

## New game changing SBA Small Business Mentor Protégé Programs and changes to small business Joint Venture rules



Michelle F. Kantor | Tuesday, August 16, 2016

On July 25, 2016, the SBA published its new Small Business Mentor Protégé Program Rules (MP Program). While the SBA has had a well-established mentor protégé program for SBA 8(a) certified firms, it lacked a mentor protégé program for other small businesses. Now, Service Disabled Veteran Owned Small Businesses (SDVOSB), Women Owned Small Businesses (WOSB), HUBZone and Small Businesses (SB) are eligible to participate in the new MP Program. The new MP Program is designed to allow mentors to provide assistance to protégé firms in order to improve the protégé's ability to successfully compete for and perform federal project work. The SBA reports that the new MP program is substantially similar to the 8(a) mentor protégé program. The New MP program rules will become effective on Aug. 24, 2016.

### **Assistance the Mentor Can Provide Under the MP Program**

The mentor can provide a variety of assistance to the protégé. The assistance includes, but is not limited to, technical assistance, management assistance, business development assistance, financial assistance in the form of equity investments and/or loans and bonding support, subcontracting and assistance in performing federal prime contracts through joint venture arrangements. However, the assistance must make sense, which means that the protégé must need this type of training and support and the mentor must have the capacity and capability to provide such assistance.

### **Protégé Eligibility**

Any SDVOSB, WOSB, HUBzone or small business may participate in the MP Program with a qualified mentor. The protégé need not be in business for any length of time. However, the protégé must be small under the size standard corresponding to its primary NAICS code or identify and prove that it is seeking business development assistance with respect to a secondary NAICS code under which it is small under such size standard and has prior experience. Generally, a protégé may only have one mentor at a time. However, the SBA will approve a second mentor relationship under certain conditions. In any event, a protégé can have no more than two mentors at the same time.

### **Mentor Eligibility**

Any large or small business entity organized for profit may be eligible to be a mentor. The mentor must be able to demonstrate that it can fulfill its obligations as a mentor. The mentor can have up to a total of three protégé firms at one time. The mentor can also be a protégé at the same time if the SBA determines that the second relationship makes sense and does not create a conflict.

### **Mentor Protégé Term and Approval Process**

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Generally, the mentor protégé relationship cannot extend more than three years, but the SBA may approve an extension for a second three-year term under certain circumstances.

The mentor protégé agreement must be in writing and approved by the SBA. The SBA intends to have a single office review and process all applications. The SBA is currently making final arrangements to implement the protocol to process and review applications. The SBA will likely develop standardized forms to be used for the approval process. It is estimated that the program will open for application in October 2016. The SBA anticipates a large volume of applications, so I suggest that you plan the mentor protégé relationship now in order to be ready to apply.

## Mentor Protégé Joint Ventures – the Game Changer

Many small businesses have outstanding expertise in their industry, but simply don't have the capacity to perform the work as a prime contractor. For instance, many small businesses lack personnel, bonding capacity, startup costs, equipment, financing, or the ability to work in other geographical areas. While some small business contractors have that capacity, they don't have past performance or expertise in a particular area of work. Likewise, many large businesses were simply not willing to work for a small business as a subcontractor. However, under the new MP Program, a large business can now joint venture with its protégé to participate in small business set-aside contracts applicable to the protégé's small business status. For example, if the protégé happens to be SDVOSB and WOSB, both the mentor and protégé can joint venture for SDVOSB, WOSB and small business set-aside contracts as long as the protégé qualifies as small for the specific procurement.

The joint venture arrangement must be in writing and approved by the SBA. Like the SBA 8(a) joint ventures rules, failure to obtain approval of the mentor protégé joint venture will amount to an affiliation between the mentor and protégé. The joint venture must be unpopulated and can be informal or formal (i.e., incorporated as an LLC or a corporation). Further, the joint venture is subject to the Rule of 2 in order to be exempt from affiliation.

It is still unclear whether the SBA will require the mentor protégé joint venture to follow a "template." The current joint venture SBA template has proven to be problematic when joint venture partners end up in disputes because the template does not address distinctive risks and liability exposure should something go wrong during the project. Other important issues to address are timing on distribution of profits and in what proportion, how third party liabilities will be handled, and how and where disputes will be handled, among other things. It is recommended that you seek an experienced attorney to help you address these critical matters in your joint venture agreement.

## Things to Look For In A Prospective Mentor and A Prospective Protégé

First, both firms must be committed to the relationship and must not be used as a vehicle to simply take advantage of the federal government small business set-aside programs. For instance, the mentor should be serious about the areas of development under which it intends to assist the protégé and the protégé must be committed to receive that assistance. Both mentors and protégés should be asking each other similar questions. There must be an open and honest dialogue regarding both of the firm's financial capacity, expertise, pricing models, insurance and bonding capacity, key personnel, administrative support, and knowledge of the government customer. In addition, understanding of each other's firm corporate cultures can be crucial to the equation. Mentors and protégés should be clear in their expectations of each other and the time line under which the mentoring will occur.

Choosing the right mentor and protégé firms will be the key to success in the MP Program. It is also important to know whether the mentor and the protégé have any current MP relationships or had any past ones that were problematic. In addition, HUBZone and SBA 8(a) firms are certified by the SBA, however, SDVOSB, WOSB, EDWOSB and small business firm are allowed to self-certify such status. Careful scrutiny should be given to make sure any self-certified firms are, in fact, legitimate. Experienced legal counsel can provide guidance on this topic.

The new MP Program can help small businesses take the next step to grow their business. It will likewise help the federal government ensure that projects are successful knowing that a mentor is working alongside its protégé to help guaranty project success.

For more information or for a consultation please contact [Michelle F. Kantor](#), Chair of the [Federal Government Contracting Group](#).



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