



# Set-Aside Alert™

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## What Every Small Business Should Know: Key Provisions in the National Defense Authorization Act of FY2013

By Isaias Alba

Partner, PiliroMazza PLLC

Earlier this month, President Obama signed into law The National Defense Authorization Act of Fiscal Year 2013. While there are numerous provisions in the Act that could affect small businesses, these are two provisions no small business should miss.

The first major change comes to the Small Business Administration's mentor-protégé program. While the Small Business Jobs Act of 2010 authorized SBA to issue regulations regarding mentor-protégé programs for Woman-Owned, HUBZone, or Service-Disabled Veteran-Owned companies, regulations which have not yet been promulgated, this Act already goes a step further by authorizing SBA to create a new mentor-protégé program for concerns categorized simply as small business.

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The details of the program will remain unclear until the SBA releases its proposed rules, but the Act did direct SBA to use the current 8(a) mentor-protégé program as a model. That said, the Act also noted that SBA should use its discretion to determine whether certain deviations from the 8(a) mentor-protégé program should be made.

This means that SBA could limit this new mentor-protégé program in any number of ways, including, for example, by eliminating the ability to joint venture without fear of affiliation. Until we know more, suffice it to say that this could be a major development for companies who lack any special status.

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or continuing with mentor-protégé programs unless a plan for such programs is submitted to, and approved by, SBA.

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This seems to support SBA's 2011 regulatory "clarification" that only statutorily-created mentor-protégé programs, or those regulatory programs approved by SBA, can create an exemption from affiliation.

However, the Act takes the issue a step further by completely eliminating programs that are not approved.

This change will not go into effect until 100 days after SBA passes regulations on the subject (assuming the Act is requiring more than the 2011 regulatory changes already in effect), but mentors and protégés participating in those programs should realize that they could be eliminated.

Secondly, there has been a major change to the limitation on subcontracting rules.

Prior to the passage of the Act, concerns performing small business contracts were prohibited from subcontracting more than 50% of the cost of the labor under a service contract, or 50% of the cost of the manufacturing on a supply contract. This calculation, especially for service contracts, excluded certain contract costs such as materials.

Now, however, the Act changed the basis upon which the relevant 50% is calculated, making the total price of the contract, not merely the cost of the labor or manufacturing, the relevant metric. While this may not seem significant,

there can be a number of costs that are included in the total price of the contract, but are not considered labor.

Thus, especially for supply contracts, small businesses may have to rethink how they calculate the percentage of work being performed by subcontractors. On a more positive note, the Act allows subcontracts with similarly situated entities (i.e., other small businesses) to be excluded from the limitation on subcontracting requirements.

This allows a small business' prime contractor to subcontract greater than 50% of the price of the contract to other small businesses while continuing to comply with the limitation on subcontracting rules.

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These are just a few of the changes in the Act, but they are some of the most important for small businesses to fully understand. For a complete analysis of all the provisions affecting small businesses, visit our website at [www.pilieromazza.com/client-alerts](http://www.pilieromazza.com/client-alerts).

*Isaias "Cy" Alba, IV is a partner of PiliroMazza PLLC in Washington, DC. For over 25 years, PiliroMazza has helped small and mid-sized businesses to successfully navigate a diverse array of legal matters, with a primary focus on government contracting and the SBA's procurement programs. Visit [www.pilieromazza.com](http://www.pilieromazza.com).*