they will stifle growth within 8(a) firms. These firms will need to constantly monitor their growth, and will have to actively work to stay small under their primary NAICS code to avoid early graduation from the 8(a) Program. They will have to set their sights low and check their ambitions. Otherwise the proposed rule will remove many promising firms from the 8(a) Program before they are able to receive the full benefits of the Program. The SBA should not be promoting such an approach to business development.

Rather than requiring firms to remain small under their primary NAICS code, 8(a) firms should be encouraged to branch out into different industries and grow in those industries so that they become more well-rounded, and able to adapt to the changing marketplace. A firm's success should not be based on its size and capabilities upon entry into the 8(a) Program. The purpose of the 8(a) Program is to develop businesses so that they are able to become strong, viable competitive entities and achieve permanent economic stability and growth, not to merely jump-start small businesses. Thus, the natural progression of these firms through the 8(a) Program enables them to acquire more infrastructure and capital that allows them to branch out into more complex business areas. This natural growth of small businesses is a process that should be promoted to increase the industrial supply base, maintain a vibrant small business community, and increase competition for federal work. Rather than enabling these small businesses to overcome their economic disadvantage, this proposed rule will have the effect of ensuring that they remain economically disadvantaged throughout their 9-year Program term.

Simply put, should this proposed regulation be implemented, all 8(a) firms will be deterred from seizing opportunities to grow and expand their businesses. Small businesses gain



economic viability by building upon their successes. Contracts awarded while a firm is small are essential building blocks upon which to continue growing in the full and open competitive market, and eventually transition out of the 8(a) Program. To deny Participants the opportunity to expand undermines the business development goals of the 8(a) Program and hinders the competitive abilities of these firms. Moreover, no harm comes from an 8(a) firm continuing to do business in secondary codes, after they have exceeded their primary code size standard, as they are still a small business in the secondary codes. For these reasons NACA strongly urges the SBA to abandon this proposed regulation.

Should the SBA remain steadfast about this new rule, NACA submits that in determining whether to early graduate a firm, the SBA should consider whether that firm has exceeded the size standard corresponding to its primary NAICS code for *three* preceding Program years, rather than two years. NACA believes that using a three-year look-back period is not only more fair, but also consistent with the SBA's size regulations. In determining a firm's size the SBA must review whether a firm has exceeded the size standard for the last three years. Using a two year look back period to determine whether a firm has exceeded the size standard for its primary NAICS code is inconsistent with the Small Business Act and the 8(a) regulations. Although we recognize that the SBA's two year look back rule is designed to determine continued Program eligibility—as opposed to size eligibility—the regulation creates confusion. Moreover, it does not seem fair that the SBA would use one period for determining size and another period for determining continuing 8(a) eligibility based upon a rule that is premised on a firm's size for the prior three years.

K. Definition of *Bona Fide* Place of Business for Purposes of 8(a) Construction Procurements
Applicable Regulations: 13 C.F.R. §§ 124.3, 124.507(b)(2)(iv)

NACA supports the proposed definitional change which clarifies that, for purposes of 8(a) construction procurements, a firm will not be required to have any specific type of industry license (such as a General Contractors License) in order to “regularly maintain an office” and have a “*bona fide* place of business” in the applicable geographical area.¹ There has been confusion about this requirement among NACA's members so NACA welcomes this clarification.

L. Requiring Contracting Officers to Protest the Small Disadvantaged Business Status of Firms That Have Been Early Graduated
Applicable Regulations: 13 C.F.R. §§ 124.304(f)(2)

NACA opposes the proposed rule to require a contracting officer to protest in order to obtain clarification of the small and disadvantaged business (“SDB”) status of a firm that has been terminated or early graduated from the 8(a) Program.

¹ NACA understands that a firm would still generally be required to have a license to do business in a particular location in order to “regularly maintain an office” and have a *bona fide* place of business at that location.



As a threshold matter, this proposed rule imposes a punishment that does not fit the crime. Specifically, NACA understands that this proposed rule would apply to firms that have been graduated or terminated for reasons unrelated to SDB status. Indeed, the example SBA provides is a firm that has refused to comply with SBA's requests for financial information; thus, "the reason for termination would not be connected to ownership, control, social disadvantage or economic disadvantage." Because the contracting officer would be unlikely to question the SDB status of that firm based solely on its graduation or termination, it would be unreasonable to require the contracting officer to protest in all cases.

Second, there are already procedures in place to protest the SDB status of a firm if there are questions about its eligibility to receive a SDB contract. Why force the contracting officer to protest when these other channels are available to police this program? Thus NACA submits that the proposed rule is unnecessary.

Finally, forcing a contracting officer to protest the SDB status of these firms would impose significant costs not only on the firm, itself, but on the contracting officers, the procurement agency and ultimately, the taxpayer. Since the protest may not always be necessary NACA submits that these costs are not justified.

Alternatively, NACA submits that the SBA might engage in a less formal fact-gathering process. Such a rule would ensure accountability and transparency on the part of these firms while saving them unallowable protest costs.

M. Consequences of Not Providing Assistance Set Forth in the Mentor/Protégé Agreement

Applicable Regulation: 13 C.F.R. § 124.520(h)

NACA opposes the proposed change to the SBA's Mentor-Protégé program, which would allow a procuring agency, upon recommendation by the SBA, to issue a stop work order on each contract awarded to a mentor-protégé joint venture if the mentor is not meeting its goals as set forth in the mentor-protégé agreement. NACA understands that this proposed rule would also provide that, in these circumstances, SBA could terminate the mentor-protégé agreement. In addition, the proposed rule states that if the joint venture's work is critical and any delay in contract performance would harm the procuring activity, SBA may request that another Participant be substituted for the joint venture to continue performance.

While NACA understands that the SBA's purpose in proposing this rule is to ensure that protégé firms obtain beneficial business development assistance through their mentor-protégé relationships, NACA feels that this proposed rule is problematic and unworkable for a number of reasons.

First, insofar as the SBA's goals are to immediately remove the non-compliant mentor from the Mentor-Protégé program and stop it from performing any joint venture contracts with their protégé, this rule is ineffective in meeting those goals. As a threshold matter, NACA notes that SBA does not have the ability to terminate a joint venture agreement. Further, recommending a



stop work order in order to encourage the mentor to withdraw from the joint venture is inconsistent with the SBA's proposed rule at 13 C.F.R. § 124.520(c)(2), which requires both parties to a mentor-protégé joint venture agreement to complete performance of all existing contracts awarded to the mentor-protégé joint venture even after the mentor-protégé relationship ends.² Indeed, the only way to remove the mentor from the mentor-protégé and joint venture arrangements, other than by terminating the contract, is for the mentor, itself, to unilaterally withdraw from the agreements. Such a scenario is unlikely given the benefits that mentors receive from these agreements. Therefore, the remaining option would be for the SBA to convince the agency to terminate the contract. Doing so, however, would effectively penalize the protégé for its mentor's failures, at a time when the protégé is most vulnerable because it is not receiving the developmental assistance it needs. Further, the protégé would be at risk for a default judgment or negative past performance rating. Penalizing protégés in this manner does not seem to be a fair or contemplated result of this rule change, as it would serve only to further hurt the protégé. Such a result would vitiate the very purpose of the SBA's Mentor-Protégé program, which is intended to help the protégé obtain contracts in order to develop and grow in the 8(a) Program.

More significantly, this rule would likely cause a chilling effect on the ability of mentor-protégé joint ventures to obtain work. NACA fears that procuring agencies will be hesitant to contract with mentor-protégé joint ventures if there is a risk that the SBA will recommend a stop work order and the agency will terminate the contract if the mentor is not providing the developmental assistance it agreed to provide.

Therefore, NACA submits that SBA should consider changing its regulations to require that mentor-protégé agreements and joint venture agreements between mentors and protégés contain clauses that allow the 8(a) protégé, when directed to do so by the SBA, to unilaterally terminate the mentor-protégé agreement in the event that the mentor fails to provide the assistance promised. Further, the clauses should state that the mentor will agree to withdraw from the joint venture when recommended by the SBA, and where the 8(a) protégé affirms that it is capable of continuing performance on its mentor-protégé joint venture contracts on its own. Under these circumstances, the 8(a) protégé would be the only remaining member of the joint venture, and could still complete performance of any contract that the joint venture was awarded while the mentor-protégé agreement was in existence. The protégé has already committed to "ensure performance of the 8(a) contract and to complete performance despite the withdrawal of [its mentor]" (see 13 C.F.R. § 124.513(c)(7)); thus there would be no need for a stop work order, a substitute joint venture partner, or a contract novation if the mentor withdraws from the joint venture.

However, if the 8(a) protégé cannot affirm that it is capable of performing the joint venture contracts on its own, the mentor-protégé agreement can still be terminated but the mentor-protégé joint venture should still be allowed to complete the contracts already awarded so as to not penalize the 8(a) firm, itself, for the transgressions of its mentor.

² Moreover, an agency may not implement the SBA's recommendation to issue a stop work order, so as to avoid the significant contract performance delays and related costs of work coming to a halt.



Allowing the protégé to proceed on the contract alone, as contemplated by the joint venture regulations, would avoid inflicting hardship on protégés for the failures of their mentors. Further, this option would not threaten the ability of protégés to gather valuable experience and revenue while still allowing the agency to meet its small business goals. It would not require the protégé to spend the time and resources finding another joint venture partner, or negotiating another joint venture agreement. This option would avoid the hassles of novation while still penalizing the mentor for its non-compliance. Overall, this option would provide the least disruption to contract performance and would save the agency both time and resources that it would otherwise expend in the contract novation process or in re-procuring the contract.

Finally, while NACA supports SBA's additional proposal to further penalize mentors by restricting their ability to act as such for two years from the date SBA terminates the mentor-protégé relationship, NACA believes that the SBA has not gone far enough with this proposal. NACA submits that those mentors who default on their agreements should be permanently prohibited from serving as mentors in the SBA's Mentor-Protégé program. Moreover, the mentor should be required to compensate the protégé for any costs that the protégé may incur due to the mentor's non-compliance with the mentor-protégé agreement. Such costs would include any termination fees that the protégé might incur with respect to the joint venture contract. Such consequences, in addition to the clauses discussed above, would more effectively deter perceived abuse by mentors.

N. Releasing Contracts for Non-8(a) Competition
Applicable Regulation: 13 C.F.R. § 124.504(e)

NACA supports the SBA's proposed change to 13 C.F.R. § 124.504(e), which codifies the SBA's "once 8(a), always 8(a)" practice. Despite the fact that this guidance may be "implicit in the regulations," NACA's members have seen many agencies refuse to follow this practice. Thus NACA welcomes this clarification.

O. Non-8(a) Business Activity Targets
Applicable Regulation: 13 C.F.R. § 124.509(a)

NACA appreciates the SBA's clarification of the activities that count towards an 8(a) Participant's competitive mix requirement. NACA also requests clarification that the SBA does not count revenues from an 8(a) joint venture as 8(a) revenues to the non-controlling 8(a) partner (i.e. an owner of 49% or less).

That said, NACA submits that the SBA should take this occasion to re-examine the non-8(a) business activity targets that Participants in the transitional stage of the 8(a) Program must meet. See 13 C.F.R. § 124.509(b). Much time has passed since the SBA first amended its 8(a) regulations to include the business activity targets. Since that time, the federal marketplace has drastically changed. The recent economic downturn has reduced the number of non-8(a) commercial contracts that are available and thus caused many 8(a) firms to depend more heavily on their strengths in the government contracts market. Others, due to their remarkable marketing efforts and high quality performance, have been awarded many unanticipated 8(a) contracts,



which has resulted in a business mix imbalance. Additionally, larger contracts are being set-aside for 8(a) competitions. 8(a) contractors invest much time and resources in preparing proposals to compete against fellow Program Participants. In many instances, these competitions are as competitive as small business set-asides. In this environment, it is challenging for 8(a) firms to achieve their non-8(a) business targets.

Therefore, the SBA should consider reducing the minimum percentages of non-8(a) revenue required to reflect the realities of the current marketplace. Additionally, the percentage of revenues derived from competitive 8(a) contracts should be a factor considered when structuring a remedial plan. Firms should not be denied sole source or competitive 8(a) contracts if they are making efforts to successfully compete in any arena.³

In addition, NACA urges the SBA to also provide more flexibility with respect to the consequences of not meeting competitive business mix targets. For example, rather than restricting sole source 8(a) contracts, the SBA could require a Participant to obtain management and/or technical assistance where the Participant's non-8(a) business activity is very close to the required target. Moreover, the SBA should consider providing the district office with more discretion to waive the sole source prohibition in 13 C.F.R. § 124.509(d). In NACA's experience, because of the stringent criteria required to secure a waiver of the sole source prohibition, the SBA is often hamstrung in its ability to grant these waivers, even when there are extenuating circumstances involved that have made it impossible for a firm to meet its competitive mix targets. As long as Participants are making substantive efforts to comply with the rules, they should not be deprived of contracts. Giving the SBA more flexibility to consider unanticipated circumstances by putting the decision making in the hands of SBA personnel familiar with the firms in their portfolio, rather than following rigid guidelines, furthers the goals of the 8(a) Program and will avoid penalizing healthy and viable firms for failing to meet their required business mix through no fault of their own.

Alternatively, NACA urges the SBA to lower the requirements to qualify for reinstatement during the first six months of the program year. See 13 C.F.R. § 124.509(d)(2)(ii)(A). For example, the SBA should abandon the rule that it will not count options on existing non-8(a) contracts in determining whether a Participant has received a new non-8(a) contract award. This requirement is unreasonable and it is often impossible for Participants to reach this goal.

P. Audit Requirements
Applicable Regulation: 13 C.F.R. § 124.602

NACA appreciates the SBA's understanding of the significant costs incurred by small businesses in providing audited and reviewed financial statements, and understands that the SBA is proposing to require audited financial statements for larger firms only. However, NACA believes that the SBA should go even further and provide that separate audit reports are not required for Native-owned 8(a) subsidiaries. Native-owned 8(a) entities already provide audited

³ NACA realizes that legislation would be required to allow the SBA to establish business activity targets that include competitive 8(a) contracts.



financials at a consolidated level, and it would be a large administrative and financial burden for these entities to submit additional separate reports.

Q. Allowing a Firm to Change its Primary NAICS Code.
Applicable Regulation: 13 C.F.R. § 124.3

NACA supports the SBA's proposed rule to authorize a firm to change its primary NAICS code by demonstrating that the "majority of its revenues" during a two-year period have evolved from its former primary NAICS code to another NAICS code. This rule change is both reasonable and necessary for the following reasons:

First, 8(a) applicants cannot be expected to predict the future. Due to changes in the demands of the marketplace it may become impossible for a firm to operate for 9 consecutive years under its originally-designated primary NAICS code. Oftentimes, firms have no choice but to alter their respective business targets and business models in order to keep afloat, particularly in these current volatile market conditions.

Second, this new rule will help to ensure that Participants do not develop an unreasonable reliance on any one type of work, which will hinder their chances of survival in the competitive marketplace where such reliance is atypical. To ease their transition into the competitive marketplace after graduating from the 8(a) Program, Participants must make maximum efforts to obtain business outside the 8(a) Program and outside their primary NAICS code.

Similarly, a firm may develop its capabilities so that it is able to expand and evolve into a more complex industry. Business development and diversification should be encouraged, and firms should not be prevented from seizing on opportunity even if it is outside their primary NAICS code. The purpose of the 8(a) Program is to develop businesses—not hold them back.

However, NACA believes that this rule, as written, will cause much confusion among Participants, as well as among the SBA servicing district offices who will be administering this regulation. In particular, the regulation does not define how a firm can demonstrate that the "majority of its revenues" have evolved from its former primary NAICS code to another NAICS code. Does a Participant have to demonstrate that over 50% of its revenues were generated in a particular industry? Or can a firm demonstrate that a plurality of its contracts was assigned a certain NAICS code? For example, if a firm earns 35% of its revenues in construction, 32% in remediation and 33% in management consulting, would construction be its primary industry? Furthermore, will the SBA confine its review of a Participant's primary industry to the Participant's 8(a) contracts? Or will the SBA perform a complete analysis of the Participant's revenues, including their non-8(a) and commercial contracts? NACA notes that commercial contracts have not been assigned NAICS codes. How will they be evaluated? Will Participants be permitted to assign a NAICS code to these contracts?

Moreover, the proposed regulation seems to depart from another SBA regulation that prescribes guidelines for determining a firm's primary industry. Specifically, a small business regulation entitled "How does SBA determine a concern's 'primary industry'?" provides that:



In determining the primary industry in which a concern or a concern combined with its affiliates is engaged, SBA considers the distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year. SBA may also consider other factors, such as the distribution of patents, contract awards, and assets.

13 C.F.R. § 121.107. As such, NACA requests the SBA to consider whether the proposed rule under 13 C.F.R. § 124.3 should provide for consideration of these additional factors.

III. CONCLUSION

Thank you for your attention to NACA's aforementioned concerns. Please do not hesitate to contact NACA if you have any questions or concerns regarding these comments.

Sincerely,

Sarah L. Lukin
Executive Director
Native American Contractors Association