

Similarly Situated Entities and the SBA All Small Mentor Protégé program

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Similarly situated entities

- 13 CFR § 125.6 (c)
- Subcontracts to similarly situated entities. A small business concern prime contractor that receives a contract listed in paragraph (a) of this section and spends contract amounts on a subcontractor that is a similarly situated entity shall not consider those subcontracted amounts as subcontracted for purposes of determining whether the small business concern prime contractor has violated paragraph (a) of this section, to the extent the subcontractor performs the work with its own employees. Any work that the similarly situated subcontractor does not perform with its own employees shall be considered subcontracted SBA will also exclude a subcontract to a similarly situated entity from consideration under the ostensible subcontractor rule (§ 121.103(h)(4)).

Similarly situated entities: Example 1

- Example 1 to paragraph (c):
- An SDVO SBC sole source contract is awarded in the total amount of \$500,000 for hammers. The prime contractor is a manufacturer and subcontracts 51% of the total amount received, less the cost of materials (\$100,000) or \$204,000, to an SDVO SBC subcontractor that manufactures the hammers in the U.S. The prime contractor does not violate the limitation on subcontracting requirement because the amount subcontracted to a similarly situated entity (less the cost of materials) is excluded from the limitation on subcontracting calculation.

Similarly situated entities: Example 2

- Example 2 to paragraph (c):
- A competitive 8(a) BD contract is awarded in the total amount of \$10,000,000 for janitorial services. The prime contractor subcontracts \$8,000,000 of the janitorial services to another 8(a) BD certified firm. The prime contractor does not violate the limitation on subcontracting for services because the amount subcontracted to a similarly situated entity is excluded from the limitation on subcontracting.

Similarly situated entities: Example 3

- Example 3 to paragraph (c):
- A WOSB set-aside contract is awarded in the total amount of \$1,000,000 for landscaping services. The prime contractor subcontracts \$500,001 to an SDVO SBC subcontractor that is not also a WOSB under the WOSB program. The prime contractor is in violation of the limitation on subcontracting requirement because it has subcontracted more than 50% of the contract amount to an SDVO SBC subcontractor, which is not considered similarly situated to a WOSB prime contractor.

Similarly situated entities: Exemptions

- 13 CFR § 125.6 (f) Inapplicability of limitations on subcontracting. The limitations on subcontracting do not apply to:
 - (1) Small business set-aside contracts with a value greater than \$3,500 but not \$150,000, or
 - (2) Subcontracts (except where a prime is relying on a similarly situated entity to meet the applicable limitations on subcontracting).

Similarly situated entities: Penalties

- 13 CFR § 125.6 (h)
- Penalties. Whoever violates the requirements set forth in paragraph (a) of this section shall be subject to the penalties prescribed in 15 U.S.C. 645(d), except that the fine shall be treated as the greater of \$500,000 or the dollar amount spent, in excess of permitted levels, by the entity on subcontractors. A party's failure to comply with the spirit and intent of a subcontract with a similarly situated entity may be considered a basis for debarment on the grounds, including but not limited to, that the parties have violated the terms of a Government contract or subcontract pursuant to FAR 9.406-2(b)(1)(i) (48 CFR 9.406-2(b)(1)(i)).

The SBA All Small Mentor-Protégé Program

- New program regulated under 13 CFR §125.9
- Patterned on existing 8(a) Mentor-Protégé program
- Designed as a business development tool
- Provide financial, technical, and/or management assistance
- Allows ALL small business protégés to joint venture with their large business mentors
- Mentor can own up to 40% of the protégé
- Exception to affiliation



Overall Benefits

- Mentor-protégé joint ventures may qualify as a small business for any federal government contract or subcontract where the protégé qualifies as small for the size standard assigned to the procurement
- Protégé firm shielded from a finding of affiliation where a large business mentor owns no more than 40% of protégé
- Once mentor-protégé relationship ends, any protection from affiliation also ends
- Agencies may provide incentives in contract evaluation process to a firm that will provide significant subcontracting work to its SBA-approved protégé

Benefits for Contracting Offices

- Larger set asides
 - Easier to meet SB goals for the organization
- The mentor's qualifications are added to that of the small business reducing risk.
- Less chance of a size protest: So long as the ASMPP office has approved the MP, the affiliation between the two companies is negated.
- Smaller number of proposals received: the number of approved MPs is less than the number of large and small businesses

Benefits for Small Businesses

- No cost training
- Opportunity to participate in larger, more complex contracts
- Funding: up to 40% of the total ownership equity can be purchased by the mentor firm under mutually agreeable terms between the MP partners.
- New relationships: working with a JV partner can lead to a preferred subcontractor in future work.
- Protection from affiliation concerns (for the MP partner only)

Protégé eligibility

- Must be small under its primary NAICS code OR seeking assistance in secondary NAICS code under which it is small
- May self-certify that it qualifies as small for its primary or secondary NAICS code
- For secondary NAICS code approval, must demonstrate prior experience and logical business progression
- Will approve a 2nd mentor only if:
 - 2nd relationship pertains to unrelated NAICS code AND
 - Protégé seeks to acquire specific expertise first mentor does not possess
- SBA may examine protégé's SDVOSB or WOSB self-certification as part of application process

Mentor eligibility

- Must demonstrate capability of fulfilling obligations under mentor-protégé agreement
- May submit copies of federal tax returns, audited financial statements or, if publicly traded, SEC filings
- Possess good character
- Not suspended or debarred
- Impart value due to lessons learned and practical experience
- Only for-profit firms for both 8(a) and new MP programs
- Can be any size
- Generally, no more than one protégé at a time
- Limit of three protégés at one time if there is no adverse impact on any protégé
- Protégés may concurrently serve as a mentor

MP participation period

- Up to three years in one agreement, maximum of six years overall
- Protégé may have two three-year MPAs with different mentors
- •EACH may be extended an additional three years
- 8(a) approved mentor-protégé relationships may transfer to the new mentor-protégé program after graduating from the 8(a) program
- 8(a) participants in last six months of their programs terms may apply for an 8(a) mentor-protégé relationship, as it could carry over to new small business mentor-protégé program

Questions?