

8(a) Mentor Protégé Program and Joint Ventures

Santa Ana District Office



U.S. Small Business Administration

-- 8(a) Mentor Protégé Program--

Presentation Overview

- Current 8(a) Mentor-Protégé Program Overview
 - What is it? What are the benefits? What's required?
- New Mentor-Protégé Program for All Small Businesses
 - Significant differences from current and newly modified 8(a) mentor-protégé program
 - Chart illustrating program differences
- Joint Ventures and Teaming

Current 8(a) Mentor-Protégé Program Overview

What is the 8(a) Mentor-Protégé Program?

The 8(a) Business Development (BD) Mentor-Protégé Program is designed to encourage approved mentors to provide various forms of business development assistance to protégé firms. *13 CFR 124.520*

This assistance may include:

- technical and/or management assistance;
- financial assistance in the form of equity investments and/or loans;
- subcontracts; and/or
- assistance in performing prime contracts with the Government through joint venture arrangements.

Mentors are encouraged to provide assistance relating to the performance of non-8(a) contracts so that protégé firms may more fully develop their capabilities.



-- 8(a) Mentor Protégé Program--

Federal Mentor-Protégé Programs

- **SBA 8(a) Mentor-Protégé Program**
- Department of Defense (DoD) Mentor-Protégé Program
- Department of Veterans Affairs (VA) Mentor-Protégé Program
- Department of Homeland Security (DHS) Mentor-Protégé Program
- Department of Energy (DOE) Mentor-Protégé Program
- NASA Mentor-Protégé Program
- US Agency for International Development (USAID) Mentor-Protégé Program
- Department of the Treasury Mentor-Protégé Program
- Department of State Mentor-Protégé Program
- General Services Administration (GSA) Mentor-Protégé Program
- Health and Human Services (HHS) Mentor-Protégé Program
- Environmental Protection Agency (EPA) Mentor-Protégé Program
- Federal Aviation Administration (FAA) Mentor-Protégé Program



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8(a) Mentor-Protégé Program Benefits

- A Mentor and its 8(a) Protégé may pursue contracts as a joint venture.
- SBA will not find affiliation or undue control based on the Mentor-Protégé arrangement; however, M-P Agreement is not carte blanche protection from affiliation either.
 - **13 CFR 121.103(b)(6)**. See, e.g., Patriot Construction, Inc., SBA No. SIZ-5439 (2013).
- 8(a) Protégé may receive financial assistance via the Mentor owning up to 40% of 8(a) concern.
- Large business may pursue set-aside opportunities for which it is otherwise ineligible
- Large business can perform up to 60% of the work as opposed to 49% as a sub to the small business Prime
- Large business can gain entre to new agency or program where small business has history



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8(a) Mentor-Protégé Qualifications for Protégés

- An 8(a) protégé firm must:
 - The firm must be a participant in the 8(a) BD Program; and
 - Be in good standing with SBA Program requirements, and
 - Be current with all SBA reporting requirements.
 - Be in development stage; or
 - Have never received an 8(a) contract; or
 - Have ½ size of its primary NAICS code
- Protégé may generally have only 1 mentor at a time, but exceptions can be made where the second relationship will not conflict with the first and it pertains to a secondary NAICS code or the protégé seeks to acquire specific expertise that the first mentor does not have.

8(a) Mentor-Protégé Qualifications for Mentors

- Mentor firms must:
 - have favorable financial health;
 - have good character;
 - That it is a federal contractor in good standing (ex. not be suspended or debarred); and
 - be able to impart value to the protégé through practical experience with the 8(a) Program or general knowledge of business operations and government contracting.
- Mentor can have more than one Protégé (if second does not compete with first), but under no circumstances will a mentor be permitted to have more than three protégés at one time.
- For the 8(a) BD Mentor-Protégé program, the mentor can be any of the following:
 - Graduated 8(a) firm
 - Current 8(a) firm in the transitional stage
 - A small business
 - A large business
 - A non-profit entity*

The Future of SBA's Mentor-Protégé Programs

SBA Proposes Significant New Regulations

Proposed Mentor Protégé Program:

- Mentor-protégé program for all small businesses
 - One new program available to all small businesses (i.e. SDVOSB, WOSB, EDWOSB, HUBZone, SBC)
 - Patterned on existing 8(a) Mentor-Protégé Program
 - Eliminates “populated” JV option
 - Impact of proposed change to Limitations on Subcontracting Rule
 - A prime contractor may satisfy the applicable limitations on subcontracting either by performing a sufficient percentage of the work itself, or by subcontracting a portion of the work to 1 or more “similarly situated entities”
 - Similarly Situated Entity: A small business concern subcontractor that is a participant of the same SBA program that qualified the prime contractor as an eligible offeror and awardee of the contract

Timeline

- Proposed rule would implement 2010 Small Business Jobs Act and 2013 National Defense Authorization Act (“NDAA”)
- Proposed rule issued February 5, 2015
- Comments were due by May 6, 2015
- Target date for final rule?



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Proposed Mentor Protégé Program

Protégé Eligibility

- Must be small under its primary NAICS code
- Must undergo a formal SBA size determination (either in the past or as part of the mentor-protégé application)
- Must identify mentors for other agency mentor-protégé programs
- Generally, may not have more than one mentor at a time
 - SBA may permit a second mentor if the second mentor brings different expertise from the first mentor and can assist the protégé in an unrelated, secondary NAICS code

Mentor Eligibility

- Must possess good financial condition, commitment to mentoring, and good character
- Only for-profit firms
- Generally, no more than one protégé at a time
 - However, SBA may approve up to three protégés for the same mentor if there is no adverse impact on any protégé
- A protégé cannot also be a mentor

Proposed Mentor Protégé Program

Participation Period

- Proposed participation period: up to three years in one agreement, maximum of six years overall
- Protégé may have two three-year agreements with two different mentors, or two three-year agreements with the same mentor
- Only for-profit firms
- SBA will review agreements annually

How to Apply

- SBA is proposing one office to receive applications from all small businesses except 8(a) firms; separate SBA office would continue processing 8(a) MP applications
- SBA may utilize “open” and “closed” application periods
- No details provided on thresholds for or timing of open and closed periods

May signal end of other mentor-protégé programs (except DoD)



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Joint Ventures and Teaming

Teaming Arrangements under the FAR

Subpart 9.6 of the FAR, Contractor Team Arrangements, distinguishes between:

- **Teaming agreements**: A teaming agreement is a contract between a potential prime contractor and another company to act as a subcontractor under a specified federal government contract or acquisition program.
- **Other teaming arrangements**: Two or more companies form a new legal entity to act as a potential prime contractor, by creating:
 - a joint venture.

No more than 3 contracts over a 2-year period starting from date of award of first offer (3 in 2 rule). The same two (or more) entities may create additional joint ventures, and each is subject to 3-in-2 rule:

- ABC-XYZ JV
- ABC-XYZ 1
- ABC-XYZ 2

However, such a longstanding inter-relationship or contractual dependence between the same joint venture partners will lead to a finding of general affiliation between them.

Legal Differences

Prime/Sub Team

- Prime has sole interest and complete responsibility
- Team controlled by
 - Subcontracts written by Prime
 - Teaming agreement
- Prime has privity of contract
- Profits and losses earned per subcontracts
- Limitations on Subcontracting
 - 50% for services
 - 50% for supplies
 - 15% for general construction
 - 25% for specialty trade construction

Joint Venture

- Separate Legal Entity with “Members” with proportionate “interests”
- “Special Purpose” entity
- Members usually jointly AND severally liable
- Profit and losses shared proportionately
- A Joint Venture may be populated or unpopulated:
 - A “populated” JV is where the JV hires employees, leases space, owns equipment, etc.
 - An “unpopulated” JV is where the JV exists only on paper and Members provide employees, facilities, equipment etc. as a subcontractor to JV

Teaming: Affiliation

Members of a joint venture that submit an offer in response to a solicitation are presumed to be affiliated with each other for that procurement

- The SBA will aggregate the number of employees or revenues (per the NAICS code) of ALL affiliated Members to determine EACH Member's size
- If the aggregate of the affiliated Members exceeds the size standard of the NAICS code for a set-aside procurement, the JV will not be eligible for the set-aside award – there are exceptions:
 - When ALL Members are “small” under the size standard for the NAICS code of solicitation and
 - Procurement is a bundled requirement

or

Procurement value is...

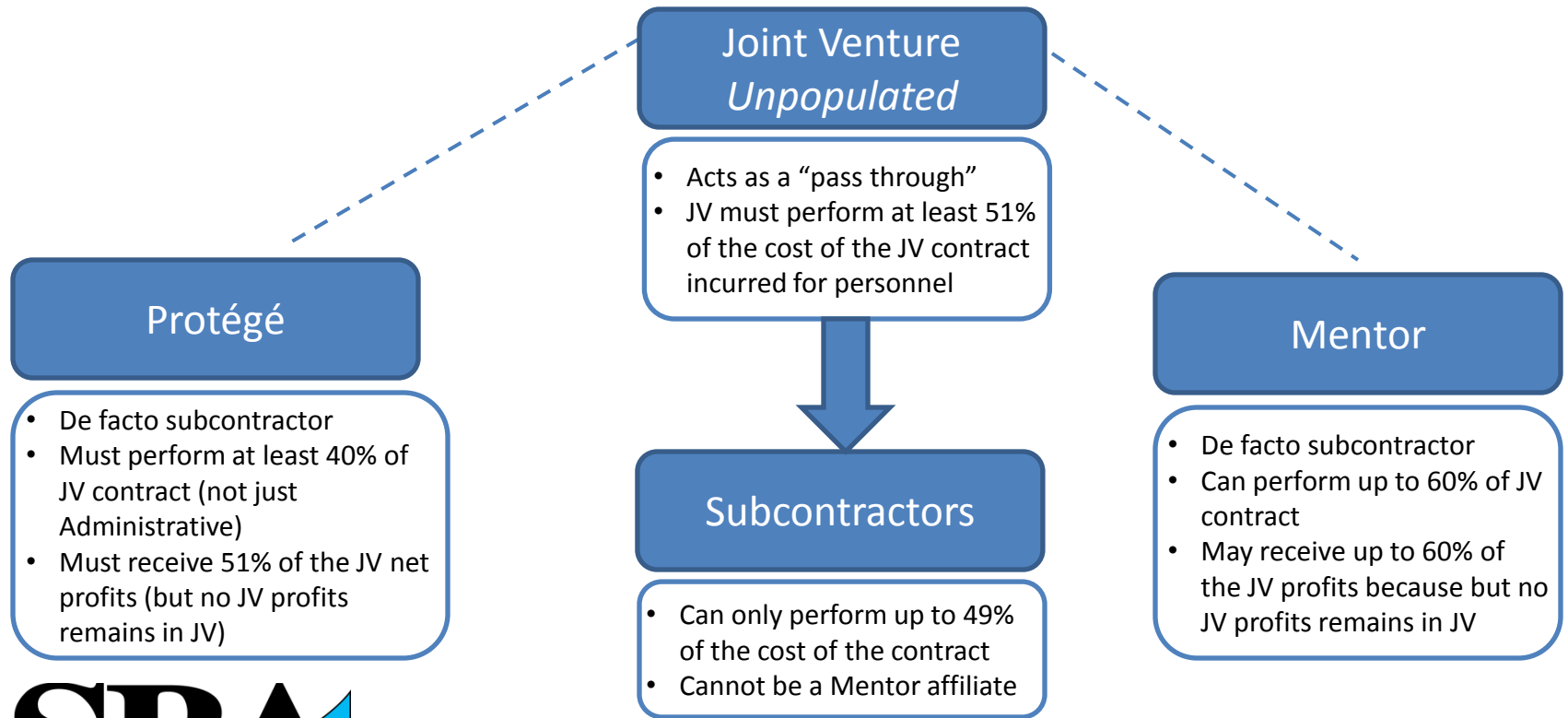
- More than \$10 million for employee-based size standards
- More than one-half the applicable size standard for revenue-based size standards



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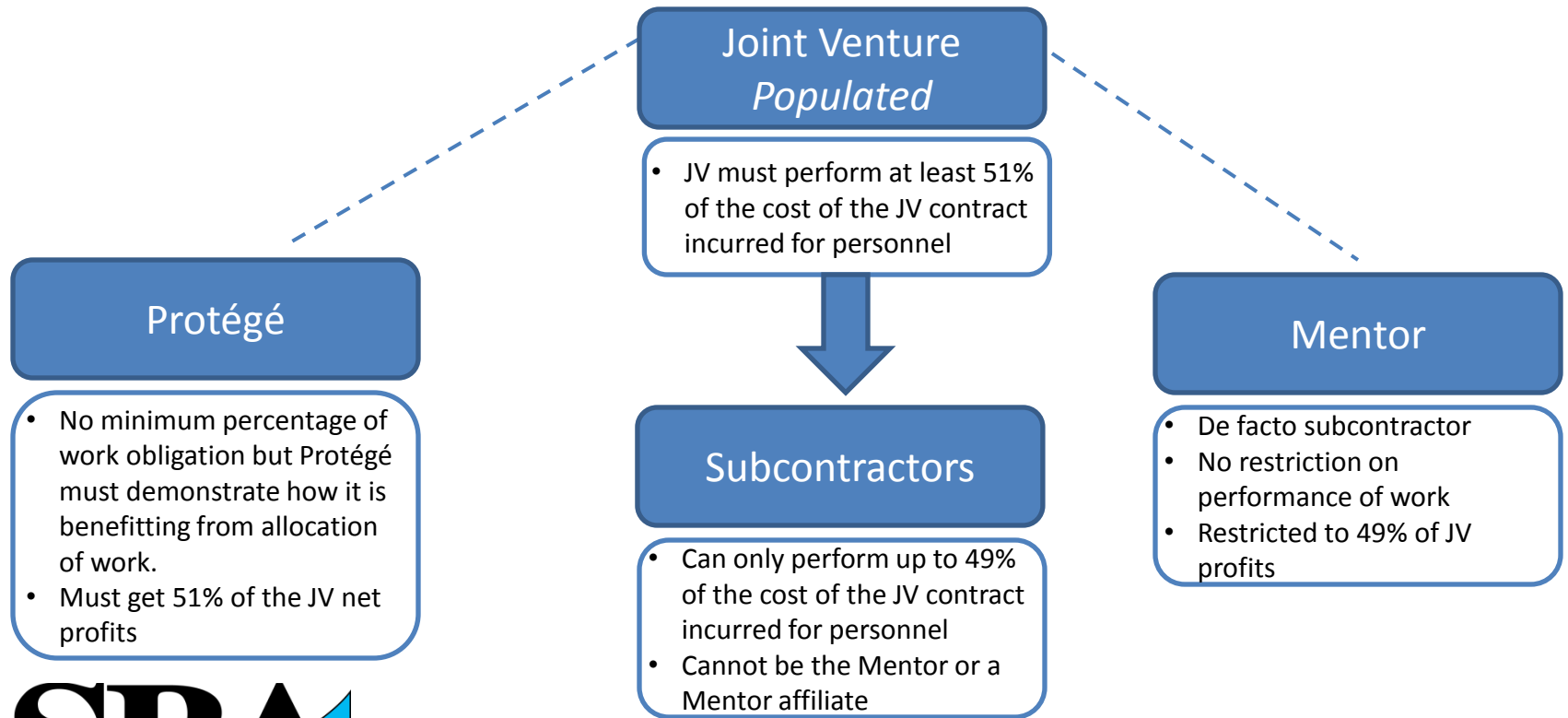
Unpopulated Joint Venture

Unpopulated SBA M/P Joint Venture



Populated Joint Venture

Populated SBA M/P Joint Venture



Contact Us....

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THANK YOU

Questions?



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