



Small Business Set Asides

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Mentor-Protégé Program

13 CFR 125.9

The small business mentor-protégé program is designed to enhance the capabilities of protégé firms by requiring approved mentors to provide business development assistance to protégé firms and to improve the protégé firms' ability to successfully compete for federal contracts.

Small Business Mentor-Protégé Program

Who can be a mentor?

“Any concern that demonstrates a commitment and the ability to assist small business concerns may act as a mentor.”

Who can be a protégé?

“In order to initially qualify as a protégé firm, a concern must qualify as small for the size standard corresponding to its primary NAICS code or identify that it is seeking business development assistance with respect to a secondary NAICS code and qualify as small for the size standard corresponding to that NAICS code.”

What are the benefits?

The ability to form a joint venture; exception from affiliation.

Mentor-Protégé Program

13 CFR 125.9

- A mentor and its protégé can joint venture as a small business for any small business contract, provided the protégé individually qualifies as small. The joint venture may also pursue any type of set-aside contract for which the protégé qualifies, including contracts set aside for 8(a), service-disabled veteran-owned, women-owned, and HUBZone businesses.
- The ability to form a joint venture; exception from affiliation
- Note that Protégé must perform at least 40% of the work (cannot rely on similarly situated small business)

Small Business Joint Ventures

13 CFR 125.8

- Who can joint venture? Small business concerns, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract; and mentor-protégé firms
- There must be a joint venture agreement, meeting certain criteria
- Provides an exception to affiliation under certain circumstances (13 CFR 121.103(h)):
 - Rule has recently changed from **3-in-2**; a joint venture can now be awarded contracts over a two-year period
 - The same entities can form more than one joint venture, but at some point the SBA will find the entities to be affiliated

Small Business Set Asides: General Principles

- Small Business Set-asides
 - Rule of Two: FAR 19.502-2
 - Acquisitions over **\$250,000** are to be set-aside for small businesses when there is a reasonable expectation that offers will be obtained from at least two responsible small businesses.
 - Status
 - 8(a) Business Development Program
 - Woman-Owned Small Business Program
 - Service-disabled Veteran Owned Small Business
 - HUBZone

Small Business Set Asides: General Principles

- Subcontracting limitations apply to contract set-asides for small businesses when the contract amount exceeds **\$150,000**, and all other set-aside or sole-source contracts under the 8(a), HUBZone, SDVOSB, and WOSB programs.
 - **Service contracts:** The small business prime contractor must provide at least **50%** of the contract cost for personnel.
 - **Supply contracts:** The small business prime contractor must perform work for at least **50%** of the cost of manufacturing the supplies, not including the cost of materials, unless the business qualifies as a non-manufacturer.
 - **General construction contracts:** The small business prime contractor must perform at least **15%** of the cost of the contract with its own employees, not including the cost of materials.
 - **Specialty construction contracts:** The small business prime contractor must perform at least **25%** of the cost of the contract with its own employees, not including the cost of materials.
 - Work performed by similarly-situated small business may be excluded from the calculation

The 8(a) Program

- Set-Asides:
 - Reasonable Expectation that at least two qualified 8(a) small businesses will submit offers
 - Resulting contract can be awarded at fair market price
 - Estimate exceeds **\$7M** for manufacturing and **\$4M** for other requirements
- Sole Source Awards available if:
 - Responsible, fair market price offer
 - Up to **\$4M** for goods and services and **\$7M** for manufacturing per contract, up to **\$100M** or five times the value of its primary NAICS code over the life of the entity's participation in the 8(a) BD Program (whichever is less).

The 8(a) Program

Alaskan Native Corporations and Indian Tribal Organizations

- To participate in the 8(a) Program, Indian Tribal Organizations and ANCs must be “small” under their primary NAICS Code.
- However:
 - ANCs are not subject to the social or economic disadvantage requirements.
 - Indian Tribal Organizations:
 - If the Indian Tribe is economically disadvantaged, businesses owned by the Tribe are economically disadvantaged;
 - Social disadvantage is presumed
 - Both are eligible for sole source awards above the competitive threshold even if there 2+ qualified firms (19.805-1(b)(2))

Contracting With HUBZone Firms

- Offers from two or more qualified HUBZone concerns and award will be made at fair market price
- Set-Asides not required if:
 - A mandatory source will be used (e.g., Ability One);
 - Order will be placed against an ID/IQ or Federal Supply Schedule contract
 - An 8(a) is currently performing the work Contract is less than the micro-purchase threshold (**\$10,000**) (FAR 19.1304)

Direct Award Contracting With HUBZone Firms

- FAR 19.1306:
- CO “shall consider” a sole source award to a HUBZone firm if:
 - Contract amount not expected to exceed **\$7.5M** (manufacturing) or **\$4.5M** (all other NAICS codes);
 - There is a reasonable expectation that two or more qualified HUBZone SBCs are not likely to submit offers;
 - The requirement cannot be met by an Ability One vendor or Federal Prison Industries; is not currently within the 8(a) Program; and is not an order against Federal Supply Schedules (FAR 19.1304);
 - Award can be made at a fair and reasonable price; and
 - Award is higher than the micro-purchase threshold.
 - Note: The SBA has the right to appeal the contracting officer’s decision not to make a HUBZone sole source award. (FAR 19.1306(b))

SDVOSBs

Sole Source Awards - FAR 19.1406

- CO “shall consider” a sole source award to an SDVOSB if:
 - There is no reasonable expectation that offers would be received from two or more responsible SDVOSBs
 - Contract is less than **\$7M** (manufacturing) or **\$4M** (all other NAICS codes)
 - The requirement cannot be met by an Ability One vendor or Federal Prison Industries is not currently within the 8(a) Program; and is not an order against Federal Supply Schedules (FAR 19.1404)
 - Award can be made at a fair and reasonable price

****Note: The SBA has the right to appeal the contracting officer’s decision not to make a SDVOSB sole source award. (FAR 19.1406(b))****

Women-Owned Small Business Program

- Set-asides authorized only in SBA-designated industries (<http://www.sba.gov/WOSB>).
- The dollar thresholds for WOSB/EDWOSB set-asides were eliminated via FAC 05-67.
- Set-asides to EDWOSBs and WOSBs are authorized in “underrepresented” industries if:
 - CO expects 2+ ED/WOSBs will submit offers
 - Contract award may be made at a fair and reasonable price

Women-Owned Small Business Program

Direct Award - 19.1506

- CO “shall consider” a sole source award to an EDWOSB or WOSB if:
 - The acquisition is assigned a NAICS code in which SBA has determined that EDWOSB/WOSB concerns are underrepresented in Federal procurement
 - The contracting officer does not have a reasonable expectation that offers would be received from two or more EDWOSB/WOSB concerns
 - Contract is less than **\$7M** (manufacturing) or **\$4.5M** (all other NAICS codes)
 - The requirement cannot be met by an Ability One vendor or Federal Prison Industries; is not currently within the 8(a) Program; and is not an order against Federal Supply Schedules (FAR 19.1504)
 - Award can be made at a fair and reasonable price

****Note: The SBA has the right to appeal the contracting officer’s decision not to make a EDWOSB/WOSB sole source award. (FAR 19.1506(d))****

Size/Status Protests and Appeals

- Size Protests
 - Protest to CO or SBA area office **5** business days after unsuccessful bidder notified
 - SBA will make size determination within **15** business days
 - If not small/eligible, CO must set aside award
- Status Protest
 - Protest to CO 5 business days after notice of successful offeror or opening sealed bid
 - SBA will make size determination within **15** business days
 - If not small/eligible, CO must set aside award
- The Office of Hearings and Appeals (OHA) hears quasi-judicial appeals of certain SBA program decisions. 13 C.F.R. § 134.102.
- Appeals to OHA
 - Due **15** calendar days after receiving the size determination
 - [13 C.F.R. § 121](#); [13 C.F.R. §§ 134.101-317](#) (OHA Regulations)

Questions?



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