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SBA Mentor-Protégé Program

The Small Business Administration (SBA)'s long-awaited final rule expanding the 8(a) mentor-protégé program to include all small businesses means businesses of all types will now be eligible to take advantage of this critical business development tool.

BNA INSIGHTS: SBA Expands Mentor-Protégé Program to All Small Businesses

BY JOHN R. PRAIRIE AND GEORGE E. PETEL

Last month, the Small Business Administration (SBA) issued its long-awaited final rule expanding the 8(a) mentor-protégé program to include all small businesses. Starting Oct. 1, all types of small businesses — women-owned small businesses (WOSB); service-disabled, veteran-owned small businesses (SDVOSB); HUBZone firms; and even ''regular'' small businesses not part of a designated SBA program — will now be eligible to take advantage of this critical business development tool.

John R. Prairie is a Partner at Wiley Rein LLP, where his practice includes a broad range of litigation, counseling and transactional matters for companies that work with federal, state and local governments.

George E. Petel is an Associate at Wiley Rein LLP, where he counsels and represents government contractors on a broad range of government contracting issues.

Overview of the Mentor-Protégé Program

The purpose of the mentor-protégé program is to encourage approved mentors to provide various forms of business development assistance to protégé firms. For protégé firms, the mentor-protégé program provides an opportunity to obtain valuable technical, management, financial and/or contracting assistance from established government contractors.

The primary motivation for large businesses to participate as mentors is the ability to form a joint venture with their protégé to pursue small-business set-aside contracts, provided they meet the SBA's qualifications and joint venture requirements. For this reason, it is not uncommon to see large-dollar 8(a) contracts awarded to a joint venture composed of an 8(a) firm and its large-business mentor. Once the SBA begins approving new mentor-protégé applications, contractors can expect that virtually every significant small-business set-aside competition will likewise involve one or more mentor-protégé joint ventures.

Qualification Requirements for Mentors and Protégés

The qualification requirements for becoming a mentor are similar to the 8(a) mentor-protégé program: A mentor must be a for-profit business that demonstrates a commitment (and the ability) to assist the business development of their small-business protégé. To meet these requirements, the mentor must possess good character, may not be currently suspended or debarred, and, most importantly, can impart value to a protégé firm due to lessons learned and practical experience. Notably, the final rule replaced the requirement that the mentor ''possesses a good financial condition.'' Instead, mentors must demonstrate their ability to meet the obligations outlined in their mentor-protégé agreements. A small business that meets the qualifications can be both a mentor and a protégé, with SBA approval.

Under the new program, all firms participating in SBA programs can qualify as protégés as long as they qualify as small under their primary North American Industry Classification System (NAICS) code. In a notable departure from the 8(a) program, firms that are not small under their primary NAICS code will also be allowed to form mentor-protégé relationships if they qualify as small under a secondary NAICS code. However, the prospective protégé must demonstrate that such a relationship is a ''logical progression for the firm and will further develop current capabilities.'' Firms cannot use the program to expand into a completely new industry.

As a result of the new relaxed protégé qualifications, 8(a) firms participating in the mentor-protégé program will no longer lose their mentor-protégé arrangements if they graduate from the 8(a) program, or otherwise lose their 8(a) status. Instead, as long as the 8(a) firm continues to qualify as a small business, the firm's existing mentor-protégé agreement can continue.

Firms wishing to join the program must enter written mentor-protégé agreements detailing the benefits the mentor will provide. The rule authorizes protégés to enter two three-year mentor-protégé agreements with different mentors, and will allow each agreement to be extended for a second three years, provided the protégé has received the agreed-upon business development assistance and will continue to receive additional assistance. Every mentor-protégé agreement must be approved by the SBA.

Notably, the final rule specifies that the SBA's approval of a mentor-protégé agreement will not be considered a formal determination of the protégé's size eligibility. The protégé, and any joint venture formed between the mentor and protégé, will still be subject to size protests by competitors and contracting officers.

Joint Venture Requirements

Mentor-protégé joint ventures under the new program can be ''formal'' (i.e., a separate legal entity) or informal. Regardless of the structure, a formal written document setting forth all of the responsibilities of the parties is required to create the joint venture.

The substantive joint venture requirements are the same as those for the 8(a) program. The protégé firm must own 51 percent of the joint venture and must receive profits commensurate with the work performed by the protégé. The protégé must also be designated the managing venturer of the joint venture, and an employee of the protégé must be designated as the project manager responsible for contract performance.

In a departure from the 8(a) mentor-protégé program, the final rule eliminates the option to create a joint venture entity populated with employees who will be performing the contract. Instead, the joint venture entity must be unpopulated or populated only with administrative personnel. The SBA has expressed concern that the large-business mentor would populate the joint venture with its own employees, and it would be too difficult to determine what benefits the protégé is receiving from the relationship.

Contracting agencies must consider the past performance of the members of a joint venture when considering the past performance of an entity submitting an offer as a joint venture. This provision in the final rule was in recognition of the difficulty newly established joint ventures have in demonstrating positive past performance where the agency requires the specific joint venture entity itself to have the experience and past performance, rather than the individual joint venture partners.

Other changes to the joint venture rules also signify the SBA's concern that this expansion of the program could create opportunities for abuse. All joint venture partners participating in a small-business set-aside contract will be required to certify to the contracting officer and to the SBA prior to performing the contract that they will perform the contract in compliance with the joint venture regulations. The joint venture must also submit annual reports to the contracting officer and SBA certifying compliance with joint venture requirements and explaining how the performance of work requirements are met.

The final rule does not require firms outside the 8(a) program to report on joint venture awards received and how they are meeting the limitations on subcontracting requirements. Instead, to enable SBA to track joint venture awards, joint ventures under the mentor-protégé program must register in the System for Award Management (SAM), with separate DUNS and Commercial And Government Entity (CAGE) numbers, listing the joint venture partners.

Timing of Applications for the New Program

In anticipation of the thousands of new mentor-protégé applications that will be submitted to the SBA under the new program, the final rule gives the SBA the discretion to decide that if the number of mentor-protégé applications becomes ''unwieldy,'' the SBA can institute ''open'' and ''closed'' periods for the receipt of mentor-protégé applications. The SBA would then accept applications only during ''open'' periods. The SBA plans to establish a dedicated office within its Office of Business Development to oversee the mentor-protégé program, which the SBA believes should decrease the likelihood that it will need to institute a ''closed'' period.

To avoid missing out on any upcoming small-business set-aside opportunities, interested contractors should act fast to find a mentor or protégé and submit an application Oct. 1. Contractors cannot take advantage of the joint venture benefit unless they have an

   ISSN 0014-9063

SBA-approved mentor-protégé agreement, which could take several months depending on the volume of applications submitted to the SBA.