

SBA Considers Restrictions on the Use of Mentor-Protégé Joint Ventures

July 25, 2024

WHAT: The U.S. Small Business Administration (SBA) has requested comments on prospective policy changes concerning the use of joint ventures under the mentor-protégé program. Due to what SBA characterized as a “perception that mentor-protégé joint ventures are winning an inordinate number of orders issued under small business multiple award contracts,” SBA is considering adopting restrictions on mentor-protégé joint ventures in future competitions.

WHEN: The SBA issued the request for comments as part of an unrelated notification of tribal consultation meetings which was issued on July 22, 2024. The notice does not include a specific deadline for submission of comments, but interested parties should submit comments no later than September 17, 2024, when SBA will hold the final tribal consultation meeting – a “Listening Session” in Honolulu.

WHAT DOES IT MEAN FOR INDUSTRY: The request for comments indicates that SBA is concerned about the impact mentor-protégé joint ventures may be having on the competitiveness of individual small businesses on multiple award contracts. Given how immensely popular mentor-protégé joint ventures have become in recent years, any restrictions on their use would have a significant impact on the industry.

SBA is specifically seeking comments on two “perceptions” about mentor-protégé joint ventures and several potential solutions to address these issues. First, SBA requests comments on the perception that mentor-protégé joint ventures are securing a disproportionate number of orders under small business multiple award contracts and invites suggestions on how to create a more balanced marketplace for individual small businesses competing against these joint ventures

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for such contracts. Second, SBA requests comments on the perception that small businesses often join mentor-protégé joint ventures because they cannot otherwise meet the stringent experience and past performance requirements that agencies create for multiple award contracts.

Although SBA's perceptions about the prevalence of mentor-protégé joint ventures may have some anecdotal support, it is unclear from the notice whether SBA has contract data which demonstrates this to be the case. Hopefully, SBA will gather data to validate whether these perceptions meet reality. If these perceptions are in fact borne out by the data, SBA should consider whether the root cause of these issues may lie with contracting agencies. Agencies are responsible for defining their needs, and often the rigorous experience requirements and scoring methodologies they impose make it imperative for small businesses to form mentor-protégé joint ventures to compete. This is often a "win-win" for the agencies, which receive small business credit for making awards to joint ventures backed by larger, more experienced mentors.

To address these issues, the notice states that SBA is considering two potential changes to its affiliation rules for mentor-protégé joint ventures: (1) eliminating the affiliation exception for multiple award contracts; or (2) limiting the affiliation exclusion for mentor-protégé joint ventures to multiple award contracts and orders not exceeding five years.

Eliminating the affiliation exception would render mentor-protégé joint ventures ineligible for multiple award contracts. SBA recognizes this change could heighten the challenge of meeting agency past performance and experience requirements. It thus expects that agencies will adjust their requirements to enable individual small businesses to qualify for awards more easily. SBA also reiterated its belief that joint ventures should be limited in scope and duration and noted its concern that mentor-protégé joint ventures performing multi-year multiple award contracts are not limited duration entities.

Although SBA's desire to protect individual small businesses is well-intentioned, SBA should consider the potential effect these changes could have on participation in the mentor-protégé program. The mentor-protégé program is an immensely popular program with broad industry participation, which results in significant growth and business opportunities for small businesses. In addition to enhancing their ability to compete for set-aside contracts, small business protégés also receive other valuable assistance from mentor firms including guidance on internal business management systems, accounting, marketing, manufacturing, and strategic planning. The primary benefit for large business mentors, though, is the ability to participate in joint ventures that are eligible for set-aside contracts, especially long-term multiple award contracts. Restricting or eliminating the ability of mentor-protégé joint ventures to compete for these contracts may reduce the number of large businesses willing to participate in the program.

Current participants in SBA's mentor-protégé program, and any other small or large contractors with views and information about these topics, should consider submitting comments on the SBA's proposed policy changes. Comments can be submitted via email to Jackson S. Brossy, Assistant Administrator, Office of Native American Affairs, U.S. Small Business Administration, at tribalconsulation@sba.gov or via mail at 409 Third

Street SW, Washington, DC 20416.

Wiley's Government Contracts Practice will continue to monitor these issues and keep contractors apprised of new developments.