

Coming Soon to a Federal Agency Near You... An Expanded Small Business Mentor-Protégé Program

Government Contracts Alert

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New Small Business Administration Rules Will Increase Eligibility for Large and Small Businesses to Bid Jointly on Set-Aside Contracts, but Not Without Greater Competition

The U.S. Small Business Administration's ("SBA") Section 8(a) business development mentor protégé program has long been heralded as a useful conduit through which small disadvantaged business concerns can gain experience and obtain competitive advantages by harnessing the expertise of a mentor company. Now, with the forthcoming August 24, 2016 launch of SBA's expanded mentor-protégé program, all types of small businesses will be able to bid jointly on set-aside contracts while leveraging the resources of a more experienced federal contractor.

Under the SBA's new "Small Business Mentor-Protégé Program," which was announced in a [Final Rule](#) issued on July 25, 2016, any small business eligible for certain set-aside contracts can team with another company to take advantage of the capabilities of a mentor business without forfeiting its small business size status and the concomitant eligibility for the set-aside contract.

Requirements of the New Mentor-Protégé Program

In order to qualify for eligibility under the new mentor-protégé program, the small business protégé firm must submit an application to the SBA seeking approval of its proposed mentor, along with a written joint venture agreement. A mentor firm may be large or small, as long as it demonstrates both the commitment and ability to assist the protégé, whether through the provision of technical, management, financial, or other assistance. Mentors, however, are limited in the number of protégé firms they can assist at any given time, and may only support up to three (3) protégé firms in either the 8(a) or the new program, combined.

The mentor-protégé joint venture is not required to form a separate legal entity, but the joint venture must be registered and identified in the System for Award Management separately from its member firms. All joint venture agreements must also be in writing, setting forth the purpose of the joint venture along with a detailed description of when and how the mentor will provide assistance to meet the protégé's needs. The written agreement must also designate the small business as the managing firm and must list an employee of the small business as the project

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manager responsible for performance of any awarded contracts.

Once the mentor and joint venture agreement are approved by the SBA, the mentor-protégé joint venture is eligible to bid on set-aside contracts for which the small business qualifies under the applicable size standard for its primary North American Industry Classification System (“NAICS”) code. The protégé may also qualify under the new program by identifying in its application to the SBA that it is seeking assistance with respect to a secondary NAICS code for which it has at least some prior experience. Notably, in evaluating past performance in connection with any bids or proposals submitted by the mentor-protégé joint venture, the awarding agency must consider the prior work done individually by each entity, as well as any past performance of the joint venture itself.

Expected Advantages of the New Program, and Traps for the Unwary

The SBA estimates that approximately \$2 billion in potential contracting opportunities will fall under the scope of the new mentor-protégé program each year. Under the new program, small businesses will be able to work with more experienced firms to improve their competitive position on programs that they previously did not have the in-house expertise to bid independently. This also means that larger or more established businesses looking to serve as mentors, or to expand and formalize relationships that already exist with smaller firms, will potentially have access to many more contracting opportunities that had previously been reserved exclusively for small businesses.

Small businesses should assess how they may be able to partner with other entities and take advantage of the expanded mentor-protégé program to gain the contracting expertise that can be applied toward more complex, larger-scale, and higher-value business opportunities. This is especially true if small businesses find themselves unable to compete against their mentor-protégé joint venture competitors as more companies become active in the new program. Large businesses should likewise explore how forming a joint venture with a protégé firm may provide an inroad to competing for procurements set aside for small businesses, particularly as it is expected that agencies may react to the new program by opting to set aside more contracts. In any event, the new program is sure to provide new opportunities – and challenges – for all competitors in the federal marketplace looking to expand their government contracting business.