

Partners

David S. Cohen
Andrew J. Mohr
Victor G. Klingelhofer
William F. Savarino
Russell J. Gaspar
Daniel H. DuVal
Charles R. "Rod" Marvin, Jr.
Norah D. Molnar

**COHEN
MOHR** LLP
1055 Thomas Jefferson Street, NW, Suite 504
Washington, DC 20007
Voice: (202) 342-2550
Fax: (202) 342-6147
www.cohenmohr.com

Of Counsel

Laurel A. Hockey
John J. O'Brien
C. Kelly Kroll

SBA Opens The Door To Its New Small Mentor Protégé Program

By: Laurel Hockey
lhockey@cohenmohr.com
(202) 342-2550

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Effective August 24, 2016, the Small Business Administration (SBA) moved forward with a new all Small Mentor Protégé Program, under which a small business may enter into a mentor protégé agreement with another business (large or small) and avoid being deemed affiliated based on assistance received under their agreement. SBA started accepting mentor protégé applications under the new Program on October 1. SBA anticipates having its electronic application up and running on November 1. Once active, the online application will be the only way to apply and applicants that applied in October will have to convert their application into the online system.

The new Small Mentor Protégé Program does not replace the 8(a) Business Development Mentor Protégé Program. The Programs will operate in tandem and similarly in most respects. In fact, final approval of applications for the 8(a) and the new Small Mentor Protégé Programs both will come from the Associate Administrator for Business Development.

You should consider several factors in assessing whether to apply under the new Small Mentor Protégé Program, and whether you are eligible based on existing mentor protégé relationships.

Limitations on the Mentor

Mentors generally may have only one protégé at one time but up to three if the mentor can demonstrate that any additional relationship will not adversely affect the development of an existing protégé. Under no circumstance can a mentor have more than three protégés at one

time, aggregating relationships entered into under the 8(a) and the new Small Mentor Protégé Programs.

Limitations on the Protégé

A protégé may have only one mentor at a time unless the protégé can demonstrate that a second relationship with another mentor does not compete or otherwise conflict with the first and 1) the second relationship relates to an unrelated NAICS code; or 2) the protégé is seeking to acquire a specific expertise that the first mentor does not possess.

Protégés are permitted only two mentor protégé relationships in total (and not just at one time), including relationships entered under the 8(a) and the new Small Mentor Protégé Programs. SBA will count all mentor protégé agreements in existence as of the effective date of the new rule (August 24, 2016). This may foreclose or limit some 8(a) contractors from participating in the new Program if they had existing 8(a) mentor protégé agreements in place on August 24. Relationships entered into under any Department of Defense mentor protégé program are not considered.

A protégé must qualify as small for its primary NAICS code (under which it earns the majority of its revenues) or may apply as a protégé under a secondary NAICS code under which it qualifies as small. SBA will not approve a mentor protégé relationship in a secondary NAICS code in which the protégé has no prior experience.

An 8(a) protégé may transfer its approved mentor/protégé relationship to the new Small Mentor Protégé Program prior to graduation from the 8(a) Program. The 8(a) must notify SBA of the transfer, with no new approval required. Mentor protégé relationships under both Programs are limited to three years, with the possibility of one extension for an additional three year period.

Mentor and Protégé

A firm may apply to be both a mentor and a protégé at the same time if the firm can demonstrate to SBA that the second relationship does not compete or otherwise conflict with the first.

Annual Reviews

SBA will review mentor protégé agreements annually to determine whether they should continue for another year. Unless rescinded in writing, a mentor protégé agreement automatically renews each year.

If SBA finds that the mentor has not provided the assistance in its mentor protégé agreement, SBA may terminate the agreement and the mentor will be precluded from mentoring for two years. SBA also is authorized to take the drastic step of pursuing government-wide suspension or debarment of the mentor. If the mentor protégé agreement is terminated by SBA, SBA also may recommend that the agency issue a stop-work order for each contract awarded to any joint venture between the mentor and protégé and/or the substitution of the protégé for the joint venture on contracts awarded to them as a joint venture.

Joint Venturing

An important benefit of the 8(a) Mentor Protégé Program has been that the mentor and protégé may joint venture together (even if the mentor is a large business) and the joint venture will be deemed a small business (assuming all of the SBA's joint venture rules are met). Joint venturing under the 8(a) Mentor Protégé Program continues, with some noteworthy changes highlighted below, and also will be permitted under the new Small Mentor Protégé Program:

- Joint ventures must be separately identified in the System for Award Management (SAM) from its partners with its own DUNS and CAGE numbers. The joint venture partners must be listed in SAM.
- SBA will no longer allow a joint venture, which is established as a separate legal entity, to be populated with its own employees for purposes of performing contracts awarded to the joint venture. (The joint venture still may employ administrative personnel).
- A HUBZone concern can joint venture with its mentor and the mentor is not required to be a HUBZone concern.
- The small business partner to a joint venture must comply with annual and final reporting requirements to SBA and the contracting officer relating to performance of small business contracts awarded to the joint venture and its compliance with the limitations on subcontracting rule.

- Interested parties may now challenge the size of an approved 8(a) mentor protégé joint venture overturning OHA precedent to the contrary.
- Agencies must consider the past performance and experience of the joint venture partners when evaluating the joint venture's proposal for a small business set-aside contract.
- The joint venture's project manager cannot be a former employee of the mentor, but can be involved in a different capacity.
- The protégé must do 40% of the work performed by the joint venture.

SBA has indicated that at some point, if the volume of mentor protégé applications becomes too great, it may establish an open season during which applications will be accepted and a date when the application period will close. Thus, interested companies should apply now, as the door may close at some point down the road. Getting into the queue as soon as possible also should result in the earlier processing of your application by SBA.

We are able to assist you by answering questions about the Programs and guiding you through the application process.