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IN FOCUS

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# The SBA's 8(a) Business Development Program

## Background

Through the 8(a) Business Development Program, Congress aims to help small "socially and economically disadvantaged" business owners overcome barriers to participating in federal contracting. The program, established under Section 8(a) of the Small Business Act in 1978, gives explicit statutory authority for program activities previously implemented through regulations. For eligible businesses, the 8(a) program creates federal contracting preferences such as contract set-asides and sole-source contracts. Set-asides limit contract competition to businesses in the 8(a) program. Sole-source awards are made to selected 8(a) program participants without competition.

Agency purchasing officials may choose to award contracts under this program in order to reach annual goals for contracting with small disadvantaged businesses (see CRS Insight IN12018, *Federal Small Business Contracting Goals*). Under the authority of the Small Business Act, the SBA accepts procurements from other federal agencies and may then award contracts to program participants through either a set-aside or sole-source award, typically depending on the value of the contract award.

In addition to contracting preferences, the program provides participants with business development support, including mentorship, training, and counseling. These services are intended to enhance participants' competitiveness and their long-term viability as businesses. Statutory authority for the program is contained in Sections 7(j), 8(a), and 8(d) of the Small Business Act. This In Focus provides an overview of the program's requirements as well as issues for Congress.

### Definition of Economically Disadvantaged

Economically disadvantaged individuals are those whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities (15 U.S.C. §637(a)(6)). They must have a net worth of less than $850,000 and an adjusted gross income averaged over the three preceding years of $400,000 or less. Funds invested in an Individual Retirement Account (IRA) or other official retirement account will not be considered in determining an individual's net worth. Ownership interest in the applicant firm and the equity in the individual's primary personal residence is excluded from net worth calculations as well. In addition, the fair market value of all his or her assets (including his or her primary residence and the value of the applicant firm) must not exceed $6.5 million.

### Definition of Socially Disadvantaged

Socially disadvantaged individuals have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities (15 U.S.C. §637(a)(5)). The SBA considers socially disadvantaged individuals to include:

- Black Americans;
- Hispanic Americans;
- Native Americans (Alaska Natives, Native Hawaiians, or enrolled members of a federally or state recognized Indian Tribe);
- Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru);
- Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

## Program Details

### Eligibility Requirements

Businesses that meet eligibility criteria and obtain 8(a) program certification may participate in the program for nine years, at which point they are no longer eligible for contracting preferences. Eligible firms must meet all of the following criteria, described at 13 C.F.R. §124:

1. Are small in size, according to size standards established by the SBA;
2. Are of good character, which relates to an applicant's criminal conduct, their incarceration, parole, or probation pursuant to crimes involving business integrity, their violations of any SBA regulations, and their submission of false information to the SBA;
3. Demonstrate potential for success, which a firm can generally do by operating and receiving contracts in the private or public sectors, in its primary industry, for at least two full years immediately prior to applying for the program (although the SBA may waive this two-year requirement under certain conditions);
4. Are at least 51% unconditionally and directly owned by one or more **socially**

**and economically disadvantaged** individuals who are citizens of the United States (or owned by an Alaska Native Corporation (ANC), Native Hawaiian Organizations (NHO), Community Development Corporations (CDC), or Indian tribe).

### Selected Program Features

The SBA also provides various forms of business assistance to program participants. To enhance their ability to manage federal contracts, firms may receive training, individual counseling, and management assistance and executive development—all provided through SBA District Office staff and SBA partners such as Small Business Development Centers (SBDCs), trade and professional associations, local service providers, and SCORE—a nonprofit business mentor network. The Small Business Act also authorizes the SBA to provide direct or guaranteed loans to program participants, on its own or with lenders.

During their nine years in the program, participants complete a developmental stage in the first four years and a transitional stage over the last five years. In the transitional stage, program participants must actively pursue non-8(a) contracts in order to reach required annual targets for non-8(a) revenue. These targets increase over time, as described at 13 C.F.R. §124.509(b); 15% of their revenue from non-8(a) sources in the fifth year, 25% in the sixth year, 30% in the seventh year, 40% in the eighth year, and 50% in the ninth year. The goal is for firms to successfully compete for federal contracts without 8(a) program assistance after completing the program by the ninth year. If the SBA determines that a participant did not make good faith efforts to meet these targets, the participant becomes ineligible for sole-source awards.

A participating business may "graduate" from the program by reaching its business development goals or may exit the program after nine or fewer years. Once a participant has left the program, neither the firm nor the owner of that firm is eligible to participate in the program again. However, if ANCs, CDCs, NHOs, and Indian tribes own multiple businesses, these groups may participate more than once via a firm that has not previously participated in the program.

### 8(a) Contract Award Limitations

The SBA is barred from awarding an 8(a) contract, either via a set-aside or on a sole-source basis, if the cost to the contracting agency exceeds "a fair market price" (15 U.S.C. §637(a)(1)(A)). Additional prohibitions on SBA accepting 8(a) contracts exist although agencies can offer contracts to the SBA "in [their] discretion," and the SBA may accept them "whenever it determines such action is necessary or appropriate" (15 U.S.C. §637(a)(1)(A)).

When an 8(a) contract's anticipated value, including options, is less than $4.5 million (or $7.5 million for manufacturing contracts), the contract is typically awarded on a sole-source basis without competition. When the anticipated value exceeds these thresholds, it generally must be awarded via a set-aside.

Sole-source awards in excess of the above thresholds may be made only when (1) there is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price; or (2) the SBA accepts the contract on behalf of certain group-owned firms, such as those owned by Indian tribes. Participant firms owned by ANCs and Indian tribes may receive sole-source awards in excess of the thresholds from any agency and NHO-owned firms may receive such sole-source awards from the Department of Defense.

Once they have been awarded more than $168,500,000 in 8(a) contract awards, participant firms owned by individuals may not receive any additional 8(a) sole-source awards, though they can still receive set-asides. This amount is set forth at 13 C.F.R. §124.519. SBA will not count awards less than $250,000 towards this limit. Firms owned by ANCs, CDCs, NHOs, and Indian tribes are not subject to this maximum total award amount and may continue to receive sole-source awards beyond it.

## Issues for Congress

Issues of potential congressional concern for the 8(a) program include performance measurement and program reporting and oversight. SBA may require technical support or additional resources to fully implement recommended solutions.

The SBA's Office of Inspector General (OIG) identified the "management and monitoring" of the 8(a) Business Development Program as a top management and performance challenge for the agency in FY2023. The OIG highlighted the lack of an effective IT system to monitor program participants' progress as a key issue. It also noted the need for consistent procedures for measuring business development. In 2022, the OIG found, "There was no mechanism in place to ensure that SBA consistently reviewed business plans and goals and then objectively monitored business development progress." According to the OIG, the SBA has begun to build a system to track participant progress but would need to complete this effort for the agency to effectively evaluate firm progress and program outcomes.

In addition to measuring participant and program outcomes, issues with reporting those outcomes present an oversight challenge for Congress. The Government Accountability Office (GAO) has reported a pattern of multiyear delays in 8(a) program reporting. GAO determined that manual data collection and validation, implementation of a new data system, and the timing of certification for federal contract data have contributed to delays and will likely continue to affect the timeliness of reports to Congress. GAO recommended that SBA document the procedures for the reporting process and is waiting for the agency to implement the recommendation. The SBA OIG appears to agree with GAO's determinations, writing that the SBA needs to improve data collection on the program in order to meet its reporting requirements.

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