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Presented By SheppardMullin

The 8(a) Mentor Protégé Program: Opportunities for Large and Small Businesses

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Under the Small Business Administration's ("SBA") 8(a) Mentor-Protégé program, large businesses provide various forms of business development assistance to small businesses participants, including, for example, technical and/or management assistance, financial assistance, and assistance in performing prime contracts. The program, whose governing regulations are set out in 13 C.F.R. Part 124, offers substantial opportunities for large businesses to participate in performance of federal government contracts through partnering with 8(a) program participants on a variety of contractual arrangements, including set-aside procurements, subcontracts, and prime contracts.

Mentors and Protégés: How to Qualify

- Any business or non-profit entity that "demonstrates a commitment and ability to assist developing 8(a) Participants" may act as a mentor.

- To be a mentor, a business must demonstrate that it 1) possesses favorable financial health; 2) possesses good character; 3) does not appear on the Federal list of debarred or suspended contractors; and 4) can impart value to a protégé firm. Mentors must submit copies of financial statements to the SBA. A mentor may have more than one protégé at a time under certain circumstances, subject to approval by the Associate Administrator for 8(a) Business Development ("AA/BD").

- To qualify as a protégé, a small firm must 1) be in the developmental stage of program participation; or 2) have never received an 8(a) contract; or 3) have a size that is less than half the size standard corresponding to its primary NAICS code.

Benefits

- Two firms approved by the SBA to be a mentor and protégé under §124.520 may joint venture as a small business for *any* Federal government prime contract or subcontract, including but not limited to 8(a) set asides, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement.

- SBA must approve the mentor-protégé ("MP") agreement before the two firms may submit an offer as a joint venture, in order to receive the exclusion from affiliation. Additionally, in order to receive the exclusion for both 8(a) and non-8(a) procurements, the joint venture must meet the requirements set forth in §124.513(c). If all requirements are met, no determination of affiliation or control may be found between a protégé firm and its mentor.

- The MP written agreement must provide a detailed description of the protégé's needs, and a timeline for delivery of assistance the mentor commits to provide to address those needs. The mentor must commit to provide such assistance for at least one year, among other requirements. The agreement must be approved by the SBA. It will not be approved if the SBA determines that the assistance to be provided is not sufficient to promote any real developmental gains for the protégé, or if SBA determines that the agreement is merely a vehicle to enable the mentor to receive 8(a) contracts. SBA will review the MP relationship annually for compliance.

- The protégé must report on all assistance provided by the mentor annually, and must describe in detail all federal contracts awarded to the MP joint venture. Additionally, after contract performance is complete, the protégé must submit a report to its servicing SBA district office explaining how the applicable performance requirements were met.

Performance Requirements

- For any 8(a) contract, or a non-8(a) contract for which the MP joint venture seeks an exclusion from affiliation, the MP joint venture must perform the applicable percentage of work required by §124.510 and §124.513(d). The MP joint venture entity must perform at least 51% of the work of the total contract. The protégé must perform at least 40% of the work done by the joint venture partners in the aggregate. The protégé must receive profits commensurate with the work performed by the protégé. The work performed by the protégé must be more than administrative or ministerial functions so that the protégé gains substantive experience.

- A mentor, or any of its affiliates, may not act as a subcontractor (at any subcontracting tier) to the MP joint venture. The purpose of this rule is to prevent would-be mentors from indirectly increasing the work they perform under the contract.

Consequences

Should the SBA determine that a mentor has not provided to the protégé firm the assistance set forth in the MP agreement, SBA will terminate the MP agreement, in which case the firm will be ineligible to act as a mentor for a period of two years. Additionally, SBA has the discretion to recommend to the relevant procuring agency to issue a stop work order for each federal contract for which the mentor and protégé are performing as a small business joint venture. SBA may also initiate debarment proceedings against the mentor on various grounds, including, but not limited to, the mentor’s failure to comply with the terms of a public agreement under 2 C.F.R. §180.800(b).