

KEY TAKEAWAYS FROM SBA's EXPANSION OF THE MENTOR-PROTÉGÉ PROGRAM

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AGENDA

- * Background on new rule and roll-out
- * Overview of benefits of new program
- * Guidelines for Protégés and Mentors
- * Approval and appeal processes
- * MPP Joint Ventures
- * Reporting requirements and potential penalties
- * Overview of DoD mentor-protégé program

SBA FINAL RULE EXPANDING MENTOR-PROTÉGÉ PROGRAM

- ❖ First announced in 2010 Small Business Jobs Act and further details in 2013 NDAA
- ❖ Proposed rule on February 5, 2015, but final rule not released until July 22, 2016
- ❖ Effective as of August 24, 2016
- ❖ Applies to **ALL** small business concerns
- ❖ Applications to be accepted on October 1, 2016

SBA FINAL RULE EXPANDING MENTOR-PROTÉGÉ PROGRAM

- ❖ SBA opted for one new program instead of four
- ❖ New MP program mirrors 8(a) MP program, and no changes to how SBA processes 8(a) MP Agreements and Joint Ventures
- ❖ Other federal agencies (except DoD) cannot have separate MP program unless SBA approved

BENEFITS OF THE PROGRAM

- ❖ Mentors can provide Protégés:
 - ❖ Technical and management assistance
 - ❖ Financial assistance through loans and investments (own up to 40% of protégé)
 - ❖ Developmental assistance through subcontracts
 - ❖ Assistance in performing prime contracts through JV agreements
 - ❖ Trade education
- ❖ *All can be provided without affiliation concern!*

BENEFITS OF THE PROGRAM

- ❖ Increases small business opportunities in the federal market
- ❖ Mentor-protégé partners can compete for more contracts
- ❖ Improves small business development
- ❖ Expands firm's ability to transfer from 8(a) BD mentor-protégé program to the new small business mentor-protégé program
- ❖ New potential for evaluation credit on subcontracts awarded to protégés

GUIDELINES FOR PROTÉGÉS

- ❖ Must qualify (self-certify) as a small business:
 - ❖ Must meet size standard of its primary NAICS code; or
 - ❖ Must be seeking assistance with business development under secondary NAICS code and must meet this code's size standard
 - ❖ Changes in size will not affect contracts previously awarded under the mentor-protégé program
- ❖ Can (now) be a mentor and protégé at same time
- ❖ Maximum of 2 mentors at a time
 - ❖ Needs to be in different NAICS code or specific mentor expertise

GUIDELINES FOR MENTORS

- ❖ Must be for profit
- ❖ Either a small or large business
- ❖ Mentor must show it can fulfill its obligations under the MP agreement
- ❖ Must possess good character and not on Excluded Parties List
- ❖ Not required to demonstrate good financial condition

GUIDELINES FOR MENTORS

- ❖ Maximum of 3 protégés at any given time under 8(a) and small business MP program
 - ❖ Default is 1 at a time, but SBA can approve where protégés are not competitors
- ❖ Mentor can own up to 40% in the protégé
 - ❖ Not required to divest in protégé after agreement terminates
 - ❖ Small businesses protected by affiliation regulations
- ❖ Protégé can mentor smaller, less experienced firms

GUIDELINES FOR MENTORS

- ❖ The program is designed to protect and support small businesses
- ❖ SBA likely to be strict in their suspension and debarment measures
 - ❖ Failing to provide agreed to assistance to protégé could result in suspension or debarment
 - ❖ Changing the mentor-protégé agreement without SBA approval could result in suspension or debarment

APPROVAL PROCESS

- ❖ Separate unit created within the SBA Office of Business Development to process and review mentor-protégé applications and agreements
- ❖ If the unit gets overwhelmed, SBA will create “open” and “closed” enrollment periods
 - ❖ Anticipating 2,000 applications
- ❖ SBA Associate Administrator for Business Development issues final decision on the application
- ❖ MP Agreement term is 3 years, but reviewed annually by SBA

APPROVAL PROCESS

❖ How to Apply

- ❖ Both applicants must have an active registration in SAM.gov
- ❖ Request application via email (allsmallmpp_request@sba.gov)
 - ❖ Straightforward questions to ensure mentor and protégé qualify for the program
- ❖ Mentors and protégés must complete online training module
 - ❖ Waived for October applicants
- ❖ Starting on November 1, all application documents will be processed through certify.sba.gov
- ❖ Protégé must submit a business plan with each application

APPROVAL PROCESS

- ❖ Participating entities have to submit a written mentor-protégé agreement:
 - ❖ SBA agreement template is available on sba.gov
 - ❖ Must include protégé's projected needs and benefits
 - ❖ Must include methods, timeline, and mode for measuring success of mentor's assistance to the protégé
 - ❖ Must include mentor point of contact that manages and implements the agreement
 - ❖ Mentor must commit to assisting protégé for at least one year
 - ❖ Either party may terminate with 30 days advance notice to other party and SBA

APPEALS

- ❖ If not approved, Protégé can request that the SBA Associate Administrator for Business Development review the denial of a mentor-protégé agreement
- ❖ Parties can request that the Office of Hearings and Appeals reconsider SBA's decision
 - ❖ Must be filed within 20 calendar days of service of the final decision
 - ❖ Must demonstrate error of fact or law material to the decision

CHANGES AND TERMINATION

- ❖ Changes must be submitted and approved, in writing, in advance, to the SBA
 - ❖ Protégé has to certify to the SBA whether the mentor-protégé agreement has been altered
 - ❖ If change without approval SBA **shall** terminate agreement
- ❖ SBA can terminate the agreement at any time if
 - ❖ Parties don't comply with the terms and conditions of their agreement
 - ❖ The protégé is not benefitting from the agreement

CHANGES AND TERMINATION

- ❖ In the event of a change in control in the mentor, new mentor has to certify in writing intention to honor terms of the mentor-protégé agreement
- ❖ If SBA deems mentor's assistance inadequate, will notify mentor. Mentor has 30 days to explain and provide plan going forward. Penalties include:
 - ❖ Agreement will be terminated
 - ❖ Mentor ineligible to serve as mentor for 2 years
 - ❖ May warrant suspension or debarment

JOINT VENTURES

- ❖ Protégé and Mentor may form JV that qualifies as a small business for any Federal government contract or subcontract, provided that protégé qualifies as small for size standard assigned to contract.
- ❖ JV will also qualify for contracts reserved/set-aside for other programs, provided that protégé also meets the particular program requirements (e.g., WOSB set aside).
- ❖ Only opportunity for non-small business to share prime contract role on set-asides

JOINT VENTURES

- ❖ JV can be formal legal entity or informal partnership
- ❖ JV should:
 - ❖ Be separately identified in SAM
 - ❖ Have separate DUNS and CAGE numbers
 - ❖ Must identify entity type as “joint venture”
 - ❖ Should list the individual joint venture partners

JOINT VENTURES

- ❖ JV agreement must be set out in writing, and identify:
 - ❖ Purpose of JV
 - ❖ Protégé = managing venturer of JV
 - ❖ Employee of protégé is PM for contract performance
 - ❖ Need special bank account for the JV
 - ❖ Equipment, facilities, resources have to be itemized
 - ❖ Have to list member responsibilities
 - ❖ Protégé office retains accounting and administrative records
 - ❖ Must submit financial statements and profit and loss statements

JOINT VENTURES

- ❖ Protégé must receive profits from JV commensurate (1) with % of work performed or (2) if separate legal entity, with ownership interest
- ❖ For separate legal entities
 - ❖ Protégé must own at least 51%
 - ❖ May not be populated other than administrative staff
- ❖ The small business partner must perform at least 40% of the substantive work
- ❖ Protégé must document how meeting performance of work requirements (annually and post-contract)

JOINT VENTURES

- ❖ Entities must be approved under mentor-protégé program before JV submits an offer for a set-aside
 - ❖ Entities are not required to have JV approval before submitting an offer for a set-aside (except 8(a) contract)
 - ❖ But, prior to award, must certify to CO and SBA that JV agreement and performance complies with regulations
- ❖ Past performance
 - ❖ Previously, based on JV's past performance as an entity
 - ❖ Now look at past performance of individual JV partners as well

REPORTING

- ❖ Must provide details on how mentor has assisted protégé
- ❖ Must disclose contracts and subcontracts awarded
- ❖ Should focus on whether SBA should extend the mentor-protégé agreement
- ❖ Protégé must provide report at the end of the mentor-protégé relationship, otherwise may be prevented from future program involvement

REPORTING

- ❖ SBA can extend a mentor-protégé agreement for a second three-year term if
 - ❖ Reports demonstrate protégé has benefitted from the relationship; and
 - ❖ The protégé will continue to benefit if the relationship is extended

DoD Mentor-Protégé Program

- * Only other agency with mentor-protégé program
 - * More restrictive than SBA program
- * On September 23, 2016 DoD issued proposed changes to its program
- * Expands qualifying protégés:
 - * Small businesses
 - * Entities owned/controlled by an Indian tribe
 - * Entities owned/controlled by individuals that are socially/economically disadvantaged
 - * Non-traditional defense contractors

DoD Mentor-Protégé Program

- * Guidelines for Mentors:

- * Any eligible large business – subcontracting plan with a federal agency is not required
- * Cannot own/manage stocks or convertible securities in the protégé
- * Cannot have agreement to merge with protégé after the mentor-protégé relationship

- * Guidelines for Protégés:

- * Only permitted one mentor
- * Must be less than half the size standard of primary NAICS code

DoD Mentor-Protégé Program

- * Participation limited to 5 years
- * Intended to help small business concerns perform work under DoD contracts and other federal contracts and subcontracts
- * Joint ventures are not granted an exception from affiliation
- * Joint ventures must be SBA-approved prior to protégé submitting an offer

Wrap Up – Action Steps

- * Find partner, perform due diligence, weigh strategic considerations
- * Prepare and submit MP agreement and application and obtain SBA approval (must be before submit offer as JV)
 - * Any changes to MP agreement must be approved in advance by SBA
- * Prepare and submit JV agreement, and for 8(a) set-asides only, get approval before contract award
- * Be aware of annual (JV) and end-of-relationship reporting requirements (protégé)

New Sick Leave Rule

- * In most instances only applicable to new contracts awarded on or after Jan 1, 2017
- * For “covered employees” 1 hour of paid sick leave for every 30 hours worked on a “covered contract” and at least 56 hours/year or 56 at the beginning of the year (carry over up to 56)
- * Certification only for 3 or more consecutive workdays
- * Existing policy may satisfy, but check!

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