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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 125, 126, and 127

RIN: 3245-AG24

Small Business Mentor Protégé Programs; Correction

AGENCY: U.S. Small Business Administration.

ACTION: Correcting amendments.

SUMMARY: The U.S. Small Business Administration (SBA) published a final rule in the Federal Register on July 25, 2016, amending its regulations to establish a new Government-wide mentor-protégé program for all small business concerns, consistent with SBA's mentor-protégé program for Participants in SBA's 8(a) Business Development (BD) program. The rule also made several additional changes to current size, 8(a), Office of Hearings and Appeals, and HUBZone regulations, concerning among other things, ownership and control, changes in primary industry, economic disadvantage of a Native Hawaiian Organization (NHO), standards of review, and interested party status for some appeals. This document makes several technical corrections to that final rule, eliminating a portion of a sentence concerning joint venture profits.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: The final rule published on July 25, 2016, at 81 FR 48557, contained errors that must be corrected in order ensure consistency within the regulations and to avoid public uncertainty or confusion.

On October 19, 2016, SBA issued a correction pertaining to 8(a) joint venture profits. 81 FR 71981. As SBA explained, due to the change made to § 121.103(h), which eliminated the ability of a joint venture to be populated with individuals intended to perform contracts awarded to the joint venture, a conforming correction was needed to § 124.513(c), which references populated joint ventures. Specifically, § 124.513(c)(4) provided that in the case of a populated separate legal entity joint venture, 8(a) Participant(s) must receive profits from the joint venture commensurate with their ownership interests in the joint venture. Because SBA eliminated populated joint ventures, that provision was superfluous and was deleted. SBA's 8(a) joint venture rule now states that the 8(a) Participant(s) in a joint venture must receive profits from the joint venture commensurate with the work performed by the 8(a) Participant(s). 13 CFR § 124.513(c)(4). This change was necessary because under the mentor protégé program, a protégé may perform as little as 40% of the total work performed by the joint venture in aggregate. It would not make sense to require a firm to receive 51% of the profits for doing only 40% of the work.

The same language that SBA corrected in the 8(a) regulations is currently in place for joint ventures under all small mentor protégé, Service-Disabled Veteran-Owned, Women-Owned and HUBZone small business programs. SBA's intent was for profits to be commensurate with the work performed by each member of the joint venture. These rules currently state that in the case of a separate legal entity, the firm must receive

profits commensurate with their ownership interests in the joint venture, which is contrary to SBA's intent. Consequently, SBA is correcting §§ 125.8(b)(2)(iv), 125.18(b)(2)(iv), 126.616(c)(4) and 127.506(c)(4) to make the rules consistent with 124.513(c)(4) and across all programs.

List of Subjects

13 CFR 125

Government Contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance, Veterans.

13 CFR 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small businesses.

13 CFR 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

Accordingly, 13 CFR parts 125, 126, and 127 are corrected by making the following correcting amendments:

PART 125 – GOVERNMENT CONTRACTING PROGRAMS

1. The authority citation for part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657f, and 657q.

2. In § 125.8, revise paragraph (b)(2)(iv) to read as follows:

§ 125.8 What requirements must a joint venture satisfy to submit an offer for a procurement or sale set aside or reserved for small business?

* * * * *

(c) * * *

(2) * * *

(iv) Stating that each participant must receive profits from the joint venture commensurate with the work performed by the concern;

* * * * *

3. In § 125.18, revise paragraph (b)(2)(iv) to read as follows:

§ 125.18 What requirements must an SDVO SBC meet to submit an offer on a contract?

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(b) * * *

(2) * * *

(iv) Stating that the SDVO SBC(s) must receive profits from the joint venture commensurate with the work performed by the SDVO SBC;

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PART 126 – HUBZONE PROGRAM

4. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644; and 657a; Pub. L. 111-240, 24 Stat. 2504.

5. In § 126.616, revise paragraph (c)(4) to read as follows:

§ 126.616 What requirements must a joint venture satisfy to submit an offer on a HUBZone contract?

* * * * *

(c) * * *

(4) Stating that the HUBZone SBC(s) must receive profits from the joint venture commensurate with the work performed by the HUBZone SBC;

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PART 127 – WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT
PROGRAM

6. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

7. In § 127.506, revise paragraph (c)(4) to read as follows:

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

* * * * *

(c) * * *

(4) Stating that the WOSB(s) must receive profits from the joint venture commensurate with the work performed by the WOSB;

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Dated: December 16, 2016.

A. John Shoraka,
Associate Administrator
Office of Government Contracting & Business Development
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