



SBA's New Rule

It's a win for government efficiency.

By Edward Bailey

The SBA just issued a new, and highly anticipated, rule implementing sweeping changes largely aimed at streamlining its procurement processes – i.e., a win for government efficiency! While the rule is comprehensive and includes a variety of relatively minor amendments to the SBA's pre-existing regulatory scheme, there are a few highlights that contractors should review immediately to understand their benefits.

AWARDEES ON UNRESTRICTED MACS MUST NOW RECERTIFY FOR ALL SET-ASIDE ORDERS

An initial highlight of the SBA's new rule surrounds changes to the recertification requirements of firms' size and socioeconomic status when specific set-aside orders are issued under an unrestricted multiple award contract ("MAC"). Previously, the SBA's regulations in this regard had led to a great deal of uncertainty as contracting officers had discretion on whether to require MAC awardees to recertify their status prior to award of a set-aside order – i.e., such awardees were left to roll the dice if they outgrew their size status during the life of their MAC. The SBA's new rule alleviates this uncertainty by simply mandating that awardees of unrestricted MACs recertify their size and socioeconomic status as of the time they submit an offer on a set-aside order. Thus, this modification puts contractors on clear notice of the requirements they need to meet when pursuing set-aside orders before investing valuable time and resources in pursuing the same.

MERGING THE 8(A) MENTOR-PROTÉGÉ PROGRAM AND THE ALL SMALL MENTOR-PROTÉGÉ PROGRAM

Since the SBA initiated its All-Small Mentor-Protégé Program in 2016, many commentators and contractors alike have been left wondering why the SBA continued to maintain a separate 8(a) Mentor-Protégé Program considering their underlying purpose and rules were nearly identical. However, at last recognizing the lack of

justification for maintaining these programs separately, the SBA's new rule will be combining them to "to eliminate confusion and remove unnecessary duplication of functions within SBA". Thus, 8(a) firms may now participate in the All-Small-Mentor-Protégé Program thereby putting all firms, seeking a mentor-protégé arrangement, into a single program and under a single set of rules.

DISCARDING THE "3-in-2" RULE

Another topic of confusion among contractors, under the SBA's pre-existing regulations, was the necessity of the SBA's rule that joint ventures may only be awarded three contracts during their two-year lifespan. Such confusion surrounded, not only what exactly the significance of "three" contracts was but also, the ease with which many savvy joint ventures could simply circumvent this limitation. Specifically, many savvy contractors would simply form additional joint ventures to pursue up to six, nine, or more awards. Again, recognizing the lack of justification for such inefficiency, the SBA's new rule streamlines the once aptly named "rule of 3-in-2" to discard with any limitation on the number of awards that joint venture can pursue during its two year lifespan – i.e., the SBA has created a much simpler "rule of 2".

TAKE AWAY

The SBA's comprehensive new rule had the goal of streamlining the procurement process and it does just that. Small businesses can now look to a single comprehensive program to pursue mentor protégé arrangements, pursue an unlimited number of contracts through a joint venture, and pursue set-aside orders on a MAC with greater certainty on the requirements they will have to meet. In addition to these key highlights, in the coming weeks and months, the SBA is expected to begin rolling out a series of guidance materials that are expected further clarify many aspects of this new rule.

CONTACT:

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