Bristol Bay Native Corporation

OPERATING WITH INTEGRITY

COMMITMENT COMPLIANCE CULTURE

Joint Ventures and Mentor Protégés – New Regulations Applied

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OVERVIEW

- SBA’s new Small Business Mentor-Protégé Program
- Recent changes to SBA’s joint venture rules
- Utilizing the new rules

SBA'S NEW MENTOR-PROTÉGÉ PROGRAM

- Open to all types of small businesses (i.e., HUBZone, WOSB, SDVOSB, 8(a), and small)
- **August 24, 2016:** rules went into effect
- **October 1, 2016:** SBA began accepting applications
- **November 1, 2016:** SBA began accepting online applications at www.certify.sba.gov

BENEFITS OF MENTOR-PROTÉGÉ

- Mentor may provide protégé with various forms of financial, technical, and/or management assistance
- Mentor and protégé may enter into subcontracts
- Mentor may own up to 40% of the protégé
- Agencies may provide contracting and evaluation incentives to offerors utilizing a protégé

BENEFITS OF MENTOR-PROTÉGÉ

- Mentor and protégé are exempted from affiliation based on the assistance provided under the mentoring relationship
  - **KEY:** this means the mentor and protégé may form joint ventures (“JVs”) for set-aside contracts, even if the mentor is a large business

PROTÉGÉS

- Must be small under its primary NAICS code
- Or, small under a secondary NAICS code
  - If seeking approval under a secondary NAICS code, protégé must demonstrate prior experience and logical business progression in that code
- Generally, only one mentor at a time
  - SBA will approve a second mentor only if the second relationship pertains to an unrelated NAICS code or the protégé seeks to acquire specific expertise that the first mentor does not possess
- Only two SBA mentor-protégé relationships **ever**

MENTORS

- Must be capable of providing mentoring
- Possess good character, not suspended or debarred
- May be large or small business
- May be protégé and mentor at the same time
- Non-profits are **not** eligible as mentors
- Generally, no more than one protégé at a time
  - But could have up to three protégés at one time if there is no adverse impact on any protégé
  - No limit on number of protégés in the life of the mentor

PARTICIPATION PERIOD

- Maximum term is six years in one mentor-protégé relationship
  - Initial term is for three years
  - One option for an additional three years
  - Parties must commit to one year – after that, either party may terminate the Mentor-Protégé Agreement upon 30 days' notice
  - SBA must approve continuation of the relationship each year and can terminate at any time

HOW TO APPLY

- SBA began accepting applications on October 1st
- SBA's online application available as of November 1st
- Visit: www.certify.sba.gov
- Currently open for anyone to apply
  - Depending on application volume, SBA may institute open and closed enrollment periods in the future

APPLICATION CHECKLIST

- Register with SAM.gov
- Prepare a Mentor-Protégé Agreement
- Complete online application
- Complete online training
- Submit other documents to substantiate eligibility, which could include:
  - Tax returns/financial statements
  - Letters of recommendation
  - Business plan for protégé

MENTOR-PROTÉGÉ AGREEMENT

- A template agreement is available at: https://www.sba.gov/sites/default/files/articles/MPA-Template.doc
- Among other requirements, the Mentor-Protégé Agreement must detail:
  - Assistance the protégé needs
  - What the mentor will do to meet the protégé's needs
  - Timeline for providing assistance
  - How the parties will measure success
  - Important to tie the mentoring to the protégé's business plan

EVALUATING THE RELATIONSHIP

- Each year, protégé must report to SBA on the assistance provided by the mentor, joint ventures formed, contracts awarded, etc.
- SBA will review report and may decide not to approve continued relationship
  - SBA could end the arrangement if it has already served its purpose for the protégé
  - Or, if SBA determines the mentor has not provided the promised assistance
    - In more egregious cases, this could also lead SBA to ban the mentor from future mentoring relationships for two years, or suspension and debarment proceedings

IMPACT ON OTHER MENTOR-PROTÉGÉ PROGRAMS

- Agencies can continue separate small business mentor-protégé programs for one year
- If an agency wants to continue its program after August 2017, it must obtain approval from SBA
- DOD’s mentor-protégé program is not affected

NEW RULES FOR JOINT VENTURES

- SBA now has uniform requirements for JVs in each set-aside program
  - Easier to judge size: the JV is small as long as each party in the JV is small under the size standard for the contract
  - Contents of the JV agreement are consistent for each program
  - Small business must be the lead partner in the JV and must perform at least 40% of the work
- No prior approval of JV agreement by SBA **<u>except</u>** for 8(a) contracts
  - 8(a) firms are now allowed to submit a JV agreement to SBA for approval at any time

KEY CHANGES TO EXISTING JV RULES

- HUBZone firms may JV with non-HUBZone firms
- SBA no longer accepts populated JVs
  - **Populated JV:** has its own employees
  - **Unpopulated JV:** the work is performed by employees of the JV partners
- JV partners must share profit commensurate with their ownership interests (rather than commensurate with work performed) in a separate legal entity JV (i.e., an LLC)
- Size protests permitted against 8(a) JVs

JV PROJECT MANAGER

- JV Project Manager ("PM") must be an employee of the small business "managing partner" of the JV
  - If PM is not employed by the small business prior to award, small business must have a signed letter of commitment from PM
  - PM may **not** be an employee of the mentor and become an employee of the protégé for purposes of JV contract performance

JV COMPLIANCE & EVALUATION

- JV must be separately identified in SAM.gov as a JV
- JV must certify compliance with JV rules and performance of work rules at the start of the contract, each year during the contract, and at the end of the contract
- Agencies must consider past performance of JV partners when considering past performance of a JV entity

UTILIZING THE NEW RULES

- Combining a mentor-protégé relationship and a JV allows a small business to partner with a large business to go after larger set-aside contracts
  - **Step 1:** Form mentor-protégé relationship, submit to SBA for approval (probably 1-3 months)
  - **Step 2:** Form JV (typically 2-3 weeks)
  - **Step 3:** JV submits proposal
  - If the mentor is a large business, SBA must approve mentor-protégé relationship **before** JV submits proposal

UTILIZING THE NEW RULES

- A mentor-protégé relationship provides protection from affiliation
  - The affiliation protection is a critical tool to defend against size and status protests
  - Consider a mentoring relationship if you envision, or if you already have, a close relationship with a large business
- Mentor-protégé is an important strategy as you grow
  - Finding a protégé to partner with can help you remain eligible to compete for strategic set-aside re-competes in the future when you are no longer small

UTILIZING THE NEW RULES

- Using JVs helps to manage your growth against your small business size standards
  - JV revenue is attributed to the JV partners in proportion to their workshare in the JV
  - **Example:** If you perform 40% of the work in a JV, 40% of the contract revenue is attributable to you
  - By contrast, if you were the prime contractor, you would get hit with 100% of the revenue even if you subcontract a significant portion of the work

UTILIZING THE NEW RULES

- When bidding as a JV, check the RFP
  - RFP may have unique past performance and other evaluation requirements for JVs
  - Sometimes, RFP provisions on JVs are wrong and need to be brought to agency's attention or protested
  - RFP may require you to include a copy of the JV agreement with your proposal.


THANK YOU
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