

Teaming to Win

The federal marketplace is not a pure free enterprise market. The federal government has a social agenda. Understanding that social agenda and the programs and regulations the government has developed to fulfill that agenda, are critical for businesses of all sizes to compete and win procurement contracts.

Generally, these programs were designed to help small businesses compete for and win a portion of the \$500B the government spends annually with the private sector. Under the Obama Administration, the set aside rules were more stringently enforced. We saw contracts up to \$100m in total contract value awarded to teams of diverse, highly qualified teams of small businesses.

SBA's new All Small Mentor Protégé Program

The final rule published by the SBA effective August, 2016, allows all small businesses to obtain developmental assistance from larger mentors, and form joint ventures with those mentors to pursue set-aside contracts. Those mentors can be large businesses or other small businesses.

A summary of the impact of the new regulation is as follows:

- A small business can be both a protégé and a mentor at the same time.
- A mentor protégé relationship is limited to 6 years
- Mentor and protégé may enter into subcontracts
- Mentor may own up to 40% of the protégé company
- Mentor may perform 60% of the awarded contract
- Mentor and protégé may form joint ventures for set-aside contracts
- Agencies may provide incentives to contracting teams in the mentor protégé program

To qualify as a protégé, a company “must qualify as small for the size standard corresponding to its primary NAICS code or identify that it is seeking business development assistance with respect to a secondary NAICS code and qualify as small for the size standard corresponding to that NAICS code.” However, if the prospective protégé is not a small business in its primary NAICS code, “the firm must demonstrate how the mentor-protégé relationship is a logical business progression for the firm and will further develop or expand current capabilities.”

However, the “SBA will not approve a mentor-protégé relationship in a secondary NAICS code in which the firm has no prior experience.”

This regulation involving secondary NAICS codes is an important feature. It recognizes that a small business may form a mentor protégé relationship to develop in a new or complementary line of work that is classified under a larger size standard NAICS code.

Protégés generally have no more than one mentor at a time. However, the SBA may approve a second mentor where certain conditions are met. In no case will the SBA approve more than two concurrent mentors for any single protégé.

Joint Ventures

The new all small business mentor-protégé program allows a mentor and protégé to form joint ventures and compete for set-aside contracts based solely on the protégé’s size and socioeconomic certifications.

A mentor and protégé may joint venture as a small business for any government prime contract or subcontract, provided the protégé qualifies as small for the procurement. The joint venture may seek any type of small business contract (i.e., small business set-aside, 8(a), HUBZone, SDVOS, or WOSB) for which the *protégé* firm qualifies (e.g., a protégé firm that qualifies as a HubZone could seek a HubZone set-aside as a joint venture with its SBA-approved mentor as the prime).

The SBA must approve the joint venture agreement before the entity can take advantage of this special exemption from affiliation.

The regulation also states that “a change in the protégé’s size status generally does not affect contracts previously awarded to a joint venture between the protégé and its mentor.” The SBA specifies that “[e]xcept for contracts with durations of more than five years (including options), a contract awarded to a joint venture between a protégé and mentor as a small business continues to qualify as an award to small business for the life of that contract and the joint venture remains obligated to continue performance on that contract.”

These new rules open up competition to all small businesses, their mentors and protégés. Identification of upcoming procurements and carefully choosing and nurturing teaming partners are the keys to success in the complex federal contracting market place.

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