

8(a) Business Development (BD) Program



Agenda:

- Overview of the 8(a) BD Program
- 8(a) BD Eligibility Requirements
- Guide to Getting a Complete 8(a) BD Application



Overview of 8(a) Business Development (BD) Program



What is the 8(a) Business Development Program?

- THE LAW: Began as a public law named after Section 8(a) of the Small Business Act 1953 (Public Law 95-507 & 100-656)
 - http://www.sba.gov/content/small-business-act full copy of the Small Business Act
- SBA REGULATIONS: Governed by 13 CFR § 124
 - www.ecfr.gov click on "Title 13" and then "Part 124"
- ADD'L FEDERAL REGULATIONS: Incorporated in the Federal Acquisition Regulations (FAR), under Part 19, Small Business Programs
 - www.ecfr.gov click on "Title 48" and then "Part 19"



What Are the Objectives of the 8(a) Business Development Program?

- "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 [firms] ..."
- "to clarify and expand the program for procurement by the United States..."

This is what Congress intended. . .



What Are the <u>Benefits</u> of the 8(a) Business Development Program?

- Obtain management and technical assistance through the 7(j)
 Management and Technical Assistance Services Program
 - Receive counseling and training in areas: financing, management, accounting, marketing, etc...
 - Identify and develop business opportunities
- May be able to receive sole-source contracts
- Form joint ventures and teams via Mentor-Protégé Program



What Are the <u>Goals And Requirements</u> of the 8(a) Business Development Program?

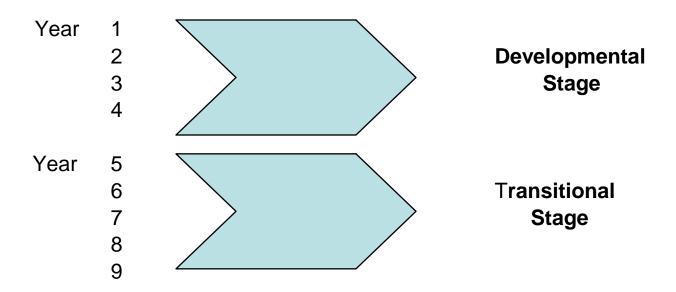
Goal: To graduate 8(a) firms that will go on to thrive in a competitive business environment.

Requirements:

- Maintain a balance between commercial and government business
- Limit on the total dollar value of sole-source 8(a) contracts
- Complete Annual Reviews
- Develop and update Business Plan
- Continue to meet the eligibility requirements during the 9-year program term



What Length of Time May a Business Participate in the 8(a) BD Program?



- A Participant receives a onetime only program term of nine years from the date of SBA's approval letter certifying the concern's admission to the program.
- The Participant must maintain its program eligibility during its tenure in the program and must inform SBA of any changes that would adversely affect its program eligibility.
- The nine year program term may be shortened only by termination, early graduation or voluntary withdrawal.

8



8(a) BD Eligibility Requirements



8(a) BD Eligibility Requirements

SBA REGULATIONS: Governed by 13 CFR § 124 www.ecfr.gov – click on "Title 13" and then "Part 124"

>	U. S. Citizens	13 CFR §	124.101
>	Size	13 CFR §	124.102
>	Social Disadvantage	13 CFR §	124.103
>	Economic Disadvantage	13 CFR §	124.104
>	Ownership	13 CFR §	124.105
>	Control and Management	13 CFR §	124.106
>	Potential for Success	13 CFR §	124.107
>	Other -		
	➤ Good Character, One-Time eligibility, Federal Financial Obligations	13 CFR §	124.108
>	ANC's and AIT's	13 CFR §	124.109
	NHO's	13 CFR §	124.110
	CDC's	13 CFR §	124.111



Guide to Getting a Complete 8(a) BD Application



U.S. CITIZENSHIP

Individuals claiming disadvantage *not* born in the U.S. must provide U.S. citizenship

MUST SUBMIT - - - - Clear and legible copy of:

- U.S. passport, or
- Certificate of Naturalization



Size

Firms, including alleged affiliates, must be small based on the applicant firm's primary NAICS Code.

Size is determined *either* by:

- raverage annual receipts, averaged for 3 years or
- ># of employees (manufacturers, dealers, wholesalers)

See 13 CFR 121 Size Regulations or visit our website: www.sba.gov/size.



Size - Affiliation

- If we determine that the applicant may not qualify as small, we may
 - Deny an application for 8(a) BD program admission or
 - Return the application to gain additional information
 - NOTE: SBA may request a formal size determination during processing
- A Firm MAY NOT BE SMALL on its own
- A Firm MAY NOT BE SMALL with its affiliates

BASIS for DECLINE - can be one or both

- -- **Size** not met (due to affiliation) –
- -- Control not met (due to potential for negative control or negative control) --



Size - Affiliation

Non-disadvantaged individuals or entities MAY NOT exercise actual control or have the power to control the firm

What We Look For

- Control of the Board (quorum requirements, ability to block decisions)
- Providing critical financial or bonding support or a critical license
- Other significant influence on business decisions
- Loan arrangements
- •Dependent business relationships with non-disadvantaged individuals or entities that the firm cannot exercise independent business judgment without great economic risk.)



Size - Affiliation

MUST SUBMIT - AT A MINIMUM (other docs may be requested)

a.If requested, SBA Form 355 (prepared by a principal of the 8(a) applicant);

b. Last 3 years business tax returns, including all schedules, attachments, and proof of tax paid;

c.If the firm is a Corporation:

- -most recent two years shareholder meeting minutes showing the election of the board of directors
- most recent two years board of director meeting minutes showing the election of the officers;
- stock certs and ledger;

d. If the firm is a LLC:

- articles of organization and operating agreement;
- e. **If the firm is a sole prop**, provide:
- assumed/fictitious name registration / DBA certificate

f. If the firm is a partnership:

- partnership agreement



SOCIAL DISADVANTAGE



Individuals are presumed to be socially disadvantaged if they are **U.S. Citizens** and members of one of the following groups $(13 \ CFR \ \$ 124.103(b)(1))$:

≻Black American

>Asian Pacific American

➤Individuals with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia, Vietnam, Korea, The Philippines, U.S. Trust Terr. Of the Pacific Islands, Rep. of the Marshall Islands. Fed. States of Micronesia, Comm. Of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru



Socially Disadvantaged Groups (cont'd)

≻Hispanic American

≻Native American

- ➤ Alaska Natives, Native Hawaiians, or enrolled members of Federally or State recognized Indian Tribe;
- ➤ If not an enrolled member of a Federally or State recognized Indian Tribe an individual must meet the Preponderance of the Evidence standard.

>Subcontinent Asian American

➤Individuals with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal.



Persons *not* members of the presumed groups must establish their individual social disadvantage by a preponderance of the evidence (13 CFR § 124.103(c)):



- ➤ The disadvantage may stem from race, ethnic origin, gender, physical handicap, long term environmental isolation, or other similar causes;
- The applicant **must** have personally suffered disadvantage in the United States;
- ➤ The disadvantage **must** be chronic & substantial;
- The discrimination **must** have negatively impacted business advancement.





What is "Preponderance"?

Generally, preponderance is evidence of a quality and quantity which leads the decision maker to objectively conclude that the existence or truth of the facts asserted is more probable than not.

MUST SUBMIT

WHATEVER EVIDENCE YOU CHOOSE (SEE EXAMPLES IN NEXT SLIDE) - - - but must be more than a one-line statement!



Types of Evidence for Preponderance (1)

- ➤ Court or Administrative findings of discrimination.
- > Statements made under oath to an investigator, in court or in an administrative proceeding.
- Affidavits or sworn statements by the individual claiming disadvantage.
- > Affidavits or sworn statements by independent third parties.



Types of Evidence for Preponderance (2)

- Documentary evidence which corroborates or supports assertions made by an applicant such as:
 - Personnel Records
 - Payroll Records
 - Rejection letters on job applications.
 - Denials of credit applications.
 - Financial statements.
 - Documents relating to rejected contract offers, i.e., bid abstracts, solicitations.
 - Contemporaneous records memorializing meetings, conversations, negotiations, telephone calls, etc.
 - Documents setting forth company policy(ies) which are alleged to be discriminatory.



Types of Evidence for Preponderance (3)

Evidence which tends to show generalized patterns of discrimination against a nondesignated group or statistical data showing that businesses owned by a specific nondesignated group are disproportionately underrepresented in a particular industry *may* be used to augment an individual's case. Statistics and generalized patterns are not sufficient by themselves to establish a case of individual social disadvantage. However, an individual's statement of personal experiences in combination with the generalized evidence may be sufficient to demonstrate social disadvantage.



Types of Evidence for Preponderance (4)

SBA will consider any relevant evidence in assessing a claim of social disadvantage. In every case, however, SBA will consider the experiences of the individual, where applicable, in education, employment and business history to see if the totality of the circumstances shows disadvantage in entering into or advancing in the business world. Evidence relating to all three areas should be addressed, if applicable, to the individual's case, and each circumstance should demonstrate how it has affected the individual's entrance into and advancement in the business world. The failure to establish disadvantage in any one or two areas does not prevent an individual from meeting the negative impact requirement as long as the totality of the circumstances experienced by the individual demonstrates such disadvantage.



FOR CONTINUED ELIGIBILITY

Disadvantaged principals are not required to re-establish their social disadvantage for the purposes of continued eligibility.



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.

Individuals who are economically disadvantaged must have:

- >A personal net worth of less than \$250,000;
- Total assets that do not exceed \$4MM; and
- An average three years personal income that does not exceed \$250,000.

For Continued Eligibility individuals who are economically disadvantaged must have:

- A personal net worth of less than \$750,000;
- Total assets that do not exceed \$6MM; and
- An average three years income that does not exceed \$350,000



Net worth criterion:

After excluding the individual's legitimate retirement account(s), equity in the firm, and equity in the primary residence, net worth may not exceed:

\$250,000.00 for 8(a) eligibility/ \$750,000 for continued eligibility*.

NET WORTH (assets less liabilities)

less legitimate/qualified IRA/retirement account value(s)

less equity (value - mtg. bal.) in primary residence

less <u>equity in business</u>

equals adjusted net worth



^{* 13} CFR § 124.104(b)(2)(i)- Contingent liabilities do not reduce the net worth.



Each individual claiming economic disadvantage must explain it in a narrative and provide personal financial information (*on SBA Form 413*) for themselves and his/her spouse, unless legally separated. (*13 CFR § 124.104(b)(1)*)

When reporting assets and liabilities each individual must record *ALL* his/her assets (*whether wholly or partially owned*) and *ALL* his/her liabilities (*whether wholly or partially responsible*).



SBA *will* consider a spouse's financial situation when determining the disadvantaged applicant's access to capital and credit where the spouse:

- ➤ Has a role in the applicant concern;
- ➤ Has loaned money to the applicant concern;
- ➤ Provided credit support to, or guaranteed a loan for, the applicant concern.

Unless information is provided to show that the couple are legally separated.

SBA, when determining an applicant individual's economic disadvantage, *does not* take into consideration community property statutes.

13 CFR § 124.104(b)(2)



IRA/Retirement Accounts and adjusted net worth

Funds invested in IRA's of other qualified retirement account(s) will not be included in adjusted net worth if these funds are unavailable until retirement age without significant penalties.

Applicant must provide, for each retirement account,

- Information regarding the terms and restrictions; and
- Certification that the account is legitimate.

13 CFR § 124.104(b)(2)(ii)



Personal Income and adjusted net worth

Income from S-Corps, LLC's (*not filing on Schedule- C*), or partnerships will not be included in adjusted net worth calculations if:

- ➤ Income was reinvested in the firm; or
- ➤ Used to pay taxes arising out of normal business operations.

Losses will not be used to reduce the adjusted net worth calculations.

13 CFR § 124.104(b)(2)(iii)



FAIR MARKET VALUE OF ALL ASSETS

FOR INITIAL ELIGIBILITY- an individual will *not* be considered economically disadvantaged if the fair market value of *ALL* of her/her assets exceeds \$4MM.

The *ONLY* exception to this are funds invested in a legitimate IRA/retirement account.

13 CFR § 124.104(c)(4)



FAIR MARKET VALUE OF ALL ASSETS

FOR CONINTUING ELIGIBILITY- an individual will *not* be considered economically disadvantaged if the fair market value of *ALL* of her/her assets exceeds \$6MM.

The *ONLY* exception to this are funds invested in a legitimate IRA/retirement account.

13 CFR § 124.104(c)(4)



8(a) BD Application- SBA Form 413

When submitting the SBA Form 413 the individual(s) claiming disadvantage must:

- •Verify that the information is no older than 30 days;
- •Provide a SEPARATE form for his/her spouse;
- •Provide the terms and restrictions for ALL of his/her retirement accounts.

 Other personal property (clothing, jewelry, etc.) may be estimated.

 Individuals may be asked to submit documentation to verify EACH asset and liability.

NOTE: Disadvantaged applicants *MUST* disclose all assets and liabilities and may not make exclusions on their own. SBA makes the exclusions.



Personal Income

FOR INITIAL ELIGIBILITY:

If a disadvantaged individual's adjusted gross income, averaged over three years, exceeds \$250,000, he/she will be presumed by SBA to *not* be economically disadvantaged. (13 CFR § 124.104(c)(3)(i))

Unless:

- ➤ Income was unusual & not likely to occur in the future:
- Losses commensurate with, and related to, earnings were suffered;
- Evidence that income is not indicative of lack of economic disadvantage.



Personal Income

FOR CONTINUING ELIGIBILITY:

If a disadvantaged individual's adjusted gross income, averaged over three years, exceeds \$350,000, he/she will be presumed by SBA to *not* be economically disadvantaged. (13 CFR § 124.104(c)(3)(i))

Unless:

- ➤ Income was unusual & not likely to occur in the future:
- Losses commensurate with, and related to, earnings were suffered;
- Evidence that income is not indicative of lack of economic disadvantage.



Personal Income (cont'd)

Income from S-Corps, LLC's (*not filing a Schedule- C*), or partnerships will not be included in personal income calculations if:

- ➤ Income was reinvested in the firm; or
- ➤ Used to pay taxes.

Losses will not be used to reduce the personal income calculations. (13 CFR § 124.104(c)(3)(ii))



Personal Income (cont'd)

SBA will examine the individual income tax returns for the prior three (3) years. Applicant's must provide:

- •Three most recent income tax returns*, inc'l all schedules and attachments;
- •All corresponding W-2's and all 1099 forms verifying the income received during the year.
 - W-2's **MUST** total line seven (7) of each income tax return;
 - 1099 and other forms/documentation must be provided to determine income and related adjustments.

^{*} Extension requests will not suffice in lieu of tax returns.



Ownership



Direct Ownership

• At least 51% unconditional *direct* ownership by the disadvantaged individual(s). Ownership through another entity *is not* direct. *13 CFR § 124.105(a)*

EXAMPLES:

- 1- Mr. A owns 100% of firm B. Firm B owns 75% of Applicant firm, Mrs. A owns 25% of Applicant firm. Applicant firm would not be eligible for 8(a) participation.
- 2- Mr. A owns 100% of Revocable Trust and is the grantor, trustee, and sole current beneficiary. Revocable Trust owns Applicant Firm. Applicant Firm may be eligible.



- ➤ Partnerships: Agreements *must* reflect unconditional ownership. Each class of interest must be at least 51% owned by disadvantaged individual(s). *13 CFR § 124.105(b)*
- ➤ Limited Liability Company: Disadvantaged individuals *must* own at least 51% of *each class* of member interest. *13 CFR § 124.105(c)*

SBA will look at the:

- Partnership agreement or operating agreement (if LLC);
- IRS 1040 Schedule E, if applicable;
- Firm's tax returns.



> Corporations:

- Disadvantaged individuals must own at least 51% of *each class* of voting stock and at least 51% of the aggregate of all outstanding stock. (13 CFR § 124.105(d))
- Stock option plans for nondisadvantaged individuals will be viewed as if they have been exercised. (13 CFR § 124.105(e))

SBA will look at the:

- stock certificates and ledger;
- IRS 1040 Schedule E, if applicable;
- Firm's tax returns.



Dividends & Distributions

One or more disadvantaged person(s) must be entitled to:

- > @ least 51% of annual distribution of dividends;
- ≥100% of the value of stock owned in case of sale; and
- >@ least 51% of R/E & 100% of unencumbered value of stock in case of dissolution.



Ownership of Another Firm

13 CFR § 124.105(g)

Disadvantaged person(s) may not use disadvantage status if an immediate family is using or has used their own disadvantaged status to qualify another firm. MAY BE waived if:

- ➤ No ownership/control connections;
- ➤ No contractual relationships; and
- Disadvantaged person(s) has industry related management/technical expertise.

If the firms operate in the same or similar lines of business there is a presumption <u>against</u> granting the waiver.

Clear & compelling evidence of no connections must be provided.



Ownership Restrictions

13 CFR § 124.105(h)

Non- Disadvantaged person(s) (in the aggregate w/ all immediate family) and Non- Disadvantaged firms, may not own more than 10% of an applicant firm, **IF** they own at least 10% of a participant firm.



Control and Management



Partnerships: Agreements must reflect unconditional management by disadvantaged partner(s). DVD individual(s) *must be* named as the General Partner(s). *13 CFR § 124.106(b)*

SBA will examine the partnership agreement, and any amendments.

➤ Limited Liability Company: One or more disadvantaged individuals *must* serve as management members with unconditional control. 13 CFR § 124.106(c)

SBA will examine the LLC's operating agreement, and any amendments.



Corporations: How control is established. 13 CFR § 124.106(d)

SBA will examine the corporations articles, by-laws, and meeting minutes, among other things.

A. Disadvantaged directors of the board must control the board by actual number of votes and must be able to establish a quorum without the presence of nondisadvantaged directors.

OR



B. Control without considering the board of directors :

- 1. A single disadvantaged individual owns <u>100%</u> of the voting stock.
- 2. A single disadvantaged individual owns at least 51% of the voting stock, is on the board of directors and no supermajority* voting requirements exist. If a supermajority requirement exists, the disadvantaged individual must own at least the percentage of voting stock necessary to overcome any supermajority requirements.
- 3. If more than one disadvantaged individual, each disadvantaged individual is on the Board of Director and together own at least 51% of the voting stock and no supermajority voting requirements exist, and there are enforceable agreements of the shareholders permitting one of them to vote all stock as a block without a shareholders meeting. If a supermajority requirement exists, the disadvantaged individuals must own at least the percentage of voting stock necessary to overcome any supermajority requirements.
- * A supermajority is a percentage of votes required by shareholders to make decisions on behalf of the concern. For example, if a 2/3 vote is required to approve a bylaw change, disadvantaged individuals must have at least 2/3 of the votes necessary to control the concern.



What constitutes Control?



A Disadvantaged Individual must:

- ➤ Hold the position of President or Chief Executive Officer, Managing/ General Partner, or LLC Managing Member;
- ➤ Be physically located in the U.S.;
- ➤ 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 the control Budget and Financial Disbursement;



Do disadvantaged individuals control the Operations?



Tests/ MUST CHECK:

- ➤ Does a disadvantaged individual or individuals devote full-time to the business?
- ➤ Does the disadvantaged individual occupying the highest office devote full-time?
- ➤ Does a disadvantaged individual or individuals have sufficient managerial experience to run the concern?
- ➤ Does a disadvantaged individual or individuals have ultimate managerial control over individuals with technical expertise and/or critical licenses?



Do Non-disadvantaged Individuals have the Ability to Control your firm?



TESTS/MUST CHECK:

- Do contractual arrangements exists that allow a nondisadvantaged individual to control the firm?
- ➤ Is the nondisadvantaged individual a previous employer or supervisor?
- Does a nondisadvantaged individual:
 - hold the critical license and have an 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; and/or
 - receive excessive compensation.



Potential for Success



Factors considered:

- ➤ Proof of two years operation in the firm's primary industry as verified by revenues reported in business tax returns, *NOT* the applicant's anniversary date.
- Financial capability: sufficient capitalization, financial performance, bonding capacity, manageable debts.
- Managerial and Technical capability: performance on previous contracts, firm has the necessary personnel, licenses, certifications, facilities, prior experience.
- Management capability: Education, experience and training of CEO and other managers, magnitude and complexity of past/current jobs, management systems.
- Qualifications for ability to perform on Federal contracts: relevant contracting experience, ability to meet Federal procurement policies.



Waiver of the Two Year Rule*

* The Two Year Waiver Requirements Are Not Applicable To Firms In The 8(a) BD Program.



SBA may waive the two-year rule *if*:

- The *individual or individuals upon whom eligibility is based* have substantial and demonstrated business management experience;
- The *applicant fir*m 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 *applicant firm* has adequate capital to carry out its business plan as a Participant;
- The *applicant firm* has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category;
- The *applicant 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.



Business Management Experience

The *individual or individuals upon whom eligibility is based* have substantial and demonstrated business management experience.

SBA will review:

- -Resume(s) of disadvantaged individual(s);
- -Possessor of any critical licenses.

SBA may request documentation evidencing where and how the disadvantaged individual(s) obtained the relevant education, skills, training, background, expertise, and certifications to control the day-to-day operations of a firm in the industry in which 8(a) BD participant status is sought.



Technical Expertise

The *applicant fir*m has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success if admitted to the 8(a) BD Program.

SBA will review:

- -Resumes of firm's principals/employees;
- -Contracts, invoices and, if available, letters of reference.

SBA may request documentation evidencing where and how the disadvantaged individual(s) obtained the relevant education, skills, training, background, expertise, and certifications to control the day-to-day operations of a firm in the industry in which 8(a) BD participant status is sought.



Adequate Capital

The *applicant firm* has adequate capital to carry out its business plan as a Participant;

If the firm has not ever generated any revenues, the waiver will not be granted.

If the firm has not generated any revenues w/in the previous two immediate tax years, the waiver will not be granted.

SBA will review:

- -Business financial statements;
- -Relevant tax returns



Performance Record

The *applicant firm* has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category.

The firm's track record can be either governmental or nongovernmental sources.

SBA will review:

- -Copies of contracts/invoices;
- -Letter of reference, if available



Ability to Perform

The *applicant 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.

SBA will review:

- -Copies of contracts/invoices and Letters of reference, if available;
- -Business financial statements;
- -Lease/rental agreements;
- -Number of employees.



Ineligible Businesses & Individual Disqualification



- ➤ Ineligible businesses: brokers *; debarred or suspended persons or concerns; nonprofit organizations. Franchises may be allowed contingent upon SBA's review of the franchise agreement.
- A business may participate only once. Even if ownership and control has completely changed, firm may not re-apply.
- 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 procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities.



Good Character



What indicates lack of good 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.



Questions?

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answerdesk@sba.gov

8(a) Office: 202-205-5852

8aquestions@sba.gov

Locally:

SBA District Offices

www.sba.gov/tools/local-assistance/districtoffices@sba.gov