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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 (SDBs; see CRS Insight IN12018, *Federal Small Business Contracting Goals*). Under the authority of the Small Business Act, the Small Business Administration (SBA) accepts procurements from other federal agencies and may then award contracts to program participants through either a set-aside or a 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)). Prior to a July 2023 ruling in a federal district court case (*Ultima Servs. Corp. v. U.S. Department of Agriculture*), the SBA applied a “presumption of social disadvantage” to individuals applying for its 8(a) program from the following groups: Asian Pacific Americans, Black Americans, Hispanic Americans, Subcontinent Asian Americans, and Native Americans. Due to the district court ruling that the SBA cannot presume social disadvantage based on ethnic or racial group membership, the SBA stopped presuming social disadvantage. All program applicants must now submit a personal narrative to the SBA that demonstrates their social disadvantage, a procedure that had already been required of individuals who were not members of one of the racial groups listed above. For more information on the SBA’s response to the legal challenge, see CRS Insight IN12245, *SBA’s 8(a) Business Development Program Responds to District Court Ruling*.

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 Organization [NHO], Community Development Corporation [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 the 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. The SBA will not count awards less than \$250,000 toward 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

Since program eligibility and application changes occurred following the district court ruling in *Ultima Servs. Corp. v. U.S. Department of Agriculture*, Congress may be interested in program application processing issues as well as whether agency contracting with SDBs has been affected by 8(a) program changes. The government seeks to award a percentage of contracting dollars to SDBs each fiscal year, and while all 8(a) participants meet the definition of SDB, not all SDBs are in the 8(a) program; 8(a) program changes may impact contracting not just with program participants but with SDBs overall.

Additional issues of potential congressional concern for the 8(a) program include performance measurement and program reporting and oversight. The 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 information technology (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.

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