

## SBA Opens Mentor-Protégé Program to All Small Businesses

Written by Nick Sanders

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Did you see this [final rule](#), published in the Federal Register on July 25, 2016? It's kind of awesome. It expands the Mentor-Protégé Program to *all* small businesses.

Before now, the Program was limited to 8(a) Program participants. If you were an 8(a) participant, then you could be a Protégé to a large business Mentor. There were several advantages to both parties from program participation. With respect to DoD participants under the "pilot" Mentor-Protégé Program (which was initially established in 1991), Protégé firms can receive significant assistance from their Mentor firms in terms of management systems, help with proposal preparation, and other important areas. With respect to the Mentor firms, they can receive direct reimbursement from DoD for the costs of assisting the Protégé firms, or if not direct reimbursement, they can apply their costs towards small business plan credit for categories in which they are lagging their goals. And (perhaps most importantly) a Mentor firm can award a subcontract to a Protégé firm without competition.

We did our time in the Mentor-Protégé Program trenches in the 1990's. Indeed, our team was awarded one of the earliest Nunn-Perry Awards for achievement in that area. But that was a very long time ago, and the new SBA rules signal a new chapter in the Program.

The new rule opens the Program to all small businesses. If your firm qualifies as a small business under a NAICS code, then it can qualify as a Protégé firm – assuming you can find a Mentor firm willing to help you out. If you are a large business, then any small business supplier you have—or are considering using—can become a Protégé firm. The benefits from the arrangement are noted above.

And SBA expanded the benefits as well as opening the program to all small businesses. It loosened the affiliation standards, such that a Mentor and Protégé could create a Joint Venture and pursue work as a small business. The new rule provides –

A firm that has an SBA-approved mentor-protégé agreement authorized ... is not affiliated with its mentor firm solely because the protégé firm receives assistance from the mentor under the agreement. Similarly, a protégé firm is not affiliated with its mentor solely because the protégé firm receives assistance from the mentor under a federal mentor-protégé program where an exception to affiliation is specifically authorized by statute or by SBA under the procedures set

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forth in § 121.903. ...

Two firms approved by SBA to be a mentor and protégé under § 125.9 of this chapter may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement, and the joint venture meets the requirements of § 125.18(b)(2) and (3), § 126.616(c) and (d), or § 127.506(c) and (d) of this chapter, as appropriate.

For purposes of this provision and in order to facilitate tracking of the number of contract awards made to a joint venture, a joint venture: must be in writing and must do business under its own name; must be identified as a joint venture in the System for Award Management (SAM); may be in the form of a formal or informal partnership or exist as a separate limited liability company or other separate legal entity; and, if it exists as a formal separate legal entity, may not be populated with individuals intended to perform contracts awarded to the joint venture (*i.e.*, the joint venture may have its own separate employees to perform administrative functions, but may not have its own separate employees to perform contracts awarded to the joint venture). SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists, pursuant to paragraph (h)(5) of this section.

So the ability to joint venture is not without limits, and we strongly recommend that any Mentor and/or Protégé firms seeking to take advantage of this change read the SBA rules in Title 13 of the Code of Federal Regulations very carefully.

Another change is that the SBA will permit a Mentor to invest in and own as much as 40 percent of its Protégé firms without changing the Protégé firms' status as a small business. This would seem to be of a significant advantage to those large firms seeking access to small business set-asides.

In summary, it looks like the SBA has opened the floodgates and we expect quite a number of government contractors to be thinking hard about how to take advantage of the new environment.

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