

# **SB Insight Sessions**

# 8(a) Business Development Program

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*Welcome!*



# 8(a) Business Development Program

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## *Objectives*



# 8(a) BD Program Objectives

- Sec. 204 of Public Law 100-656
- “to promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals...”
- “to promote the competitive viability of such concerns...”
- “to clarify and expand the program for procurement by the United States...”

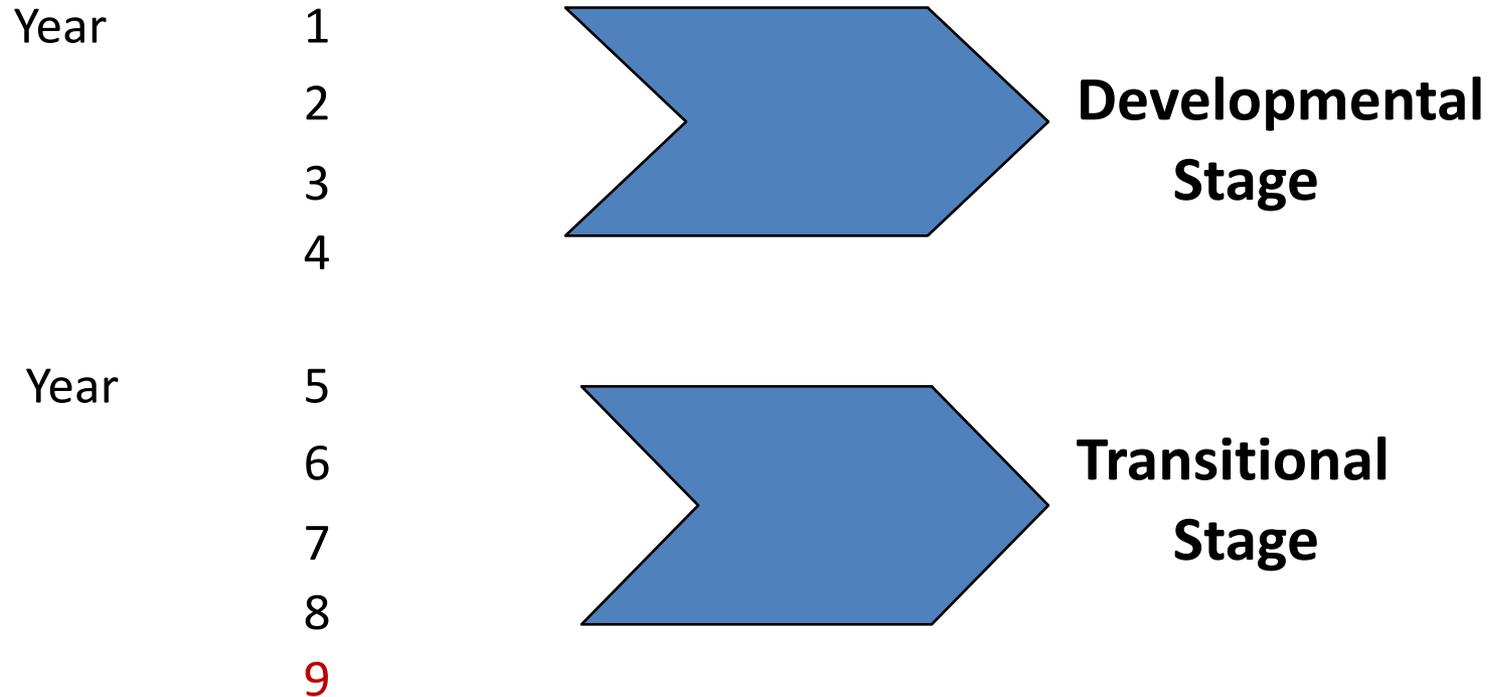
# 8(a) BD Program Benefits

- Exclusive training opportunities
- Be eligible for 8(a) set-aside and sole source contracts
- Firms are assigned to a Business Opportunity Specialist to assist with firm growth and contracting needs
- 5% government-wide goal for prime contract dollars going to small disadvantaged businesses

# Term of Participation



START = date of approval



Continuation in the program is dependent on the firm's continuing eligibility as a socially and economically disadvantaged owned and operated firm and continued compliance with the 8(a)BD participation agreement.

# 8(a) Business Development Program

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*Eligibility Criteria – Social Disadvantage*



# Social Disadvantage

- **Socially disadvantaged** individuals are persons who have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups, without regard to individual qualities.



# Social Disadvantage

- Individuals are presumed to be socially disadvantaged if they are a U.S. Citizen and a member of one of the following groups:
  - Black Americans
  - Asian Pacific Americans
  - Hispanic Americans
  - Subcontinent Asian Americans
- Individuals who are not members of one of these groups must establish social disadvantage based on a preponderance of the evidence.

# What is “Preponderance”?

- To establish social disadvantage based on a preponderance of the evidence, several steps must be followed

# Steps for Preponderance Cases

- Identify at least one objective distinguishing feature that has contributed to social disadvantaged, such as race, ethnic origin, gender, physical handicap, long term environmental isolation, or other similar causes.
- Provide specific personal experiences of social disadvantage stemming from the objective distinguishing feature(s) occurring in the United States.
- The social disadvantage must be chronic and substantial, and must have negatively impacted entry and/or advancement in the business world.

# Steps for Preponderance Cases

- An individual's statement of personal experiences in combination with generalized evidence may be sufficient to demonstrate social disadvantage.
- SBA considers experiences in the areas of education, employment, and business history to determine whether the totality of circumstances demonstrates social disadvantage.

# 8(a) Business Development Program

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*Eligibility Criteria – Economic Disadvantage*



# Economic Disadvantage

- **Economically disadvantaged** individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit.

# Personal Net Worth

- After excluding the individual's equity in the firm and equity in the primary residence, net worth must be less than **\$250,000**.

- Net Worth

less      Equity in Primary Residence  
less      Equity in Business  
Equals    Adjusted Net Worth  
(must be less than \$250,000)



# Retirement Accounts

- Funds in IRAs or other Official Retirement accounts that are unavailable to an individual until retirement age without a “significant penalty” will not be considered in determining an individual’s net worth.
- Individuals must provide information to SBA about the terms and restrictions of the accounts and certify that the retirement accounts are legitimate.
- “Significant penalty” would be one equal or similar to the penalty assessed by the IRS for early withdrawal.

# Other Factors

- Individuals may not have excessive personal income or personal assets.
- Individuals with an average three-year adjusted gross income over \$250,000 are not considered economically disadvantaged.
- Individuals with total personal assets over \$4 million are not considered economically disadvantaged. The only assets excluded are funds in qualified IRA or retirement accounts.

# 8(a) Business Development Program

*Eligibility Criteria – Ownership, Control, and Management*



# Ownership

- At least 51% unconditional ownership by the disadvantaged individual(s).
- **Partnership:** Partnership agreement must reflect 51% unconditional ownership.
- **Limited Liability Company:** Operating agreement must show the disadvantaged individual(s) owns at least 51% of each class of member interest.

# Ownership

- **Corporation:**

- Disadvantaged individuals must own at least 51% of each class of voting stock and at least 51% of all outstanding stock.
- Stock options held by non-disadvantaged individuals will be viewed as if they have been exercised.

# Control and Management

- **Partnership:** Partnership agreement must reflect unconditional management by disadvantaged partner(s).
- **Limited Liability Company:** Operating agreement must demonstrate that one or more disadvantaged individuals serve as management members with unconditional control.
- **Corporation:** One or more disadvantaged individuals must control the Board of Directors.

# What Constitutes Control?

- A Disadvantaged Individual must:
  - Hold the highest position of President, Chief Executive Officer, Managing Partner, or LLC Managing Member
  - Be the highest compensated individual
  - Have the ability to hire and fire
  - Set policies
  - Have the ability to commit firm to contracts
  - Have the ability to control budget and financial disbursement

# Do you Control Operations?

- Tests:

- The disadvantaged individual holding the highest position must devote full-time to the business and be physically located in the United States.
- The disadvantaged individual managing on a full-time basis must possess sufficient managerial experience to run the business.
- The disadvantaged individual must have ultimate managerial control over individuals with technical expertise and/or critical licenses.

# Do Other Individuals have Control?

## ■ Tests

- Do contractual arrangements exist that allow a nondisadvantaged individual/entity to control the firm?
- Is the individual/entity a previous employer or supervisor?
- Does a nondisadvantaged individual/entity:
  - Hold the critical license and have equity interest in the applicant concern?
  - Provide the necessary licenses or bonding?
  - Have unlimited access to the business bank accounts?
  - Provide critical financing?
  - Control through business loan arrangements?
  - Receive excessive compensation?

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*Eligibility Criteria - Size*



# Size

- Firms must be small based on their primary North American Industry Classification System (NAICS) code, including affiliates.
- Size is determined either by:
  - Average 3 years of revenues, or
  - Average number of employees (manufacturers, dealers, wholesalers)
- See 13 CFR 121 Size Regulations or visit [www.sba.gov](http://www.sba.gov)
- For specific questions regarding affiliation, contact your local SBA Government Contracting Size Specialist

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*Eligibility Criteria – Potential for Success*



# Potential for Success

- Factors considered:
  - Two Year Rule: proof of two full years of operations in the firm's primary industry as verified by revenues reported on the two most recent years of Federal business tax returns.
  - Financial Capability: sufficient capitalization, financial performance, manageable debts, bonding capacity.
  - Managerial and technical experience of the firm's managers.
  - Performance on previous contracts.
  - Firm has the necessary personnel, licenses, certifications, facilities, equipment, etc. to perform on contracts.

# Waiver of the Two Year Rule

- SBA may waive the Two Year Rule if all the following five waiver conditions are met:
  - The individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience.
  - The firm has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success if admitted to the 8(a) BD Program.
  - The firm has adequate capital to carry out its business plan as a Participant.

# Waiver of the Two Year Rule

- Conditions, continued:
  - The firm has a record of successful performance on contracts from governmental or nongovernmental sources in the primary industry category.
  - The firm has, or can demonstrate, its ability to timely obtain the personnel, facilities, equipment, and any other requirements needed to perform such contracts as a participant.

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*Eligibility Criteria – Good Character*



# Demonstrations of Lack of Character

- Adverse information regarding possible criminal conduct by the applicant or its principals.
- Violations of any SBA regulations.
- Debarred or suspended individuals or firms.
- Applicant firms and principals that lack business integrity as shown by an indictment, guilty plea, or civil judgment.
- Any principal who is incarcerated or on parole or probation.
- Evidence that the firm knowingly submitted false information during the application process.
- Any firm or any of its principals that fail to pay financial obligations to the Federal government.

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*Eligibility Criteria – Ineligible Businesses & Individual Disqualification*



# These Entities/Individuals are Ineligible

- Ineligible businesses: brokers\*; debarred or suspended persons or concerns; nonprofit organizations. Franchises may be allowed contingent upon SBA review of the franchise agreement.
- A business may participate only once. Even if ownership and control has completely changed, firm may not reapply.
- Any person who has used his/her disadvantaged status to qualify another firm shall be regarded as non-disadvantaged.

*\*A broker is a concern that adds no material value to an item being supplied to the Procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities.*

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*Questions?*



# Name of Your Office

For more information on SBA's programs and services

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