



**SMALL BUSINESS ADMINISTRATION**

**13 CFR Parts 121 and 124**

**RIN 3245-AG94**

**Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments; Correction**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Correcting amendment.

**SUMMARY:** The U.S. Small Business Administration (SBA) is correcting a final rule that was published in the *Federal Register* on October 16, 2020. The rule merged the 8(a) Business Development (BD) Mentor-Protégé Program and the All Small Mentor-Protégé Program to eliminate confusion and remove unnecessary duplication of functions within SBA. This document is making technical corrections to the final regulations.

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

**FOR FURTHER INFORMATION CONTACT:** Mark Hagedorn, U.S. Small Business Administration, Office of General Counsel, 409 Third Street SW, Washington, DC 20416; (202) 205-7625; [mark.hagedorn@sba.gov](mailto:mark.hagedorn@sba.gov).

**SUPPLEMENTARY INFORMATION:** On October 16, 2020, SBA published a final rule revising the regulations pertaining to the 8(a) BD and size programs in order to further reduce unnecessary or excessive burdens on small businesses and to more clearly delineate SBA's intent in certain regulations (85 FR 66146). This is the fourth set of corrections. The first set of corrections was published in the *Federal Register* on November 16, 2020 (85 FR 72916). The second set of corrections was published in the *Federal Register* on January 14, 2021 (86 FR 2957). The third set of corrections was published in the *Federal Register* on February 23, 2021 (86 FR 10732). This document augments those corrections.

In the final rule, SBA amended § 121.404(a)(1) to revise and clarify when the size status of a business concern is determined for a multiple-award contract. In doing so, SBA inadvertently removed § 121.404(a)(1)(iv), which concerned when the size of a concern is determined for multiple-award contracts for which offerors are not required to submit price as part of the offer. SBA did not intend to delete that provision. This document adds back in § 121.404(a)(1)(iv) as it appeared in SBA’s regulations prior to the final rule.

This rule also corrects a typographical error contained in the introductory text of § 121.404(g) by removing the word “until” from the second sentence.

The final rule also revised § 121.404(g)(2) to add language relating to the effect a merger, sale or acquisition that occurs between a concern’s offer for a particular procurement and the date of award for that procurement would have on the concern’s continued eligibility to receive the award and a procuring agency’s ability to continue to receive small business credit. The final rule inadvertently left out a corresponding change to § 121.404(g)(4). This rule corrects that omission by adding the words “or pending” to § 121.404(g)(4) to make clear that the revisions to § 121.404(g)(2) were intended to apply to orders issued under multiple award contracts (MACs) as well.

Finally, the final rule also made several revisions to § 124.509 regarding business activity targets applying to Participants in SBA’s 8(a) Business Development program. One of the changes made by the final rule was to clarify that SBA will compare 8(a) and non-8(a) revenues in a Participant’s program year, as opposed to its fiscal year. The final rule intended to change all references from fiscal year to program year. However, one reference to fiscal year was mistakenly left in § 124.509(b)(3). This correction changes fiscal year to program year in § 124.509(b)(3).

## **List of Subjects**

### **13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

### **13 CFR Part 124**

Administrative practice and procedure, Government procurement, Government property, Small businesses.

Accordingly, 13 CFR parts 121 and 124 are corrected by making the following correcting amendments:

### **PART 121—SMALL BUSINESS SIZE REGULATIONS**

1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116-136, Section 1114.

2. Amend § 121.404 by

- a. Adding paragraph (a)(1)(iv);
- b. Revising the second sentence of paragraph (g) introductory text; and
- c. Revising the second sentence of paragraph (g)(4).

The addition and revisions read as follows:

#### **§ 121.404 When is the size status of a business concern determined?**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(iv) For an indefinite delivery, indefinite quantity (IDIQ), Multiple Award Contract, where concerns are not required to submit price as part of the offer for the IDIQ contract, size will be determined as of the date of initial offer, which may not include price.

\* \* \* \* \*

(g) \* \* \* Similarly, a concern that represents itself as a small business and qualifies as small after a required recertification under paragraph (g)(1), (2), or (3) of this section is generally considered to be a small business throughout the life of that contract.

\* \* \*

\* \* \* \* \*

(4) \* \* \* However, if the Multiple Award Contract was set-aside for small businesses, partially set-aside for small businesses, or reserved for small business, then in the case of a contract novation, or merger or acquisition where no novation is required, where the resulting contractor is now other than small, the agency cannot count any new or pending orders issued pursuant to the contract, from that point forward, towards its small business goals. \* \* \*

\* \* \* \* \*

## **PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS**

3. The authority citation for part 124 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644 and Pub. L. 99-661, Pub. L. 100-656, sec. 1207, Pub. L. 101-37, Pub. L. 101-574, section 8021, Pub. L. 108-87, Pub. L. 116-260, sec. 330, and 42 U.S.C. 9815.

4. Amend § 124.509 by revising the first sentence of paragraph (b)(3) to read as follows:

### **§ 124.509 What are non-8(a) business activity targets?**

\* \* \* \* \*

(b) \* \* \*

(3) \*\*\* SBA will measure the Participant's compliance with the applicable non-8(a) business activity target at the end of each program year in the transitional stage by

comparing the Participant's non-8(a) revenue to its total revenue during the program year  
just completed. \* \* \*

\* \* \* \* \*

Antonio Doss,  
*Acting Associate Administrator,*  
*Office of Government Contracting and Business Development.*

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