PracticalAdvice
Federal Government Contracts & Procurement

Fox Rothschild LLP
ATTORNEYS AT LAW

SBA Proposes To Expand Mentor-Protégé Program

By Sean Milani-nia

On February 5, 2015, the Small Business Administration (SBA) issued a new proposed rule that would establish a U.S. government-wide mentor-protégé program for all small businesses.

Under the current framework, entities that enter into joint venture agreements to perform federal contracts are, in most instances, considered "affiliates." In determining a company's eligibility to compete for set-aside procurements, the SBA combines the offeror's size with the size of its affiliated entities. Thus, an otherwise eligible small business may be deemed "large" due to its affiliation with another entity.

An exception to this general rule exists for participants in the SBA's 8(a) mentor-protégé program. Under the 8(a) mentor-protégé program, an 8(a) protégé can joint venture with an SBA-approved large business mentor without being deemed affiliated, and, as a result, potentially ineligible to seek set-aside contracts.

The SBA's proposed rule seeks to expand the mentor-protégé program to all small businesses. The intent is to create a parallel program for non-8(a) small businesses, including participants in the HUBZone, Women-Owned Small Business, and Service-Disabled Veteran Owned Small Business programs, that is identical to the 8(a) mentor-protégé program. Under the proposed rule, any small business would be able to enter into an SBA approved mentor-protégé relationship and joint venture with its approved mentor without being considered affiliated.

Expanded Protégé Definition

Note that the proposed rule would allow more businesses to qualify as protégés under both the 8(a) mentor-protégé program and the proposed small business mentor-protégé program. Currently, in order to qualify as a protégé under the current 8(a) mentor-protégé program, an 8(a) contractor must meet at least one of the following criteria:

- have a size that is less than half the size standard corresponding to its primary NAICS code;
- be in the developmental stage of its 8(a) program participation; or
- have not received an 8(a) contract.

The proposed rule provides that any firm that qualifies as a small business for the size standard corresponding to its primary NAICS code would qualify as a protégé under either the small business mentor-protégé program or the 8(a) mentor protégé program. Participants in the 8(a) program would also need to demonstrate how the business development assistance to be received through its mentor-protégé relationship would advance the goals and objectives set forth in its business plan.

Ownership Interest

Similar to the 8(a) mentor-protégé program, the proposed rule provides that a mentor may own an equity interest of up to 40% in the protégé. This could be a significant opportunity for small businesses that are looking to increase working capital.

If finalized in the current form, the proposed rule would create significant opportunities for the participants in the new mentor-protégé program, but could place those small contractors that do not participate at a competitive disadvantage.

Contractors who are interested in participating should begin evaluating potential partners and even structuring their agreements. The SBA has recognized that once the proposed rule is finalized, the number of firms seeking SBA approval of their mentor protégé agreements may become "unwieldy." SBA states that it may institute certain open and closed periods for receipt of mentor-protégé applications and would only accept mentor-protégé applications in open periods. Contractors should be prepared to submit their applications as soon as possible to avoid missing the first open period.

Comments on the proposed rule are due on April 6, 2015.

Sean Milani-nia, Esq.
202.461.3105 | smilani@foxrothschild.com