

## § 124.518

## 13 CFR Ch. I (1–1–12 Edition)

or is ineligible for the contract, other than the right set forth in § 124.501(h) to request a formal size determination where SBA cannot verify it to be small.

(d)(1) The NAICS code assigned to a sole source 8(a) requirement may not be challenged by another Participant or any other party either to SBA or any administrative forum as part of a bid or contract protest. Only the AA/BD may appeal a NAICS code designation with respect to a sole source 8(a) requirement.

(2) In connection with a competitive 8(a) procurement, any interested party who has been adversely affected by a NAICS code designation may appeal the designation to SBA's OHA pursuant to § 121.1103 of this title.

(e) Anyone with information questioning the eligibility of a Participant to continue participation in the 8(a) BD program or for purposes of a specific 8(a) contract may submit such information to SBA under § 124.112(c).

[63 FR 35739, June 30, 1998, as amended at 74 FR 45754, Sept. 4, 2009]

### **§ 124.518 How can an 8(a) contract be terminated before performance is completed?**

(a) *Termination for default.* A decision to terminate a specific 8(a) contract for default can be made by the procuring activity contracting officer after consulting with SBA. The contracting officer must advise SBA of any intent to terminate an 8(a) contract for default in writing before doing so. SBA may provide to the Participant any program benefits reasonably available in order to assist it in avoiding termination for default. SBA will advise the contracting officer of this effort. Any procuring activity contracting officer who believes grounds for termination continue to exist may terminate the 8(a) contract for default, in accordance with the Federal Acquisition Regulations (48 CFR chapter 1). SBA will have no liability for termination costs or reprocurement costs.

(b) *Termination for convenience.* After consulting with SBA, the procuring activity contracting officer may terminate an 8(a) contract for convenience when it is in the best interests of the Government to do so. A termination for convenience is appropriate if any

disadvantaged owner of the Participant performing the contract relinquishes ownership or control of such concern, or enters into any agreement to relinquish such ownership or control, unless a waiver is granted pursuant to § 124.515.

(c) *Substitution of one 8(a) contractor for another.* Where a procuring activity contracting officer demonstrates to SBA that an 8(a) contract will otherwise be terminated for default, SBA may authorize another Participant to complete performance and, in conjunction with the procuring activity, permit novation of the contract without invoking the termination for convenience or waiver provisions of § 124.515.

### **§ 124.519 Are there any dollar limits on the amount of 8(a) contracts that a Participant may receive?**

(a) A Participant (other than one owned by an Indian Tribe, ANC or NHO) may not receive sole source 8(a) contract awards where it has received a combined total of competitive and sole source 8(a) contracts in excess of the dollar amount set forth in this section during its participation in the 8(a) BD program.

(b) Once the limit is reached, a firm may not receive any more 8(a) sole source contracts, but may remain eligible for competitive 8(a) awards.

(c) SBA includes the dollar value of 8(a) options and modifications in determining whether a Participant has reached the limit identified in paragraph (a) of this section. If an option is not exercised or the contract value is reduced by modification, SBA will deduct those values.

(d) A Participant's eligibility for a sole source award in terms of whether it has exceeded the dollar limit for 8(a) contracts is measured as of the date that the requirement is accepted for the 8(a) program without taking into account whether the value of that award will cause the limit to be exceeded.

(e) The AA/BD may waive the requirement prohibiting a Participant from receiving sole source 8(a) contracts in excess of the dollar amount set forth in this section where the head of a procuring activity represents that award of a sole source 8(a) contract to

the Participant is needed to achieve significant interests of the Government.

[63 FR 35739, June 30, 1998, as amended at 76 FR 8262, Feb. 11, 2011]

**§ 124.520 What are the rules governing SBA's Mentor/Protégé program?**

(a) *General.* The mentor/protégé program is designed to encourage approved mentors to provide various forms of business development assistance to protégé firms. This assistance may include technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts; and/or assistance in performing prime contracts with the Government through joint venture arrangements. Mentors are encouraged to provide assistance relating to the performance of non-8(a) contracts so that protégé firms may more fully develop their capabilities. The purpose of the mentor/protégé relationship is to enhance the capabilities of the protégé, assist the protégé with meeting the goals established in its SBA-approved business plan, and to improve its ability to successfully compete for contracts.

(b) *Mentors.* Any concern or non-profit entity that demonstrates a commitment and the ability to assist developing 8(a) Participants may act as a mentor and receive benefits as set forth in this section. This includes businesses that have graduated from the 8(a) BD program, firms that are in the transitional stage of program participation, other small businesses, and large businesses.

(1) In order to qualify as a mentor, a concern must demonstrate that it:

- (i) Possesses favorable financial health;
- (ii) Possesses good character;
- (iii) Does not appear on the federal list of debarred or suspended contractors; and
- (iv) Can impart value to a protégé firm due to lessons learned and practical experience gained because of the 8(a) BD program, or through its knowledge of general business operations and government contracting.

(2) Generally a mentor will have no more than one protégé at a time. However, the AA/BD may authorize a con-

cern or non-profit entity to mentor more than one protégé at a time where it can demonstrate that the additional mentor/protégé relationship will not adversely affect the development of either protégé firm (*e.g.*, the second firm may not be a competitor of the first firm). Under no circumstances will a mentor be permitted to have more than three protégés at one time.

(3) In order to demonstrate its favorable financial health, a firm seeking to be a mentor must submit to SBA for review copies of the Federal tax returns it submitted to the IRS, or audited financial statements, including any notes, or in the case of publicly traded concerns the filings required by the Securities and Exchange Commission for the past three years.

(4) Once approved, a mentor must annually certify that it continues to possess good character and a favorable financial position.

(c) *Protégés.* (1) In order to initially qualify as a protégé firm, a Participant must:

- (i) Be in the developmental stage of program participation; or
- (ii) Have never received an 8(a) contract; or
- (iii) Have a size that is less than half the size standard corresponding to its primary NAICS code.

(2) Only firms that are in good standing in the 8(a) BD program (*e.g.*, firms that do not have termination or suspension proceedings against them, and are up to date with all reporting requirements) may qualify as a protégé.

(3) A protégé firm may generally have only one mentor at a time. The AA/BD may approve a second mentor for a particular protégé firm where:

- (i) The second relationship pertains to an unrelated, secondary NAICS code;
- (ii) The protégé firm is seeking to acquire a specific expertise that the first mentor does not possess; and
- (iii) The second relationship will not compete or otherwise conflict with the business development assistance set forth in the first mentor/protégé relationship.

(4) A protégé may not become a mentor and retain its protégé status. The protégé must terminate its mentor/