The SBA’s New “All Small” Small Business Mentor-Protégé Program

Navy Gold Coast

August 22-23, 2017
Presentation Overview
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- Overview of Federal Mentor-Protégé Programs
- Affiliation and Joint Venturing
- SBA’s New “All Small” Small Business Mentor-Protégé Program
Mentor-Protégé Overview
Mentor-Protégé Overview

• Mentor-Protégé Program:
  • An agency-approved arrangement under which a small or socioeconomically disadvantaged business receives financial, technical, educational and/or other types of assistance from an established government contractor
    • Participants must execute a written mentor-protégé agreement
    • Sponsoring agency must approve arrangement
    • Approved mentors and protégés are entitled to special benefits and/or regulatory exceptions
Mentor-Protégé Overview

- A mentor-protégé arrangement is an assistance agreement
- Contrary to popular misconception, “mentor-protégé” is **not** a form of teaming relationship
  - Only legal relationship to teaming involves question of whether mentor and protégé are affiliated
  - A mentor and protégé may (if they wish) never team on anything
Mentor-Protégé Overview

- DHS
- State
- Treasury
- NASA
- GSA
- HHS
- DoD
- FAA
- USAID
- Energy
- VA
- EPA
- SBA 8(a)
- DOT
Mentor-Protégé Overview

• **Protégé Eligibility**
  - 8(a) (SBA 8(a))
  - All small businesses (SBA All Small)
  - SDVOSB/VOSB (VA)
  - All disadvantaged SBs (most others)

• **Mentor Eligibility**
  - Large business only (DoD)
  - Large or small business (most others)
Mentor-Protégé Benefits

• Potential protégé benefits:
  • Direct or indirect financial assistance
  • Proposal assistance
  • FAR/regulatory training
  • Marketing assistance
  • Subcontracts
  • Formal or informal training
  • Bonding assistance
  • Joint venturing (SBA 8(a) & All Small Only)
Mentor–Protégé Overview

Potential mentor benefits:

• Subcontracting plan credit (DoD)
• Exceptions from affiliation (SBA & DoD only)
• Source selection credit
• Public relations
• Develop industry allies
• Joint venturing (SBA 8(a) & All Small)
Mentor-Protégé Overview

• Mentor and protégé must agree on most protégé benefits in advance
  – Benefits spelled out in written mentor-protégé agreement
  – Agencies may request timelines & updates to better ensure that protégés receive promised benefits
  – SBA requires annual updates (8(a) & All Small)
Affiliation and Joint Venturing
Affiliation & Joint Venturing

• Old SBA regulation:
  – Participants in “Federal Mentor-Protégé Programs” exempt from affiliation based on assistance provided by mentor to protégé
• 2011 SBA regulation (effective currently):
  – SBA only recognizes exception for mentor-protégé programs authorized by Congress or sanctioned by SBA
    • DoD mentor-protégé program the only non-SBA program authorized by Congress
    • SBA has not approved any other agency’s mentor-protégé program
Affiliation & Joint Venturing

• **Size Appeal of J.R. Conkley & Assocs., Inc., SBA No. SIZ-5326 (2012):**
  – Size protest arising under SDVOSB set-aside, alleging that SDVOSB was affiliated with a large business
  – SDVOSB and large business were parties to a VA-approved mentor-protégé agreement
  – VA’s regulations state no affiliation can be found based on mentor-protégé agreement
  – SBA OHA rejects VA regulatory exception; no exception from affiliation recognized because SBA has not approved VA’s mentor-protégé program
Affiliation & Joint Venturing

• Bottom line:
  – From 2011 to 2016, only SBA 8(a) mentor-protégé program and DoD mentor-protégé program provide exception from affiliation
  – SBA has adopted broad exception from affiliation as part of “All Small” mentor-protégé program
  – Other agency mentor-protégé programs still do not provide affiliation “shield”
Affiliation & Joint Venturing

• Under the 8(a) mentor-protégé program, a mentor and protégé can joint venture, as a small business, for “any” federal contract or subcontract for which the protégé qualifies as small.

• Under prior law, this benefit was limited only to the 8(a) mentor-protégé program (not DoD).

• SBA has adopted a similar benefit as part of its “All Small” mentor-protégé program.
SBA’s “All Small” M-P Program
“All Small” Mentor-Protégé

• **2010 Small Business Jobs Act:**
  – Congress authorizes (but does not require) SBA to create mentor-protégé programs for SDVOSBs, HUBZones, and WOSBs

• **2013 NDAA:**
  – Congress authorizes (but does not require) SBA to create mentor-protégé programs for all small businesses
  – Congress directs SBA to standardize other agencies’ mentor-protégé programs (except DoD)
“All Small” Mentor-Protégé

- SBA Final Rule takes effect Aug. 24, 2016
- Codified at 13 C.F.R. 125.9
- Creates single, “universal” mentor-protégé program (SBA uses name “All Small” in practice, but it’s not in regulation)
  - Any firm may qualify as protégé if it is small in its primary NAICS code or in a secondary NAICS code in which it intends to develop
    - SBA won’t approve protégé in secondary NAICS code in which the protégé has no experience
  - Any for-profit business (large or small) may qualify as a mentor
    - Mentor can own up to 40% equity interest in protégé
    - Non-profits don’t qualify, but for-profit affiliates of non-profits may
“All Small” Mentor-Protégé

• 13 C.F.R. 125.9:
  – Mentors will usually have no more than one protégé, but may have up to three with SBA permission
    • SBA will look for potential conflict of interest
  – Protégés will generally have no more than one mentor, but may have up to two with SBA permission
    • Important: protégé limited to two SBA mentors over protégé’s life
  – Company can serve as both mentor and protégé at same time, but in different NAICS codes
“All Small” Mentor-Protégé

• 13 C.F.R. 125.9:
  – Mentor and protégé must enter into written agreement approved by SBA
    • Changes must be approved by SBA
    • Reauthorization assumed if SBA takes no action
  – Single mentor-protégé agreement limited to three years
    • SBA can approve second three-year term, but no approvals beyond six years total
  – Expiring 8(a) mentor-protégé agreements can be transferred to “All Small” program
“All Small” Mentor-Protégé

• 13 C.F.R. 125.9:
  – Mentor and protégé will not be deemed affiliated based on assistance provided by mentor to protégé
    • May still be deemed affiliated for other reasons
  – Mentor and protégé may joint venture as a small business for any prime contract or subcontract for which the protégé qualifies as small
“All Small” Mentor-Protégé

- 13 C.F.R. 125.9:
  - Mentor-protégé JVs must adopt JV agreements containing certain mandatory provisions in order to benefit from affiliation exception
    - Miss even one required provision and the JV is “other than small” if mentor is a large business
  - Requirements are set forth in 13 C.F.R. and may vary slightly depending on solicitation’s socioeconomic status
  - Protégé must perform at least 40% of JV’s work
  - Procuring agency must take into account past performance and experience of individual JV members
    - Stronger than FAR rule for prime/subcontractor teams
“All Small” Mentor-Protégé

• SBA Final Rule:
  – Agencies (other than DoD) cannot continue existing M/P programs unless approved by SBA
  – Other agencies will have one year from final rule to obtain SBA approval of existing M/P programs
  – SBA questions whether other agencies’ M/P programs are necessary given “All Small” M/P program
“All Small” Mentor-Protégé

• SBA issued Final Rule on July 25, 2016
• Rule took effect on August 24, 2016
• SBA began accepting applications on October 1, 2016
• Electronic application portal available (and required) effective November 1, 2016
“All Small” Mentor-Protégé

- To Apply:
  - [https://www.sba.gov/navigation-structure/all-small-mentor-protege-program](https://www.sba.gov/navigation-structure/all-small-mentor-protege-program)

- Use SBA mentor-protégé template as starting point (available for download on SBA website)
  - But remember: “heart” of application is specific to participants; template is just a starting point
“All Small” Mentor-Protégé

• Application Pointers:
  – Protégé must apply in primary NAICS or show evidence of work performed in secondary NAICS
  – Details, details, details: vague needs, assistance, timelines and metrics may be rejected
  – Assistance should be targeted to protégé’s individual needs, not generic
  – Timeline should be realistic and measurable
  – Metrics should be measurable: can SBA determine whether assistance was successfully provided?
    • My two cents: choose a metric you control
“All Small” Mentor-Protégé

• Application Pointers:
  – Protégé should think of this as opportunity for real mentoring—not just a means to an end (joint ventures)
  • Chance to have real needs met by a company that knows what it is doing
“All Small” Mentor-Protégé

• Application Process:
  – All Small office has been processing applications very quickly
    • At one point earlier this year, average time was eight days
    • Much faster than typical 8(a) mentor-protégé application
  – List of active mentor-protégé agreements publicly posted each month on ASMPP website
  – ASMPP website now has first annual review forms
    • Good idea to read these forms before applying to get a sense of what SBA will want to see to reauthorize
Questions?

Thank you!

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For More Information

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