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# Federal Contractor's Guide to the SBA's October 2020 Final Rule –

## Part IV: Changes to the SBA 8(a) Program

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# Today's Agenda

- Changes to the 8(a) Application Process
- Relaxation of Immediate Family Member Restriction
- New Definition for “Follow-on” Requirement or Contract
- Business Activity Targets
- Sole-Source Contracts
- “Bona Fide Place of Business”
- Clarifications to Ownership Rules for Tribally-Owned and ANC-Owned 8(a) Applicants
- Economic Forecasts for FY 2021



# Changes to the 8(a) Application Process

- Allows a firm that the SBA rejected to correct its application and **reapply after 90 days** – without seeking reconsideration of the denial.
  - Previously, when denied firms did not seek reconsideration within 45 days, they would have to wait a year to reapply.
- **Limit:** If the SBA denies a firm 3 times within 18 months, the firm must wait 12 months before reapplying.
- Firms must submit a **business plan within 60 days** of 8(a) admission or risk suspension from 8(a) benefits.
  - Previously, firms had to wait for SBA approval of its business plan before being eligible for program benefits.



# Relaxation of Immediate Family Member Restriction for Program Eligibility

Applicant is **not eligible** if it has an **immediate family member in the program** (currently or formerly) and one of the following circumstances exist:

1. Applicant and immediate family member share any kind of **common ownership or management**;
2. The concerns have a **contractual relationship** “that was not conducted at an arm’s length”;
3. The concerns **share facilities**; or
4. Both concerns operate under the **same primary NAICS code** but the applicant does not have experience in the primary NAICS code.



# New Definition for “Follow-on” Requirement or Contract

Multifactor definition of “follow-on” involves consideration of:

1. Whether the contract **scope** changed;
  2. Whether the requirement’s magnitude/value changed by **at least 25%**; and
  3. Whether **the end user (agency) has changed** – if the end user is the same, the requirement will likely be a follow-on.
- Work is *not* a “follow-on”: Agency must notify SBA of its intent to procure work outside of the 8(a) program as a “new” requirement.
  - Work is a “follow-on”: Agency must make a written request and get SBA approval to re-procure a follow-on outside of the 8(a) program.



# Business Activity Targets

- The Final Rule makes business activity targets **less demanding on program participants**.
- Now, firms must only demonstrate “**good faith efforts**” to reach those percentage goals.
  - A concern will not be disqualified from sole-source contract eligibility if it can clearly demonstrate good faith efforts to reach 8(a) goals.
- The Final Rule **lowers the business activity percentage goals** in years 3, 4, and 5 of the transitional stage of the program.
  - Reduces goals by 5% in years 3, 4, and 5 to require **30%, 40%, and 50%** business activity target goals, respectively.



# Sole-Source Contracts

- For **sole-source** contracts, a firm must be a current 8(a) program participant **at the time of the contract award**.
  - **Competitive 8(a) contracts** require a firm to be a current participant on the offer submission date.
- For **design-build contracts**, eligibility is determined on the initial submission date for phase one offers.
- Adjusts *how* the SBA will calculate **the \$100M earnings limit** for a concern's continued eligibility to receive sole-source contracts.
  - The SBA will look to **revenues already received** (not projected profit from IDIQ orders, option years, or MACs).
  - The SBA will **not** count contracts **under the Simplified Acquisition Threshold**



# “Bona Fide Place of Business”

- **Bona fide place of business:** “the geographic area serviced by the SBA district office, a Metropolitan Statistical Area (MSA), or a contiguous county (whether in the same or different state) where the work will be performed.”
  - **Broadens the geographic area** a contractor may have its business.
- Participants may also have bona fide places of business **in more than one location.**
- The SBA will make determinations within **5 working days** of a site visit **or 15 working days** after a servicing district office’s request.
  - A participant may presume approval if the SBA does not timely respond.



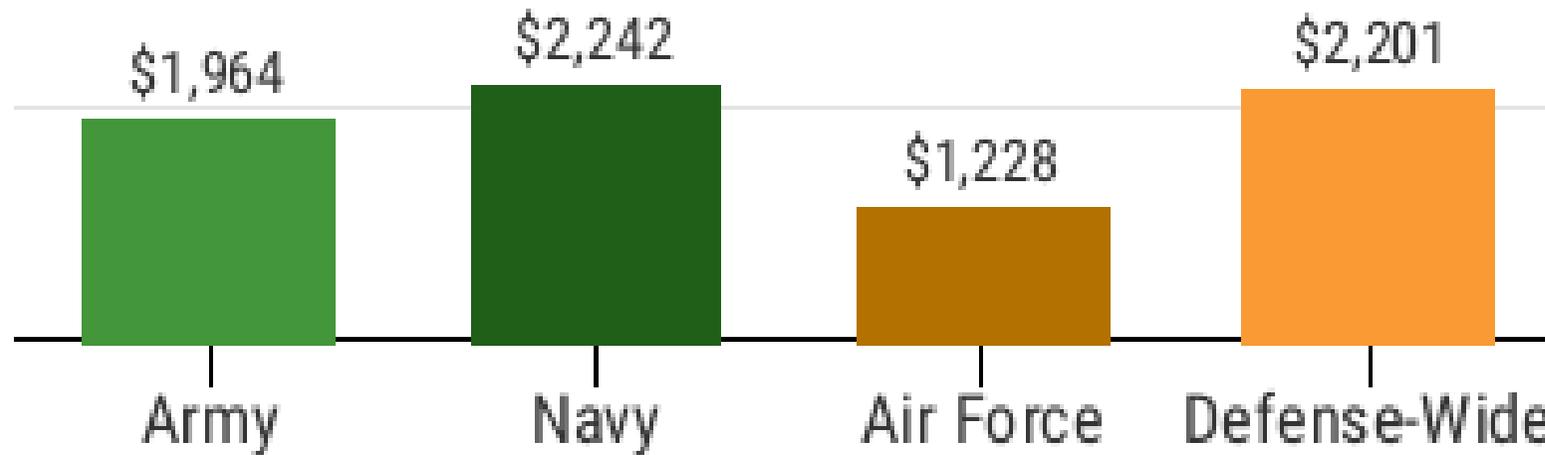
# Clarifications to Ownership Rules for Tribally-Owned and ANC-Owned 8(a) Applicants

- A tribally-owned or ANC-owned firm **no longer needs to request a change of ownership** if it reorganizes ownership of the participant business by adding or removing a wholly-owned business entity in the chain of ownership between the tribe/ANC and the business.
  - Must notify the SBA of the change **within 30 days**.
- A **single person** may also control the management/daily operations of **2 tribally-owned concerns** at the same time.
- If a tribally-owned participant **changes its primary NAICS code**, the tribe may qualify **another firm** under the **previous NAICS code**.



# Economic Forecast for FY2021

DoD continues to restore, sustain, replace, and build critical facilities, and plans to invest over \$21 billion in Military Construction and Facilities, Sustainment, Restoration, and Modernization, the budget.



# Thank You for Joining Us.

Be sure to look out for an upcoming article summarizing all of the SBA rule changes covered in this series.

Additionally, we will be making a few announcements in 2021:

- New Program for Federal Contractors:  
Aiming for Success in the Federal Market
- Support Program for SBLO's

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