Patton Boggs, LLP
Contractor Alert!
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SBA Extends Comment Period on 8(a) Rule Making to January 28, 2010; Tribal Consultations Announced: How to Make the Most of Them.

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UPDATE ON THE RULE MAKING PROCESS

SBA will announce in tomorrow's Federal Register (December 9, 2009) that it is extending the comment period in response to the proposed rule making on the 8(a) regulations to January 28, 2009. This extension has been expected for some time, and the official notice is welcome news.

SBA announced last week that it would be conducting several "public meetings" around the country in the next six weeks, and that two of these would be "tribal consultations." The "official" announcement of these tribal consultations was made in the December 7, 2009 Federal Register (see attached). The first tribal consultation will be in Seattle, December 16, 2009; the second will be held in Albuquerque January 14, 2010. The deadline for registering for the Seattle conference is December 10, 2009. The deadline for Albuquerque is January 8, 2010.

(Please see our previous alerts regarding the initial release of the proposed rule (October 27, 2009), and forwarding a Feature article written by Bob Tompkins for *The Government Contractor*, published by Thomson Reuters, November 11, 2006. If you would like copies of these alerts, please let us know.)

We have received numerous questions about the tribal consultation process and how it fits in with the overall rule-making. Putting aside the legalities of Executive Orders, etc., here are a few of the common questions we have received and our brief response to each.

How can I participate in the Tribal Consultations?

You can participate in at least three ways. First, you can simply attend and listen; these are public meetings. Second, you can offer written testimony to be included in the record of these meetings.

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Third, you can ask to present oral testimony. You must register though if you intend to do any of these three things. (See the Federal Register notice for instructions, and note the deadlines!)

What will happen at these Tribal Consultations?

Generally, these meetings will involve a panel of SBA personnel who will make a presentation about the rule-making. Then members of the public will have the opportunity to make their presentations of oral testimony. We expect there will also be considerable dialogue between the SBA participants and the audience. The meetings are schedule to last from 9 a.m. to 4 p.m. with an hour break for lunch.

If we submit testimony for the consultation, can we still file comments on the proposed rule?

Yes. These are not mutually exclusive, and we generally recommend doing both. (see below)

What should I say in written or oral testimony?

That's largely up to you. For the sake of ANC, Tribal and NHO participation in the program, we believe it is important for SBA to hear as many voices from this community as possible. Also, given that these meetings will provide for some back and forth with SBA, the consultations present an important opportunity to get clarification from SBA on any perceived ambiguities, mistakes, etc. that you may have noticed in the proposed rules.

What's the most effective use of the consultation process?

Generally, we think the tribal consultation process is useful in a number of ways, including:

1. The meetings and any testimony will become part of the official record SBA considers in preparing a "final" rule.

2. Similarly, it will be important for SBA to hear from as many members of the community as possible so SBA understands the importance of the 8(a) program for Native organizations, communities, and individuals. The substance of testimony is important, but so is the volume. The same goes for written comments submitted in response to the rule making.

3. Use the meeting to ask questions of SBA, listen to what they say in their presentation, and listen to what others are saying in their testimony. All of these things should be useful in drafting comments to submit to SBA by the January 28, 2010 deadline.

4. Given that the Seattle conference is coming up so soon, it might be prudent to reserve making substantial presentation of testimony until the Albuquerque consultation, to get the benefit of hearing SBA's presentation in Seattle first, and to hear what others are saying at the other public meetings around the country.

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Conclusion

We are working with a number of ANC's and Tribes to help them analyze the proposed rule and to prepare comments. Per our previous alerts, also please note that most of the proposed changes are really in effect now as SBA is stating these changes merely clarify existing regulations. It would be prudent to be analyzing current operations and strategies to ensure these "clarifications" are taken into account. If we can be of assistance in any of these matters, please let us know.

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