



NACA

Native American Contractors Association

**Welcome to the
Native American Contractors
Association's**

**Different Types of Set-Asides
Available
AK CLE Certified for 5 credits**

**Washington, D.C.
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Who we are

NACA is a National Native organization based in Washington, D.C. that advocates for the rights of Tribes, ANCs and NHOs in government contracting and their participation in the SBA 8(a) Program.

Vision: To enhance the economic self-sufficiency of America's Indigenous people.

View our website at www.nativecontractors.org





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OVERVIEW

- ❖ Eligibility criteria for the following Government Contracting set-aside programs:
 - Small Business Program
 - 8(a) Business Development Program
 - HUBZone Program
 - Service-Disabled Veteran-Owned Small Business (SDVOSB) Programs
 - Women-Owned Small Business (WOSB) and Economically Disadvantaged Women-Owned Small Business (EDWOSB) Programs

- ❖ Q&A

#1 ELIGIBILITY REQUIREMENT FOR ALL SET-ASIDE PROGRAMS: MUST BE A SMALL BUSINESS!

- ❖ Small business status is determined by industry based on the size standards associated with the North American Industry Classification System (NAICS) codes found at 13 C.F.R. § 121.201
- ❖ Firms generally have a “primary” NAICS code, where the majority or plurality of their revenues are generated
- ❖ The size of a firm is determined by the average annual receipts of the firm over the three most recently completed fiscal years, or by the average number of employees for each pay period during the past 12 months (13 C.F.R. §§ 121.104, 121.106)

AFFILIATION

- ❖ Size of a firm includes any affiliates
 - Multiple ways that affiliation can arise
 - Key is when one firm controls or has the power to control the other, or a third party or parties controls or has the power to control both, even if this control is not exercised (13 C.F.R. § 121.103)

- ❖ **BUT . . .** Firms owned and controlled by Indian Tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs), or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are **not** affiliates of such entities (13 C.F.R. § 121.103(b)(2)(i))
 - There is also a general exemption from affiliation for sister companies owned by Indian Tribes, ANCs, etc. (13 C.F.R. § 121.103(b)(2)(ii)), although affiliation may be found for other reasons

SET-ASIDE PROGRAMS: SMALL BUSINESS SET-ASIDES

- ❖ Contracts may be set-aside exclusively for small business participation under an assigned NAICS code
- ❖ To be an eligible small business for a small business set-aside, the company must be small under the NAICS code and size standard assigned to the procurement
 - Small business status for a procurement is measured on the date you submit your proposal, with price
 - It is not necessary that your primary NAICS code be the same as the NAICS code assigned to the procurement
 - The procuring agency is responsible for selecting the NAICS code, but you can challenge it
- ❖ New opportunities for set-asides under MAS and FSS schedules

SET-ASIDE PROGRAMS:

8(a) BUSINESS DEVELOPMENT PROGRAM

- ❖ Created to help small, disadvantaged businesses compete in the federal marketplace through contractual and business development assistance
- ❖ The 8(a) program helps thousands of aspiring entrepreneurs gain a foothold in government contracting
 - Offers a broad scope of assistance to firms that are owned and controlled at least 51% by socially and economically disadvantaged individuals
 - Many opportunities for firms owned by Tribes, ANCs, NHOs, and CDCs to participate
- ❖ Competitive and sole source set-aside opportunities
- ❖ Unique mentor-protégé program and joint venture capabilities

ELIGIBILITY REQUIREMENTS FOR THE 8(A) PROGRAM

- ❖ Business must be small and have the potential for success
- ❖ Business must be majority owned (at least 51%) and controlled by a socially and economically disadvantaged individual who is a U.S. citizen
- ❖ **However, a firm may be eligible to participate if owned and controlled by a Tribe, ANC, NHO, or CDC**
 - Social and economic disadvantage is determined on the Tribal level – once a Tribe has successfully launched one firm, no need to prove disadvantage again
 - Important to reiterate that rules governing affiliation are more lenient for Tribally-owned firms within the 8(a) Program – almost total exclusion from affiliation for 8(a) set-aside and sole source contracts

SOCIAL DISADVANTAGE

- ❖ Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identification as members of groups without regard to their individual qualities
- ❖ Individuals in the following groups are “presumed” to be socially disadvantaged:
 - Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans
 - Tribes, ANCs, NHOs, and CDCs are presumed to be socially disadvantaged
- ❖ Individual is presumed socially disadvantaged if holds himself or herself out as a member of a presumed group and is currently identified by others as a member of the presumed group
- ❖ An individual not in a “presumed group” may still be eligible for 8(a) Program participation, on a case-by-case basis

ECONOMIC DISADVANTAGE

- ❖ For initial 8(a) eligibility, the personal net worth (PNW) of a disadvantaged individual must be less than \$250,000, and average income over past three years must be less than \$250,000
- ❖ For continued 8(a) eligibility after admission to the program, personal income, averaged over the past three years, may not exceed \$350,000 and PNW may not exceed \$750,000
- ❖ PNW excludes ownership interest in firm and equity in primary residence, except SBA can include these when looking at the applicant's total assets; total fair market value of all assets may not exceed \$4 million for applicants, and \$6 million for participants
- ❖ While in the program, owners may not take “excessive withdrawals”: excessive if in the aggregate during any fiscal year the Participant withdrawals exceed: (i) \$250,000 for firms with sales up to \$1,000,000; (ii) \$300,000 for firms with sales between \$1,000,000 and \$2,000,000; and (iii) \$400,000 for firms with sales exceeding \$2,000,000
 - However, no limitations on the amount of withdrawals taken by a Tribal owner if used for the “benefit” of the Tribe
- ❖ Firms owned by Tribes, ANCs, NHOs, or CDCs need not demonstrate economic disadvantage once they have gone through the process of admitting one firm
 - SBA looks at available data showing Tribe's economic condition, including number of Tribal members, present unemployment rate, per capita income of Tribal members, percentage of local Indian population below poverty level, and Tribe's access to capital

MANAGEMENT AND CONTROL REQUIREMENTS FOR CONCERNS OWNED BY TRIBES OR ANCS

- ❖ The management and daily business operations of a Tribally-owned concern must be controlled by the Tribe, although it may be controlled by the Tribe through one or more individuals who possess sufficient management experience. It may also be established the following ways:
 - By committees, teams, or Boards of Directors which are controlled by one or more members of an economically disadvantaged tribe, or
 - By non-Tribal members if the concern can demonstrate that the Tribe can hire and fire those individuals, and that it will retain control of all management decisions common to boards of directors
- ❖ Members of the management team, business committee members, officers, and directors are precluded from engaging in any outside employment or other business interests that conflict with the management of the concern or prevent the concern from achieving the objectives set forth in its business development plan

HOW TO OBTAIN AND MAINTAIN 8(a) ELIGIBILITY

- ❖ Must apply to the SBA; application process generally takes six months to one year
- ❖ Tribes, ANCs, NHOs, and CDCs 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 (can be a secondary code, though)
- ❖ Participants granted a nine-year term, divided into two stages (4-yr developmental stage, then 5-yr transitional stage)
- ❖ Maintain a balance between commercial and government business, changes for each Program year
- ❖ Limit on the total dollar value of sole-source contracts that may be received while in Program: less of \$100 million or five times the size standard corresponding to its primary NAICS code (for receipts-based NAICS codes)
 - However, no limit on sole source contracts made to firms owned by Tribes, ANCs, NHOs, or CDCs

SET-ASIDE PROGRAMS: HUBZONE PROGRAM

- ❖ Designed to benefit “Historically Underutilized Business Zones”
- ❖ HUBZone designations are dependent upon a district’s income levels, unemployment rates, Difficult Development Area status (designated by HUD), base closure status, and Indian land status
 - **Indian reservations are eligible HUBZones**
- ❖ Competitive and sole source set-aside contract opportunities
- ❖ 10% price evaluation preference in full and open contract competitions, as well as subcontracting opportunities

ELIGIBILITY REQUIREMENTS FOR THE HUBZONE PROGRAM

- ❖ Must be a small business
- ❖ Must be owned and controlled at least 51% by U.S. citizens
 - Firms wholly owned by one or more Tribe, ANC, or CDC are also eligible to participate in the HUBZone Program
- ❖ “Principal office” must be located in a HUBZone
- ❖ At least 35% of employees must live in a HUBZone

ELIGIBILITY REQUIREMENTS FOR THE HUBZONE PROGRAM, CONT'D

- ❖ “Principal office” means the location where the greatest number of the concern’s employees at any one location perform their work (13 C.F.R. § 126.103)
 - However, for those concerns whose “primary industry” is service or construction, the determination of principal office excludes the concern’s employees who perform the majority of their work at job-site locations to fulfill specific contract obligations

- ❖ “Employee” means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month
 - Includes temporary, leased, or “co-employed” employees
 - Also includes owner, even if no compensation is received

HOW TO OBTAIN AND MAINTAIN HUBZONE ELIGIBILITY

- ❖ Must apply to the SBA; application process generally takes three to six months
- ❖ Once admitted, there is no limit to the length of time you may participate in the program, although required to recertify eligibility with the SBA every three years
 - You must report all “material changes” to the SBA that may affect your eligibility, such as changes in ownership, business structure, principal office, or failure to maintain 35% HUBZone residency requirement
- ❖ Must meet HUBZone eligibility requirements at time of offer and award of a HUBZone set-aside contract
- ❖ Can only joint venture with other HUBZone firms

SET-ASIDE PROGRAMS: SDVOSB PROGRAMS

- ❖ There are two programs for service-disabled veteran-owned small businesses (SDVOSBs), one through the SBA and the other through the Department of Veterans Affairs (VA)
- ❖ Goals are to increase federal government's contracting with military veterans and to assist veterans in the transition from active duty to civilian life
- ❖ Competitive and sole source set-aside opportunities
- ❖ VA has a mentor-protégé program; SBA mentor-protégé program coming soon
- ❖ Joint ventures with other small businesses

ELIGIBILITY REQUIREMENTS FOR THE SDVOSB PROGRAMS

- ❖ Must be a small business
- ❖ Must be owned by a Service-Disabled Veteran (SDV)
- ❖ The SDV must:
 - Have a service-connected disability as determined by the VA or DoD
 - Unconditionally own at least 51% of the SDVOSB
 - Control the management and daily operations of the SDVOSB
 - Hold the highest officer position in the SDVOSB and have the necessary experience to run the business
 - Manage the SDVOSB on a day-to-day basis and be the highest-compensated individual in the firm (VA only)

HOW TO OBTAIN AND MAINTAIN SDVOSB ELIGIBILITY

- ❖ Self certification for the SBA Program
 - Must meet eligibility requirements on day of proposal submission
- ❖ For the VA Program, there is an application process that takes three to six months
 - Verified in www.VetBiz.gov by the VA's Center for Veterans Enterprise
 - If verified by CVE, SDVOSBs may compete for contracts set aside by the VA – see 38 C.F.R. Part 74
 - Must be eligible at time of proposal and time of award
 - Re-verification every two years
 - Joint ventures must be separately verified by the VA

SET-ASIDE PROGRAMS: WOSB & EDWOSB PROGRAMS

- ❖ Companion programs for women-owned small businesses (WOSBs) and economically disadvantaged women-owned small businesses (EDWOSBs)
- ❖ Competitive set-asides, but no sole source awards yet
- ❖ Priority in 2013 to increase use of the WOSB/EDWOSB programs
 - SBA's "ChallengeHer" campaign to match WOSBs and EDWOSBs with agencies
 - 2013 NDAA lifted the \$6.5 million dollar cap on set-aside competitions under the WOSB/EDWOSB programs

ELIGIBILITY REQUIREMENTS FOR THE WOSB PROGRAM

- ❖ Must be at least 51% owned and controlled by one or more women, and primarily managed by one or more women who are U.S. citizens
- ❖ Firm must be “small” in its primary industry in accordance with SBA’s size standards for that industry
- ❖ Must be a firm that participates in an industry that has been identified by the SBA as one where WOSBs are substantially underrepresented
 - Not all NAICS codes apply

ELIGIBILITY REQUIREMENTS FOR THE EDWOSB PROGRAM

- ❖ An EDWOSB is by definition a WOSB, so same eligibility requirements apply (and EDWOSBs may compete for WOSB opportunities)
- ❖ Additionally, in order for a WOSB to be deemed “economically disadvantaged,” its owners must demonstrate economic disadvantage
 - Personal net worth must be less than \$750,000, excluding ownership interest in firm and equity interest in personal residence
 - Adjusted gross income cannot be more than \$350,000 averaged over the last three years
 - Fair market value of total assets, including interest in firm and equity interest in personal residence, may not exceed \$6 million

HOW TO OBTAIN AND MAINTAIN WOSB/EDWOSB ELIGIBILITY

- ❖ Two ways to become eligible:
 - 1) “Modified” self certification by uploading eligibility documentation to SBA’s online repository
 - 2) Certification through SBA-approved Third Party Certifiers
- ❖ Must operate in one of the industries available for the WOSB/EDWOSB programs
 - Not all industries are available - 83 NAICS codes identified; roughly half for EDWOSB participation
 - Applicable industries identified on SBA’s website

Any Questions?

Thank you for joining us today.

If you would like to speak with Jon or Katie about the eligibility requirements for the various set-aside programs, please contact them as follows:

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