

Rescinding the Bona Fide Place of Business (BFPoB) Requirement to Eliminate Unnecessary Burdens on Tribal Enterprises Pursuing Federal Construction Contracts



National Congress of American Indians Resolution #MN-23-010 supports:

S.1407 / H.R. 2970 - A bill to amend the Small Business Act to eliminate certain requirements relating to the award of construction subcontracts within the county or state of performance

8(a) Business Program and American Indian/Alaska Native Communities:

The 8(a) Business Development Program provides training and technical assistance to disadvantaged small business owners, including those owned by tribal enterprises—which includes entities owned by Alaska Native Corporations. The program supports small businesses and tribal enterprises in accessing federal and private procurement markets. Participation in the program is a key contributor to economic growth and independence for tribal communities.

Tribal enterprises play a unique role in funding government operations and services in tribal communities, which often lack a tax base. Tribal enterprises' federal contracting activities focus on generating revenue and providing quality employment opportunities to their constituencies. The revenue generated is crucial to community investments in cultural preservation, infrastructure, education, workforce development, and other initiatives. The federal contracting industry is also vital to American Indian and Alaska Native communities seeking to diversify their economies. Most often, these communities are located in remote areas with limited opportunities to pursue alternative revenue streams, such as natural resource management and tribal gaming.

Rescinding the Current Bona Fide Place of Business Requirement and Moratorium Success:

The Small Business Administration (SBA) has interpreted legislative text passed in 1998 to roll out a new rule, currently under a moratorium, which limits the ability of disadvantaged small businesses to win certain 8(a) construction contracts by requiring the establishment of a Bona Fide Place of Business (BFPoB). Defined as an office location where at least one full-time individual is employed within the state of business conducted, a BFPoB does not include construction trailers or other temporary construction sites. This requirement hinders 8(a) participants seeking to pursue construction contracts by mandating that businesses make an unnecessary investment in securing a brick-and-mortar office location in every state in which they submit a bid for these construction contract services. The BFPoB is a burdensome requirement that does not reflect today's mobile and flexible job market and has no bearing on a contractor's ability to fulfill the obligations from a location outside where the job is located.

The needlessness of the requirement in 2024 is demonstrated by the multi-year continuation of the moratorium on the BFPoB rule, originally implemented in response to the COVID-19 pandemic. The moratorium was last extended in 2023. It expires on September 30, 2024.

The SBA has worked with the sponsors of S.1407 and H.R.2970 regarding the best mechanism to strike the legislative text undergirding the BFPoB requirement. The National Congress of American Indians calls on congressional allies to support S.1407 and H.R.2970 and strike the SBA's BFPoB requirement.

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¹ Government contracting is helping tribal economies diversify. Marketplace. (2024, March 26).

<https://www.marketplace.org/2024/03/26/government-contracting-helps-tribal-economies-diversify>

² Federal contracting's expanding revenue role in Indian Country | Federal Reserve Bank of Minneapolis. (2022, December 21).

<https://www.minneapolisfed.org/article/2022/federal-contractings-expanding-revenue-role-in-indian-country>

³ SBA Announces Extension of Moratorium on 8(a) Eligibility Requirement | U.S. Small Business Administration. (2023, August 21).

www.sba.gov <https://www.sba.gov/article/2023/08/21/sba->