

Summary of Mentor-Protégé Rule

Jobs Act of 2010

- Authorized SBA to establish separate mentor-protégé programs for the Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) Program, the HUBZone Program, and the Women-Owned Small Business (WOSB) Program;
- Each M/P program must be modeled on SBA's existing mentor-protégé program available to 8(a) Business Development (BD) program participants.

National Defense Authorization Act for Fiscal Year 2013 (NDAA), Pub. L. 112-239

New Program for Small Business

- Section 1641 of the NDAA authorized SBA to establish a mentor-protégé program for all small business concerns.
- This section further provides that a small business mentor-protégé program must be identical to the 8(a) BD mentor-protégé program, except that SBA may modify the program to the extent necessary, given the types of small business concerns to be included as protégés.

Proposed Rule

- Feb. 5, 2015 (80 FR 6618); comments due by April 6, 2015
- Comment period extended to May 6, 2015 (by notice in FR 4/7/15, 80 FR 18556)
- Series of tribal consultations pursuant to Executive Order 13175
 - Washington, DC (Feb. 26, 2015); Tulsa, OK (April 21, 2015); and in Anchorage, AK (April 23, 2015); and two telephonic tribal consultations (one on April 7, 2015, and a Hawaii/Native Hawaiian Organization specific one on April 8, 2015).

Final Rule - 81 Fed. Reg. 48558 (July 25, 2016) – Effective August 24, 2016

Mentor-Protégé Program

- One program for all small business; 8(a) M/P program will remain separate.
- 8(a) firm can choose to apply to 8(a) or small business M/P program
- Protégé firm that graduates or otherwise leaves the 8(a) BD program but continues to qualify as a small business may transfer its 8(a) mentor-protégé relationship to a small business mentor-protégé relationship.
 - Commenters questioned whether such transfer was automatic or whether there was some sort of application process.
 - Final rule adds clarifying language that a firm seeking to transfer its mentor-protégé relationship could do so by notification, without applying to and receiving approval from SBA to do so.

Applications for Small Business M/P Program

- Proposed rule: D/GC
- Final rule: AA/BD (separate office to be established within OBD to handle small business M/P applications).
- Commenters opposed open/closed enrollment periods.
- Efficiencies gained by having a dedicated staff for the small business M/P program will allow SBA to timely process applications for M/P status, and that the need for open and closed enrollment periods will be reduced.

Mentors

- Any for-profit business (large or small)
 - NDAA defined “mentor” to be “a for-profit business concern of any size.”
 - Changed 8(a) M/P program to not allow non-profit mentors. Consistency.
- Generally, 1 protégé at a time; but can have up to 3 at one time if it can demonstrate that the additional M/P relationship will not adversely affect the development of either protégé firm (e.g., the second firm may not be a competitor of the first firm).
- Total of 3 protégés combined – small business and 8(a).
- Proposed Rule: Good financial condition
 - Commenters said confusing standard.
 - Final Rule: mentor must be able to fulfill its obligations under the MPA. If a proposed mentor can fulfill those obligations and has the financial wherewithal to provide all of the business development assistance to the protégé firm as described in its MPA, SBA should not otherwise care about the proposed mentor’s financial condition.
- Proposed Rule: cannot be both a protégé and mentor at the same time.
 - Final Rule: provides that SBA may authorize a small business to be both a protégé and a mentor at the same time where the firm can demonstrate that the second relationship will not compete or otherwise conflict with the first mentor-protégé relationship.

Protégés

- Proposed Rule: Firm must be small for its primary NAICS code.
 - Comments recommending that a firm should be able to form a mentor-protégé relationship as long as they qualified as small for the particular type of work for which a mentor-protégé relationship is sought, even if the firm no longer qualified as small for its primary business activity.
 - SBA agrees.
- For 8(a) program, eliminates the 3 current alternatives: (1) half the size standard corresponding to its primary NAICS code; (2) in the developmental stage of program participation; or (3) have not received an 8(a) contract.
- Proposed Rule: Required SBA to verify size before approving MPA
 - Comments: Size has always been a self-certification process.
 - Final Rule: Eliminate that requirement – protest procedures sufficient to protect the integrity of the program.
- A firm may not become a mentor and continue to retain its protégé status at the same time.

Benefits

- JVs with exclusion from affiliation.
 - Individual identified as the project manager of JV need not be an employee of the protégé firm at the time the JV submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the protégé firm if the JV is the successful offeror.
 - Individual identified as the project manager cannot be employed by the mentor and become an employee of the protégé firm for purposes of performance under the JV.
- 40% ownership
 - Asked for comments re: whether mentor should be able to continue to own the 40% interest after M/P relationship ends.
 - Final Rule allows mentor to continue ownership interest.
 - Outside of M/P program, a large business may currently own a substantial ownership interest in a small business (up to 49% where one individual owns the remaining 51%) without a finding of affiliation.
 - Affiliation rules are sufficient to protect against a large business from unduly benefitting from small business contracting programs.

Written M/P Agreement

- SBA must approve any mentor-protégé agreement prior to the firms receiving any benefits through the mentor-protégé program.
- SBA will not approve the agreement if SBA determines that the assistance to be provided is not sufficient to promote any real developmental gains to the protégé, or if SBA determines that the agreement is merely a vehicle to enable the mentor to receive small business contracts.
- MPA submitted to SBA for approval must identify how the assistance to be provided by the proposed mentor is different from assistance provided to the protégé through another M/P relationship, either with the same or a different mentor.
- Will be reviewed annually by SBA.
- MPA will be able to survive change of ownership/control of mentor where mentor acknowledges the MPA and expresses its intent to continue to fulfill its obligations under the agreement.
- Transfer MPA from other agency: if certain specified assistance was identified in a MPA of another agency, but that assistance has not yet been provided, a firm can choose to terminate the M/P relationship with the other agency and use the not yet provided assistance as part of the assistance that will be provided through the 8(a) BD or small business M/P relationship.
- Duration of MPA
 - Proposed Rule: 3 years - permitted a protégé to have one 3-year MPA with one entity and one 3-year MPA with another entity, or two 3-year MPAs (successive or otherwise) with the same entity.
 - Final Rule: Continues to authorize two 3-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 will continue to receive additional assistance.