

UNDERSTANDING SBA'S NEW GOVERNMENT-WIDE SMALL BUSINESS MENTOR-PROTÉGÉ PROGRAM

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Co-hosted by:



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Bank

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FAIR LABOR STANDARDS ACT – EXEMPTION CHANGES EFFECTIVE DECEMBER 1, 2016

- ❖ **Salary Basis for executive, administrative, and professional employees increases to \$913 per week, \$47,476 per year.**
- ❖ **Action:**
 - **Conversion to non-exempt, hourly**
 - **Conformances and conversions under the Service Contract Act**
 - **Update overtime policy and train employees**
 - **Evaluate impact on contract prices and rates**
 - **Fair Pay Safe Workplaces FAR and DOL Guidance Effec**



FAIR PAY SAFE WORKPLACES FAR AND DOL GUIDANCE EFFECTIVE OCTOBER 25, 2016

- ❖ Graduated implementation for new solicitations depending on size of contracts
- ❖ Contractors must disclose labor violations when bidding and on SAM
- ❖ Requirement to provide pay stubs with certain information and to notify employees of exempt or independent contractor status phased in January 1, 2017.
- ❖ Arbitration prohibitions for Title VII complaints begin immediately for awards over \$1 million
- ❖ Action:
 - Evaluate potential violations to report
 - Implement tracking system
 - Analyze risk
 - Take mitigating action
 - Update pay procedures
 - Review employment agreements and pre-dispute arbitration clauses



SICK LEAVE

- ❖ **Montgomery County Sick Leave Law effective October 1, 2016**
- ❖ **Awaiting final rules on Executive Order 13706**



OVERVIEW

- ❖ **Small Business Mentor-Protégé Program**
 - Mechanics
 - Eligibility
 - Compliance Requirements
 - Application
- ❖ **All Small Business Joint Ventures**
- ❖ **Other Important Rule Changes**



NEW MENTOR-PROTÉGÉ PROGRAM AVAILABLE TO ALL SMALL BUSINESSES



TIMELINE

- ❖ **Final rule implements 2010 Small Business Jobs Act and 2013 National Defense Authorization Act (“NDAA”)**
- ❖ **Effective August 24, 2016**
- ❖ **SBA accepting applications for new Mentor-Protégé Program beginning October 1, 2016**
 - **Electronic applications only**



NEW MENTOR-PROTÉGÉ PROGRAM

- ❖ New program regulated under § 125.9
- ❖ Patterned on existing 8(a) Mentor-Protégé program
 - Designed as a business development tool
 - Provide financial, technical, and/or management assistance
- ❖ Allows ALL small business protégés to joint venture with their large business mentors
- ❖ Mentor can own up to 40% of the protégé
- ❖ Exception to affiliation



BENEFITS

- ❖ **Mentor-protégé joint ventures may qualify as a small business for any federal government contract or subcontract where the protégé qualifies as small for the size standard assigned to the procurement**
- ❖ **Protégé firm shielded from a finding of affiliation where a large business mentor owns 40% of protégé**
 - **Once mentor-protégé relationship ends, any protection from affiliation also ends**
- ❖ **Agencies may provide incentives in contract evaluation process to a firm that will provide significant subcontracting work to its SBA-approved protégé**



HOW TO APPLY

- ❖ **Newly created unit within Office of Business Development**
 - Final decision making authority vested in AA/BD
 - Due to application volume/oversight, SBA may institute open enrollment periods in the future
- ❖ **8(a) mentor-program remains separate and distinct**
 - Office of Business Development will continue processing 8(a) and small business mentor-protégé applications separately
 - 8(a) firms can apply to either office



APPLICATION SUBMISSION

- ❖ Applications will only be accepted electronically using new online application available at **certify.sba.gov**
 - All documents (e.g., signed MPAs) to be uploaded to certify.sba.gov
 - SBA retains right to request financial statements and tax returns during reporting and evaluating process
- ❖ Applicants required to register in SAM **PRIOR** to creating profile in certify.sba.gov
- ❖ Applicants (both mentors and protégés) required to complete online training module and upload certificate of completion to certify.sba.gov **BEFORE** completion of application process



CURRENT AND PRIOR PROTÉGÉ RELATIONSHIPS

- ❖ **8 (a) Firms and Graduates with no mentor on August 24 may have 2 new mentors.**
- ❖ **8 (a) firms with a mentor on August 24, may continue that relationship for 3 years.**



PROTÉGÉ ELIGIBILITY

- ❖ Must be small under its primary NAICS code **OR** seeking assistance in secondary NAICS code under which it is small
- ❖ May self-certify that it qualifies as small for its primary or secondary NAICS code
 - For secondary NAICS code approval, must demonstrate prior experience and logical business progression
- ❖ Will approve a 2nd mentor only if:
 - 2nd relationship pertains to unrelated NAICS code **OR**
 - Protégé seeks to acquire specific expertise first mentor does not possess
- ❖ SBA may examine protégé's SDVOSB or WOSB self-certification as part of application process



MENTOR ELIGIBILITY

- ❖ **Must demonstrate capability of fulfilling obligations under mentor-protégé agreement**
 - **May submit copies of federal tax returns, audited financial statements or, if publicly traded, SEC filings**
- ❖ **Possess good character**
- ❖ **Not suspended or debarred**
- ❖ **Impart value due to lessons learned and practical experience**
- ❖ **Only for-profit firms for both 8(a) and new MP programs**
 - **Can be any size**
- ❖ **Generally, no more than one protégé at a time**
 - **Limit of three protégés at one time if there is no adverse impact on any protégé**
- ❖ **Protégés may concurrently serve as a mentor**



WRITTEN AGREEMENT

- ❖ Agreement must set forth assessment of protégé's needs
 - Detailed description and timeline for the delivery of the assistance by the mentor which will enable protégé to meet its goals
- ❖ Minimum one year commitment
- ❖ Single point of contact for mentor responsible for managing and implementing the MPA
- ❖ Identify any other mentor-protégé relationship held by the protégé (either SBA or Agency)
- ❖ Written agreement approved by AA/BD
- ❖ Changes must be approved
- ❖ Either party may terminate with 30 days advance notice
- ❖ Reviewed annually by SBA – SBA may terminate at any time



PARTICIPATION PERIOD

- ❖ **Up to three years in one agreement, maximum of six overall**
 - **Protégé may have two three-year MPAs with different mentors**
 - **EACH may be extended an additional three years**
- ❖ **8(a) approved mentor-protégé relationships may transfer to the new mentor-protégé program after graduating from the 8(a) program**
 - **8(a) participants in last six months of their programs terms may apply for an 8(a) mentor-protégé relationship, as it could carry over to new small business mentor-protégé program**



DECLINED APPLICATIONS

- ❖ **If SBA declines application, protégé may file request for reconsideration within 45 days**
 - **Able to revise MPA during reconsideration to provide additional information and documentation**
 - **SBA to issue reconsideration decision within 45 days – if declined again but for different reasons, protégé can submit new reconsideration request**

- ❖ **If application is declined, proposed protégé cannot attempt to enter into another mentor-protégé relationship with the same mentor for a 60 day period**
 - **Can submit application with new mentor at any time**



EVALUATING THE RELATIONSHIP

- ❖ **Within 30 days of approval anniversary, protégé must report to SBA for the preceding year:**
 - All technical and/or management assistance provided by the mentor
 - All loans to and/or equity investments made by mentor
 - All subcontracts awarded to and between the mentor and protégé, and their values
 - All federal contracts awarded to the M-P joint venture, including set-aside designation, value of each contract, and percentage of the contract performed and percentage of revenue accrued by each party
 - Narrative describing success the assistance has had in meeting developmental goals of protégé
- ❖ **Protégé must report mentoring services it receives by category and hours**
- ❖ **Protégé annually certifies whether agreement has changed**
- ❖ **SBA will review report and may decide not to approve continued relationship based on assistance not being provided**



CONSEQUENCES OF NOT PROVIDING ASSISTANCE

- ❖ **SBA may determine mentor is not providing assistance as described in MPA:**
 - Will notify mentor and allow chance to respond
- ❖ **If mentor fails to provide a plan or respond altogether, SBA will:**
 - Terminate the MPA
 - Firm will be ineligible to act as a mentor for two year period
- ❖ **SBA may request that agencies issue stop work orders to all contracts awarded to the M-P joint venture**
 - If protégé able to continue work on its own, SBA will recommend that protégé be substituted as contract awardee
- ❖ **Failure to provide MPA assistance may be basis for debarment**



IMPACT ON OTHER MENTOR-PROTÉGÉ PROGRAMS

- ❖ For one year after effective date, agencies can continue separate small business mentor-protégé programs
- ❖ After one year, federal department or agency carrying out a mentor-protégé program for small businesses must submit plan to, and receive approval from, SBA Administrator
- ❖ DoD's mentor-protégé program is **NOT** affected
- ❖ Small Business Innovation Research Program or Small Business Technology Transfer Program **NOT** affected



ALL SMALL BUSINESS JOINT VENTURES



JOINT VENTURES

- ❖ Uniform requirements for ALL small business programs regarding size and content of JV agreement
- ❖ Need not be incorporated or established as separate LLC
- ❖ Required written agreement of arrangement and responsibilities of the parties
 - New: Only general descriptions necessary for IDIQ and multiple award contracts
- ❖ Agencies must consider past performance of JV partners when considering past performance of a JV entity
- ❖ No prior approval of JV agreement by SBA EXCEPT for 8(a) contracts
- ❖ New Certificate of Compliance requirements



JOINT VENTURES (CONTINUED)

- ❖ Separately identified in SAM
- ❖ 8(a) firms allowed to submit a JV agreement to SBA for approval at any time
- ❖ Small business of M-P JV must perform at least 40% of the work
 - Also applies to 8(a), SDVOSB, WOSB, & HUBZone JVs
- ❖ HUBZone firms may JV with non-HUBZone firms
 - SBA will not consider the employees of the mentor in determining 35% HUBZone residency or principal office requirement or in determining size of applicant
- ❖ Size protests permitted, including for 8(a) JVs



JOINT VENTURE STRUCTURE

- ❖ Formal separate legal entities – NO MORE POPULATED JVs
 - MAY NOT be populated with direct labor, but may be populated with administrative employees
 - Small business must own 51% of formal separate legal entity
 - After August 24, 2016, proposals submitted by populated JVs WILL NOT be covered under the affiliation exception
- ❖ Informal partnership – SBA assumes it is unpopulated
- ❖ JV partners to share profit commensurate with their ownership interests in a separate legal entity joint venture



JV PROJECT MANAGER

- ❖ **Must be an employee of the small business JV partner**
 - **If not employee must have signed letter of commitment from PM**
- ❖ **PM may not be an employee of the mentor and become an employee of the protégé for purposes of JV contract performance**



CERTIFICATES OF COMPLIANCE

- ❖ Requirement for ALL small business JVs including SDVOSB, 8(a), HUBZone, EDWOSB and WOSB
- ❖ Helps SBA track use and performance of JV and deter wrongdoing
- ❖ Prior to performance of set-aside or reserved contract, small business partner to JV must submit a written certification to the CO and SBA, signed by each joint venturer certifying that the JV:
 - Fully complies with the regulatory requirements and
 - Will perform the contract in compliance with the JV agreement and the regulatory performance of work requirements



CERTIFICATES OF COMPLIANCE (CONT.)

- ❖ Annual submission of report detailing how performance of work requirements are being met
- ❖ Upon contract completion, the small business partner to the JV must submit a report to the relevant CO and SBA signed by each joint venturer, explaining:
 - How and certifying that the performance of work requirements were met for the contract, and
 - Certifying that the contract was performed in compliance with the JV regulatory requirements
- ❖ Failure to submit may be grounds for suspension and debarment



SAM REGISTRATION

- ❖ **Separately identified in SAM for tracking JV awards**
 - **Register with separate DUNS and CAGE numbers than those of individual parties to the JV**
 - **Entity type identified as JV with individual joint partners listed**



OTHER IMPORTANT RULE CHANGES



8(A) SOCIAL & ECONOMIC DISADVANTAGE

❖ Alters Standard

- SBA may disregard an applicant's claim if the applicant does not provide sufficient evidence to make his/her claim any more likely than a legitimate alternate reason for adversity the applicant has faced
- SBA not intending to raise the evidentiary burden on applicants above the current preponderance of the evidence standard nor seeking definitive proof, but rather additional facts to support the applicant's claim of discriminatory conduct

❖ Eliminates narrative statement for claim of economic disadvantage

- Economic disadvantage based solely on financial data relating to individual's net worth, income, and total assets



PRIMARY NAICS CODE REVIEW

- ❖ **SBA will independently review participant's primary NAICS codes**
 - **Will not implement change in primary NAICS code without engaging in discussions with the 8(a) firm**
 - **Review of 8(a) firm's business plan where greatest portion of the firm's total revenues during a three-year period evolved from one NAICS code to another**
 - **If entity-owned (e.g., Tribe, ANC, NHO, CDC) 8(a) firm's primary NAICS code changed and the entity already has another participant in the 8(a) program with designated NAICS code as primary industry, the second firm will be able to continue to participate in 8(a) program, but will no longer be permitted to receive any additional 8(a) contracts in the industry identified as the primary NAICS code of the other 8(a) participant**



SIZE RECERTIFICATION

- ❖ **Recertification when an affiliate acquires another concern**
 - Change **NOT** announced in proposed rule
 - Requires a firm to recertify when an affiliate of that firm acquires another concern. Acquisition by an affiliate must be deemed an acquisition by the concern in question
 - Meant to stop practice of circumventing the recertification rules by the creation of affiliates to acquire or merge with other firms



Any Questions?

Thank you for joining us today.

