

Presentation of the SBA's Mentor Protégé Program for the Native American Contractors' Association

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Mentor/Protégé Program

In general, the mentor/protégé program is designed to encourage approved mentors to provide various forms of assistance to eligible Participants.



Mentor Protégé

- Designed to encourage approved mentors to provide various business development assistance to protégé firms (including non-8(a)) contracts)
- Purpose to enhance the capabilities of the protégé in meeting its business plan goals
- Different from agency Mentor Protégé (DoD excepted)
- Accomplished through approved agreement that generally includes
 - Technical and/or management assistance
 - Financial assistance (like equity investment, loans, subcontracts and prime contract performance, **including JVs**)

Mentor Protégé 124.520-8(a)-Now all

- Mentor qualifications
 - Demonstrates ability too assist developing 8(a) participants
 - Can be a graduated 8(a)
 - Can be a small business-New Rule
 - Favorable financial health-NEW Rule-Must meet the requirements of the MPA
 - Good Character
 - Not debarred/suspended
 - Can impart value from lessons learned and practical experience
 - Certify annually
 - Generally, can only have one protégé at a time, but the absolute cap is 3

Mentor Protégé 124.520 8(a) In Line with Other Programs

- Protégé Qualifications (remember OR)
 - [Be in the developmental stage or] GONE
 - [Never received an 8(a) contract] or GONE
 - [Have a size standard that is half the size standard corresponding to its NAICs Code] GONE
 - Good standing/no proceedings
 - Generally, can have only one mentor, but no more than 2

New Mentor Protégé Regulations: Implementation of Mentor Protégé Program for all Small Business Concerns

- The SBA has established a new mentor protégé program similar to the 8(a) mentor protégé program.
- While this program is similar to the 8(a) mentor protégé program, the 8(a) program will continue to operate and be processed separately, addressing the concerns that are unique to 8(a).
- 8(a) firms may also transfer the mentor protégé relationship when it leaves the 8(a) Program as long as the firm notifies the SBA in writing and provided that the firm is still qualified for the program to which it is transferring.

Processing Small Business Applications for the Mentor Protégé Program

- The SBA established a separate unit within the Office of Business Development whose sole function would be to process mentor protégé applications and review mentor protégé agreements (“MPA”) and the assistance provided under those agreements, once the agreement is approved.
- This new unit processes and makes determinations with respect to all small business MPAs, with the ultimate decision made by the Associate Administrator/BD or his/her designee.
- While the SBA would like to avoid the open and closed periods of processing, if the applications become overwhelming, open enrollment periods are still a possibility.
- If such a need arises for open or closed period, the SBA has stated that the will provide advance notice so that potential applicants can plan accordingly.

Mentors

- Mentors for all programs must be for-profits. This is a change for the 8(a) Program, which previously allowed non-profits to be mentors.
- The change comes about because of the language of the statute and the need for consistency between the mentor protégé programs.

Number of Firms one Company can Mentor

- The final regulation falls in line with the regulations in the 8(a) Program in that any one mentor can have up to three protégé firms at any one time-regardless of the SBA program.
- The same regulations would likely apply that in order to fulfill the obligations under the MPA, there would have to be a demonstration that the additional mentor protégé relationship would not adversely affect the development of the protégé firm (any of them), by being a competitor, etc.

A Firm can be a Mentor and a Protégé at the Same Time

- The proposed rule would not have allowed a firm to be a mentor and a protégé at the same time.
- After comments and review, the SBA believed that there were benefits to be provided to small firms to act as mentors and protégés at the same time.
- The final regulation allows a firm to be both a mentor and protégé at the same time where it can demonstrate that the second relationship will not compete with the first.

Protégés

- In order to qualify as a protégé in all programs, the protégé must qualify as small for the size standard corresponding to its primary NAICS Code **OR**
- Identify that it is seeking business development assistance with respect to a secondary code and identify provided that the secondary code development is consistent with its business plan and a logical progression for the firm to development current capabilities.
- While this eliminates some threshold requirements for 8(a) protégé participants, it brings consistency between the 8(a) requirements and requirements for other programs.
- A protégé may have two mentors where the two relationships will not compete or otherwise conflict with each other and the protégé demonstrates that the second relationship pertains to an unrelated, secondary NAICS Code, or the first mentor does not possess the specific expertise of the second mentor.
- The SBA will accept self-certification for protégé firms because any size protest would protect the integrity of the program.

Benefits of the Mentor Protégé Relationship

- As with the 8(a) Program, a protégé may JV with its SBA approved mentor and qualify as a *small business* for any Federal government contract or subcontract, provided that the protégé qualifies as small for the size standard corresponding to the NAICS Code assigned to that procurement.
- This DOES NOT mean that such a JV affirmatively qualifies for any other small business program unless it qualifies and is approved for the other programs (HUBZone, 8(a), WOSBs, etc.) as well.

Program Managers of MPA/JV and Ownership Interests

- The SBA clarified that the designated project manager for the JV under a contract does NOT have to be an employee of the protégé. However, there must be a signed letter of intent that the employee will become an employee of the protégé firm if the contract is awarded to the JV.
- This still does not allow the transference of employment for this position between the mentor and protégé firms.
- During the mentor protégé relationship, the mentor is shielded, generally, from affiliation when it owns up to 40% of the protégé.
- Once the mentor protégé relationship ends, so does the protection from affiliation for the 40% interest.
- As such, if it does not divest that 40% interest, the former protégé will be found to be ineligible for any contract as a small business where the 40% causes affiliation under the size rules.

Written Mentor Protégé Agreements

- The SBA believes the benefits identified in the MPAs should be clearly and specifically identified.
- This identification and measurement includes a timeline for the assistance delivered.
- The regulation also clarifies that a subcontract from a mentor to a protégé or a protégé to a mentor can be developmental assistance authorized by the MPA.
- The SBA is also requiring that if a firm is receiving benefits from another MPA from another agency, those benefits cannot be duplicated through the SBA's MPA.

Written Mentor Protégé Agreements

- The regulation continues to authorize two three-year MPAs with different mentors, but will allow each to be extended for a second three years provided the protégé has received the agreed upon business development assistance and continue to receive assistance.
- Although an 8(a) firm can transfer its mentor protégé relationship to a small business mentor protégé relationship after it leaves the 8(a) Program, it may enter into only one additional mentor protégé relationship. It cannot enter into two additional small business mentor protégé relationships.
- For 8(a) mentor protégé relationships, the regulations allow the relationship to continue when the control or ownership of the mentor changes when the new mentor expresses in writing to the SBA that it acknowledges the MPA and that it continues with the commitments and obligations in that agreement.

Mentor Protégé Written Agreements

- SBA must approve any mentor protégé agreement prior to the firm's receiving any benefits or the mentor protégé program
- SBA will not approve the agreement if the SBA determines that the assistance to be provided is not sufficient to promote any real developmental gains to the protégé or if the SBA determines that the agreement is merely a vehicle to enable the mentor to receive small business contracts
- The mentor protégé agreements submitted to the SBA for approval must identify how the assistance to be provided by the mentor is different from the assistance provided to the protégé through another mentor protégé relationship, either with the same or a different mentor
- The agreement will be reviewed annually by the SBA
- The agreement will be able to survive change of ownership/control of mentor where mentor acknowledges the agreement and expresses its intent to continue to fulfill its obligation under the agreement

Mentor Protégé Programs of Other Departments and Agencies

- The NDAA 2013 specifically excluded the Department of Defense's mentor protégé program, so that will not be dealt with here.
- Under the provisions of the NDAA, the other agencies or departments that are currently operating a mentor protégé program may continue to operate that program for one year and then go through the SBA's approval process in order to receive the mentor protégé benefits of the SBA, including affiliation.
- The SBA has incorporated in its rule that the individual procuring agencies may take into account the subcontracting benefits of that agency that it may wish to provide for consistency with its previous program if the agency does not continue its own mentor protégé program.

Exclusion from Affiliation for Mentor/Protégé Joint Ventures: Non-8(a) Contracts

- If the size of a joint venture claiming an exception to affiliation is protested, the requirements of Section 124.513(c) and (d) must be met for exception to apply.
- Project Manager and percentage of work: control and performance.
- Active and substantial role in contract performance.

Mentor/Protégé Program: Section 124.520

- Requires that assistance provided through a mentor/protégé relationship be tied to the protégé firm's SBA business plan.
- At each annual review, the business plan may be adjusted.

Changes to the Mentor/Protégé Program: Section 124.520

- Section 124.520(b)(2), allows mentors to have up to three protégés at one time.
- Section 124.520(b)(3) allows demonstration of financial health by tax returns, audited financial statements, and filings required by the SEC, if a public entity.

Joint Ventures

- Joint venture may be a formal or informal partnership or exist as a separate limited liability company or other separate legal entity
- Regardless of form, the joint venture must be reduced to a written agreement
- If a JV exists as a separate legal entity it CANNOT be populated and expect affiliation exceptions

Joint Ventures

- Prior to Award: each partner to the JV must certify that it will perform the contract in compliance with JV regulations and the JV agreement
- During Performance: report annually to the contracting officer and the SBA how they are reading the applicable performance of work requirements for each small business set-aside contract to perform as a joint venture
- After Contract Completion: report certifying compliance and explaining how the performance of work requirements were met for the contract

Rule: Tracking Joint Venture Awards

- The SBA believes that some sort of JV identification is required.
- The regulation requires:
 - JVs are separately identified in SAM;
 - With a separate DUNS number and CAGE number;
 - The Entity Type in SAM must be identified as Joint Venture; and
 - The Joint Venture partners should also be listed.

Joint Ventures

- **Past performance.** When evaluating the past performance of an entity submitting an offer for an 8(a) contract is a joint venture approved by the SBA, a procuring activity must consider work done individually by each partner to the joint venture as well as any work done by the joint venture itself previously. Extended to SDVO, HUBZone, and WOSB.
- **Contract execution.** Where the SBA has approved a joint venture, the procuring activity will execute an 8(a) contract in the name of the joint venture entity or the 8(a) Participant, but in either case will identify the award is one to an 8(a) joint venture or an 8(a) mentor protégé joint venture, whichever is applicable

Joint Ventures: Exclusion for Affiliation for Small Business 13 CFR 121.103

- Current exclusion from affiliation based on mentor protégé relationship as long as the agreement is current and followed. That stands.
- New exclusion: Broadens the exclusion and allows two or more small businesses to joint venture for any procurement without being affiliated with regard to the performance of ***that procurement*** requirement.
- They both must be small under the NAICS for that procurement.

Questions/Applications

