



Prepared for:

Bristol Bay Native Corporation

Compliance Training

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8(a) Updates

Presented By:

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Your Presenter

Laura M. Foster

- Of Counsel at Outlook Law, LLC.
- Formerly an Attorney Advisor in the Office of Procurement Law (OPL) at the U.S. Small Business Administration in Washington, DC.
- While at SBA, served as OPL's subject matter expert with respect to the 8(a) program and entity-owned participation in small business programs.

Rulemaking Process

- Tribal Consultations
- Proposed Rule
- Public Comments (sometimes additional Tribal Consultations)
- Final Rule

Bona Fide Place of Business

13 CFR 124.503(d)(1) and 124.507(c)(2)

- Current Rule: Must receive SBA determination prior to submitting offer on 8(a) construction requirement
 - Proposed New Rule: Must submit request for SBA approval at least 20 days before offers are due
- Current Rule: No regulatory timeframe for SBA District Office review/determination
 - Proposed New Rule: SBA District Office must conduct site visit and issue determination within 15 days of request

Changes of Ownership

13 CFR 124.105(i)

- Current Rule: Must receive SBA's prior approval for any change impacting more than 10%
 - Proposed New Rule: No SBA approval required for changes impacting less than 20%
 - Proposed New Rule: No SBA approval required, but must notify SBA within 30 days of reorganization where ultimate ANC parent remains the same
 - Proposed New Rule: No SBA approval required if ANC is increasing its ownership interest

Mentor/Protégé Programs and Joint Ventures

13 CFR 124.520 and 124.513

- Current Rule: All Small Mentor Protégé Program (ASMPP) operates separately from 8(a) Mentor Protégé Program
 - Proposed New Rule: ASMPP adopts all 8(a) Mentor Protégé Program operations
- Current Rule: SBA approval required prior to award for all 8(a) joint venture agreements
 - Proposed New Rule: No SBA approval necessary for competitive 8(a) procurements

Business Activity Targets

13 CFR 124.509

- Current Policy: Varies depending on District Office
 - Proposed Policy Notice: BATs compliance measured based on Fiscal Year
 - Proposed Policy Notice: BATs compliance determined during annual review at end of Program Year
 - Proposed Policy Notice: Any remedial measures (6 month periods for coming back into compliance) measured on Program Year
 - Proposed Policy Notice: Waivers granted on contract-specific basis

Size Recertification

13 CFR 121.404(g)

- Current Rule: Size recertification required within 30 days of merger, sale, or acquisition
 - Proposed New Rule: No recertification required from company at least 51% owned by ANC if ultimate parent remains unchanged
- Current Rule: Joint venture must recertify within 30 days of merger, sale, or acquisition of one of the JV partners
 - Proposed New Rule: Only the JV partner acquired/acquiring/merged must recertify its size status

Small Business Runway Extension Act of 2018

H.R. 6330 and S. 3562

- Current Statute: Size of businesses providing services to be determined on the basis of annual average gross receipts over a period of not less than 3 years
 - Proposed Legislation: Not less than 5 years

Questions?