

PiliroMazza Overview of Proposed and Final Changes to SBA's Mentor Protégé Rules

Current Rule Citation	Current Rule	Proposed Changes	Final Rule
13 C.F.R. § 121.103(b)(6)	Cross-references to 8(a) BD MPP in 13 C.F.R. § 124.520.	Remove cross reference as 8(a) MPP will be subsumed into ASMPP.	Remove cross reference as 8(a) MPP will be subsumed into ASMPP.
13 C.F.R. § 121.103(b)(9)	For a solicitation for a bundled contract, a small business contractor may enter into a Small Business Teaming Arrangement with one or more small business subcontractors and submit an offer as a small business without regard to affiliation, so long as each team member is small for the size standard assigned to the contract or subcontract.	Also allows similar Small Business Teaming Arrangements for MACs with a value in excess of the agency's substantial bundling threshold.	Also allows similar Small Business Teaming Arrangements for MACs with a value in excess of the agency's substantial bundling threshold.
13 C.F.R. § 121.103(f)(2)	SBA may presume an identity of interest, and thus affiliation based on economic dependence, when a concern derives 70% or more of its receipts from one other business over the past three fiscal years. This presumption may be rebutted by a showing that, despite the contractual relations with another concern, the concern at issue is not solely dependent on that other concern, such as where the concern has been in business for a short amount of time and has only been able to secure a limited number of contracts.	Add that presumption of identity of interest may be rebutted based on a showing that, despite contractual relations with another concern, the concern at issue is not solely dependent on the other concern, either because the concern in question has only been in business for a short time and thus has only a limited number of contracts, or because the contractual relations do not restrict the concern's ability to sell the same type of products or services to another purchaser.	Add that presumption of identity of interest may be rebutted based on a showing that, despite contractual relations with another concern, the concern at issue is not solely dependent on the other concern, either because the concern in question has only been in business for a short time and thus has only a limited number of contracts, or because the contractual relations do not restrict the concern's ability to sell the same type of products or services to another purchaser.
13 C.F.R. § 121.103(g)	Newly organized concern rule - SBA will find affiliation when former officers, directors, etc. of one firm form a new firm in the same or related field.	Add "current" to regulation so it will read "former <u>and current</u> officers, directors, etc."	Add "current" to regulation so it will read "former <u>and current</u> officers, directors, etc."; add clarifying language to ensure that rule doesn't contradict § 124.109(c)(4)(iii), which permits managers of tribal entities to manage no more than two 8(a) Participants at the same time.
13 C.F.R. § 121.103(h)	JV "3 in 2" rule - JVs may only be awarded 3 contracts in 2 years from the date of first contract award; JV may only be active in general for 2 years following date of first contract award.	Remove the 3-contract limitation, but retain the 2-year limit on JV activity; also, a contract novated to a JV counts as first contract award for purposes of calculating 2-year limit.	Remove the 3-contract limitation, but retain the 2-year limit on JV activity; also, a contract novated to a JV counts as first contract award for purposes of calculating 2-year limit.

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13 C.F.R. § 121.103(h)	NA	A JV may have its own separate employees to perform administrative functions, including one or more Facility Security Officer(s), but may not have its own separate employees to perform contracts awarded to the JV.	The JV may have its own separate employees to perform administrative functions, including one or more Facility Security Officer(s), but may not have its own separate employees to perform contracts awarded to the JV. A JV lacking an FCL may be awarded a contract requiring an FCL if 1) the individual JV partners that will perform the necessary security work has or have an FCL. Where the security portion of the contract requiring an FCL is ancillary to the principal purpose of the procurement the JV partner performing that work must possess the required FCL. Where an FCL is required to perform primary and vital requirements of a contract, the lead small business partner must possess the required FCL.
13 C.F.R. § 121.103(h)	121.103(h)(3)(iii) references 8(a) BD MPP-specific standards for JVs, specifically rule that allows an 8(a) MP JV to be treated as an 8(a) small.	Remove 121.103(h)(3)(iii) because 8(a) MPP will be subsumed into ASMPP.	Remove 121.103(h)(3)(iii) because 8(a) MPP will be subsumed into ASMPP.
13 C.F.R. § 121.103(h)	NA	Each JV partner will include its percentage share of JV receipts/employees in its own receipts/employees; percentage share is based on share of work performed in JV.	New 13 C.F.R. 121.103(h)(3). Each JV partner will include its proportionate share of JV receipts in its own receipts unless the proportionate share is already accounted for in receipts reflecting transactions between the concern and its JVs; proportionate share is determined based on the percentage of work each party to the JV performs within the JV; if JV is prime contractor, 100 percent of revenues for the contract, including any subcontracted dollars, will be apportioned to JV partners using this proportionate share calculation. For employee-based size standards, proportionate share is based on JV ownership stake after first subtracting any JV employee already accounted for in the employee count of one of the partners.

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13 C.F.R. § 121.402	Flows MAC "master" NAICS code down to all orders placed against the MAC, meaning a supply NAICS code (and thus size standard) could be applied to a services order, and vice versa.	Requires COs to assign a new NAICS code to each order; code must 1) be included in underlying MAC and 2) represent principal purpose of order (e.g., supply vs service). In cases like the GSA Schedule, where an agency can issue an order against multiple SINS with different NAICS codes, the CO must select the single NAICS code that best represents the acquisition. If the base contract has not been assigned a NAICS code that reflects the principal purpose of the order, the CO shall select a new NAICS code and corresponding size standard for the order.	Requires COs to assign a new NAICS code to each order unless only one NAICS code is applicable to all work under the MAC; code must 1) be included in underlying MAC and 2) represent principal purpose of order (e.g., supply versus service). In cases where an agency can issue an order against multiple SINS with different NAICS codes, the CO must select the single NAICS code that best represents the acquisition. If the NAICS code corresponding to the principal purpose of the order is not contained in the underlying Multiple Award Contract, the CO may not use the Multiple Award Contract to issue that order.
13 C.F.R. §§ 121.404(a)(1), 121.503(i), 125.18(d), 127.504(c)	Allows COs to rely on original SB self-certification (size and socioeconomic status) for overarching MAC when placing SB set-aside orders against unrestricted MACs.	Requires SBs to recertify size and status (depending on type of set-aside) for all SB set-aside orders placed against unrestricted MACs (EXCEPT orders and BPAs placed against FSS contracts); SBs may use "current and accurate" SAM certification for this purpose.	For restricted MACs (and restricted "pools" under otherwise unrestricted MACs), the size/status certification made at the initial offer for the MAC will control through the life of the MAC, because the initial offer was when the SB's size/status was relevant. For restricted orders placed against unrestricted MACs (EXCEPT orders and BPAs placed against FSS contracts), SBs will have to certify as to size/status at the time of their offer related to the specific order.
13 C.F.R. § 121.404(b)	References obsolete SDB program.	Remove SDB reference, add WOSB reference.	Remove SDB reference, add WOSB reference.
13 C.F.R. § 121.404(d)	Size status for purposes of compliance with nonmanufacturer rule is determined as of date of final proposal revision (or final bid in sealed bidding).	Size status for purposes of compliance with the ostensible subcontractor rule and JVA requirements is determined as of the date of final proposal revision.	Size status for purposes of compliance with the ostensible subcontractor rule and JVA requirements is determined as of the date of final proposal revision.
13 C.F.R. § 121.404(e)	NA	Explicitly allows prime contractors to rely on self-certifications of subcontractors in absence of reason to doubt self-certification.	Explicitly allows prime contractors to rely on self-certifications of subcontractors in absence of reason to doubt self-certification.
13 C.F.R. § 121.404(g)	Requires JV to recertify its size status if one of the partners has been acquired, is acquiring, or merges with another company.	Requires only the acquired/acquiring/merging partner to recertify its individual status to allow the JV to recertify its overall status.	Requires only the acquired/acquiring/merging partner to recertify its individual status to allow the JV to recertify its overall status.

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13 C.F.R. § 121.404(g)	NA	Expressly permits a CO to request size recertification as he or she deems appropriate at any point in a long-term contract.	Expressly permits a CO to request size recertification as he or she deems appropriate at any point in a long-term contract.
13 C.F.R. § 121.404(g)	NA	If a merger/acquisition occurs that requires an SB to recertify as no longer small <u>between offer and award</u> , the recertified firm is no longer small and will not be eligible for award of the contract.	If a merger/acquisition occurs that requires an SB to recertify between offer and award, the SB must recertify its size to the CO prior to award; if merger/acquisition occurs within 180 days of date of offer, the concern will be ineligible for award of the contract; if it occurs after 180 days, award will be made but not count as small business award.
13 C.F.R. §§ 121.404(g), 121.603	NA	Recertification is not required when SB changes to or from wholly-owned concern of the same entity (e.g., tribe, ANC, CDC) because ultimate owner has not changed.	Recertification is not required when SB changes to or from wholly-owned concern of the same entity (e.g., tribe, ANC, CDC) because ultimate owner has not changed.
13 C.F.R. § 121.404(g)(3)	NA	Explicitly allows CO to request size recertification at any point in a long-term contract.	Explicitly allows CO to request size recertification before the 120th day in the fifth year of a long-term MAC.
13 C.F.R. § 121.702	NA	Applies general size requirements for JVs to SBIR program, so a JV will only be considered small if each of the partners (including affiliates) has ≤ 500 employees.	Applies general size requirements for JVs to SBIR program, so a JV will only be considered small if each of the partners (including affiliates) has ≤ 500 employees.
13 C.F.R. § 121.1001	NA	Adds SBA's AGC for Procurement Law to list of individuals permitted to independently initiate or file size protests.	Adds SBA's AGC for Procurement Law to list of individuals permitted to independently initiate or file size protests.
13 C.F.R. §§ 121.1004, 125.28, 126.801, 127.603	Only allows size/status protests for orders placed against a MAC when CO requests recertification of size or status.	In addition to existing possibilities, allows size/status protests whenever a set-aside order is placed against an unrestricted MAC (EXCEPT orders and BPAs placed against FSS), and status protests when underlying MAC is a different set-aside than that required in the order.	In addition to existing possibilities, allows size/status protests whenever a set-aside order is placed against an unrestricted MAC (EXCEPT orders and BPAs placed against FSS), and status protests when underlying MAC is a different set-aside than that required in the order.

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13 C.F.R. § 124.3	NA	<p>Adds definition of "follow-on requirement or contract" with three-factor test: 1) whether scope has changed significantly, requiring meaningfully different types of work or capabilities, 2) whether the magnitude/value of the requirement has changed by $\geq 25\%$, and 3) whether end user of requirement has changed; satisfaction of any <u>one</u> of the three requirements means the requirement is <u>not</u> a follow-on. Conversely, if the procurement satisfies none of these conditions, it is considered a follow-on procurement.</p> <p>The 25 percent rule, however, cannot be applied rigidly in all cases because by doing so could encourage a result that is inconsistent with the intent of another provision in this part.</p>	<p>Adds definition of "follow-on requirement or contract" with three-factor guidelines: 1) whether scope has changed significantly, requiring meaningfully different types of work or capabilities, 2) whether the magnitude/value of the requirement has changed by $\geq 25\%$ for equivalent periods of performance, and 3) whether end user of requirement has changed; satisfaction of any one of the three requirements means the requirement is likely not a follow-on; However, meeting any one of these conditions is not dispositive that a requirement is new. In particular, the 25 percent rule cannot be applied rigidly in all cases. Conversely, if the requirement satisfies none of these conditions, it is considered a follow-on procurement.</p>
13 C.F.R. § 124.105	<p>Requires 8(a) applicant firm to demonstrate that no connection exists between disadvantaged individual owner of applicant and an a former or current 8(a) participant owned by an immediate family member and that the individual seeking to qualify the second concern has management and technical experience in the industry. If the AA/BD approves an application under paragraph (g)(1) of this section, SBA will, as part of its annual review, assess whether the firm continues to operate independently of the other current or former 8(a) concern of an immediate family member. SBA may initiate proceedings to terminate a firm from further participation in the 8(a) BD program if it is apparent that there are connections between the two firms that were not disclosed to the AA/ BD at the time of application or that came into existence after program admittance.</p>	<p>8(a) applicant would not qualify if: qualifying individual's immediate family member has used disadvantaged status to enter 8(a) program AND concerns are connected by common ownership/management, OR concerns had contractual dealings that were not arm's length.</p>	<p>8(a) applicant would not qualify if: qualifying individual's immediate family member has used disadvantaged status to enter 8(a) program AND concerns are connected by common ownership/management OR concerns share facilities, OR concerns had contractual dealings that were not arm's length. Applicant applying in the same NAICS code as family member participant must have technical and management experience in that NAICS code, and must not rely on family member experience. If the AA/BD approves an application under paragraph (g)(1) of this section, SBA will, as part of its annual review, assess whether the firm continues to operate independently of the other current or former 8(a) concern of an immediate family member. SBA may initiate proceedings to terminate a firm from further participation in the 8(a) BD program if it is apparent that there are connections between the two firms that were not disclosed to the AA/BD at the time of application or that came into existence after program admittance.</p>

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13 C.F.R. § 124.105(i)	Requires SBA approval when $\geq 10\%$ change in 8(a) minority ownership.	No longer requires SBA approval when change in minority ownership interest in 8(a) concern affects $\leq 20\%$ of total interest in concern; however, concern must notify SBA of any of these changes within 60 days of the change.	No longer requires SBA approval when change in minority ownership interest in 8(a) concern affects $\leq 20\%$ of total interest in concern; however, concern must notify SBA of any of these changes within 60 days of the change.
13 C.F.R. § 124.105(i)(2)	Requires SBA review and approval of <u>any</u> change in disadvantaged owner's stake in 8(a) firm.	Does not require SBA approval if disadvantaged owner's stake in 8(a) firm <u>increases</u> , but still requires SBA review.	Does not require SBA approval if disadvantaged owner's stake in 8(a) firm increases; however, concern must notify SBA of any of these changes within 60 days of the change.
13 C.F.R. § 124.109	NA	8(a) firm owned by tribe/ANC need not request change of ownership from SBA when tribe/ANC merely reorganizes ownership by removing or inserting wholly-owned entity between tribe/ANC and 8(a) firm.	8(a) firm owned by tribe/ANC need not request change of ownership from SBA when tribe/ANC merely reorganizes ownership by removing or inserting wholly-owned entity between tribe/ANC and 8(a) firm.
13 C.F.R. § 124.109	NA	If SBA changes the primary NAICS code of a tribally/ANC-owned 8(a) firm, the tribe/ANC may submit an 8(a) application for another tribally/ANC-owned firm operating under the code that formerly applied to the reclassified 8(a) firm.	If SBA changes the primary NAICS code of a tribally/ANC-owned 8(a) firm, the tribe/ANC may immediately submit an 8(a) application for another tribally/ANC-owned firm operating under the code that formerly applied to the reclassified 8(a) firm.
13 C.F.R. § 124.109	NA	Because an individual may be responsible for the management and daily business operations of two tribally-owned concerns, the full-time devotion requirement does not apply to tribally-owned applicants and participants.	Because an individual may be responsible for the management and daily business operations of two tribally-owned concerns, the full-time devotion requirement does not apply to tribally-owned applicants and participants.
13 C.F.R. § 124.109	Requires tribal leadership to make "firm written commitment" to support operations of 8(a) applicant concern.	Allows tribally-owned economic development companies (or similar holding companies) to also make such firm written commitments to support the operations of the 8(a) concern.	Allows tribally-owned economic development companies (or similar holding companies) to make such firm written commitments to support the operations of the 8(a) concern.

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13 C.F.R. § 124.110	NA	Applies all changes to tribal/ANC 8(a) rules identified above to NHOs also (except new ownership change rule)	Applies all changes to tribal/ANC 8(a) identified above to NHOs; also includes the clarification that if the primary NAICS code of an NHO-owned participant is changes, the NHO could submit an application and qualify another firm owned by the NHO for participation in the 8(a) BD program under the previous primary NAICS code.
13 C.F.R. § 124.111	NA	Applies all changes to tribal/ANC 8(a) rules discussed above to CDCs also.	Applies all changes to tribal/ANC 8(a) rules discussed above to CDCs also.
13 C.F.R. § 124.112	NA	Allows "excessive distributions" from tribally-owned 8(a) firms to non-disadvantaged individuals through pro rata distributions to all shareholders unless SBA determines amount of distribution will adversely affect the business development of the 8(a) firm.	Allows "excessive distributions" from tribally-owned 8(a) firms to non-disadvantaged individuals through pro rata distributions to all shareholders unless SBA determines amount of distribution will damage BD of 8(a) firm.
13 C.F.R. § 124.112	Allows SBA to change primary NAICS code of tribally-owned 8(a) firms if SBA gives notice and opportunity for 8(a) firm to explain why proposed change would be inappropriate.	Also allows appeals of actual SBA changes to primary NAICS codes for tribally-owned 8(a) firms at a level above the district office (the SBA AGC for Procurement Law).	Also allows appeals of actual SBA changes to primary NAICS codes for tribally-owned 8(a) firms; firms may go to AA/GCPL to appeal these changes.
13 C.F.R. § 124.201	NA	No amendment, but SBA requests comments on whether prospective 8(a) applicants should be required to take SBA-sponsored prep course before applying.	No change made; prep course is an option, not a requirement.
13 C.F.R. § 124.203	Does not require 8(a) applicants to submit an IRS Form 4506T unless SBA requests one.	Requires all 8(a) applicants to submit an IRS Form 4506T (or C when available).	Each individual claiming disadvantaged status must authorize SBA to request and receive tax return information directly from the IRS if such authorization is required.
13 C.F.R. § 124.204	NA	Stops processing clock for 8(a) application when SBA has requested clarifications, revisions, or other information from applicant.	Stops processing clock for 8(a) application when SBA has requested clarifications, revisions, or other information from applicant.
13 C.F.R. § 124.205	NA	Reconsideration of denied 8(a) application eliminated.	Reconsideration of denied 8(a) application eliminated.

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13 C.F.R. § 124.207	Allows declined 8(a) applicants to resubmit application after 12 months.	Allows declined 8(a) applicants to resubmit application after 90 days (like HUBZone program); requests comments on whether rejection reconsideration process should be eliminated based on new rule.	Allows declined 8(a) applicants to resubmit application after 90 days (like HUBZone program); however, if concern has been declined three times within 18 months of the date of the first ineligible decision, concern can't submit another application for 12 months from date of third decision; eliminates separate reconsideration process.
13 C.F.R. §§ 124.300, 124.301	Discusses the ways in which a business may leave the 8(a) Program (Expiration of Program Terms, Voluntary Withdrawal or Voluntary Early Graduation, Early Graduation, Termination etc.).	Puts SBA policy into regulation; allows 8(a) firms to voluntarily withdraw or graduate early at any time period to the expiration of its program terms; allows District Directors to grant approval for withdrawal/graduation instead of limiting final approval to AA/BD.	Puts SBA policy into regulation; allows 8(a) firms to voluntarily withdraw or graduate early; allows District Directors to grant approval for withdrawal/graduation instead of limiting final approval to AA/BD.
13 C.F.R. § 124.304	Upon deciding that early graduation or termination is warranted, the AA/BD will issue a Notice of Early Graduation or Termination. The Notice will set forth the specific facts and reasons for the decision, and will advise the concern that it may appeal the decision in accordance with the provisions of Part 134 of this title.	In addition to the current rule, if AA/BD terminates/early graduates 8(a) firm, termination/early graduation is treated as suspension from program until the determination becomes the final agency decision.	If AA/BD terminates/early graduates 8(a) firm, termination/early graduation is treated as suspension from program and does not count against total 8(a) program term if firm appeals and is placed back into program.
13 C.F.R. §§ 124.305, 124.402	Requires SBA approval of 8(a) business plan before firm may receive 8(a) benefits (e.g., 8(a) contracts).	Requires submission of 8(a) business plan within 60 days of admission into 8(a) program; firm begins receiving 8(a) benefits immediately upon acceptance into program but is suspended if it fails to timely submit business plan.	Requires submission of 8(a) business plan within 60 days of admission into 8(a) program; firm begins receiving 8(a) benefits immediately upon acceptance into program but is suspended if it fails to timely submit business plan.

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13 C.F.R. §§ 124.305	An 8(a) Participant may elect to be suspended where a disadvantaged individual who is involved in controlling the day-to-day management and control of the Participant is called to active military duty by the United States and the individual's participation in the firm's management and daily business operations is critical to the firm's continued eligibility, and the Participant elects not to designate a non-disadvantaged individual to control the concern during the call-up period.	An 8(a) Participant may elect to be suspended where a disadvantaged individual who is involved in controlling the day-to-day management and control of the Participant is called to active military duty by the United States and the individual's participation in the firm's management and daily business operations is critical to the firm's continued eligibility, and the Participant elects not to designate a disadvantaged individual to control the concern during the call-up period.	An 8(a) Participant may elect to be suspended where a disadvantaged individual who is involved in controlling the day-to-day management and control of the Participant is called to active military duty by the United States and the individual's participation in the firm's management and daily business operations is critical to the firm's continued eligibility, and the Participant elects not to designate a disadvantaged individual to control the concern during the call-up period. The final rule also allows the AA/BD to immediately suspend a participant when he or she determines that suspension is needed to protect the interests of the federal government.
13 C.F.R. §§ 124.501, 124.507	8(a) eligibility is only addressed in context of competitive awards.	Move 8(a) eligibility into general contracting provisions section so it clearly addresses both competitive and sole-source awards.	Move 8(a) eligibility into general contracting provisions section so it clearly addresses both competitive and sole-source awards.
13 C.F.R. §§ 124.501, 124.507	Bona fide place of business for 8(a) construction contractors is only addressed in context of competitive awards.	Move bona fide place of business requirements into general contracting provisions section so it clearly addresses both competitive and sole-source awards.	Move bona fide place of business requirements into general contracting provisions section so it clearly addresses both competitive and sole-source awards.
13 C.F.R. §§ 124.501, 124.507	NA	Limits SBA's timeframe for approval of requests for bona fide place of business to 5 days after SBA site visit and 15 days after submission of request for approval if site visit is not possible; requests comments regarding whether a contractor may presume approval (for purposes of offer submission) if SBA does not respond within that timeframe. Also clarifies that SBA must determine eligibility for 8(a) sole source awards at the time it accepts a requirement for the 8(a) Program and, for competitive 8(a) awards, after the apparent successful offeror is identified for a competitive 8(a) contract.	Limits SBA's timeframe for approval of requests for bona fide place of business to 5 days after SBA site visit and 15 days after submission of request for approval if site visit is not possible; contractor may presume approval if SBA does not respond within timeframe, but SBA must approve in order to be eligible for award (if SBA has not acted prior to the time participant becomes apparent offeror, SBA will make determination within 5 days of request from procuring agency for eligibility determination). Also clarifies that SBA must determine eligibility for 8(a) sole source awards at the time it accepts a requirement for the 8(a) Program and, for competitive 8(a) awards, after the apparent successfully offeror is identified for a competitive 8(a) contract.

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13 C.F.R. § 124.503(e)	NA	If, after SBA accepts an 8(a) sole source requirement on behalf of an 8(a) firm, the procuring agency determines, prior to award, that it cannot do the work or the parties cannot agree on price, SBA allows the agency to substitute one 8(a) Participant for another if it believes another Participant could fulfill its needs. If the procuring agency and SBA agree that another Participant cannot fulfill its needs, the procuring agency may withdraw the original offering letter and fulfill its needs outside the 8(a) BD program.	If, after SBA accepts an 8(a) sole source requirement on behalf of an 8(a) firm, the procuring agency determines, prior to award, that it cannot do the work on the parties cannot agree on price, SBA allows the agency to substitute one 8(a) Participant for another if it believes another Participant could fulfill its needs. If the procuring agency and SBA agree that another Participant cannot fulfill its needs, the procuring agency may withdraw the original offering letter and fulfill its needs outside the 8(a) BD program.
13 C.F.R. § 124.503(g)	A firm that has left 8(a) program may no longer receive orders pursuant to an 8(a) BOA.	Adds BPAs to this provision as both BPAs and BOAs are "not contracts".	Adds BPAs to this provision as both BPAs and BOAs are "not contracts".
13 C.F.R. § 124.504	Prohibits SBA from accepting an 8(a) requirement when an agency competed the requirement among 8(a) firms prior to receiving SBA's formal acceptance.	Prohibits SBA from accepting an 8(a) requirement when agency competed a requirement among 8(a) Participants prior to offering the requirement to SBA and did not clearly evidence its intent to conduct an 8(a) competitive acquisition.	Prohibits SBA from accepting an 8(a) requirement when agency competed a requirement among 8(a) Participants prior to offering the requirement to SBA and did not clearly evidence its intent to conduct an 8(a) competitive acquisition.
13 C.F.R. § 124.504	NA	Generally requires SBA approval of agencies' decision to release any follow-on procurements from 8(a) program.	Generally requires SBA approval of agencies' decision to release any follow-on procurements from 8(a) program. Where a procurement will contain work currently performed under one or more 8(a) contracts, and the procuring agency determines that the procurement should not be considered a follow-on requirement to the 8(a) contract(s), the procuring agency must notify SBA that it intends to procure such specified work outside the 8(a) BD program through a requirement that it considers to be new.
13 C.F.R. § 124.504	NA	SBA must generally approve release of any follow-on requirement when an agency seeks to reprocur the requirement through an existing limited contracting vehicle which is not available to all 8(a) participants (e.g., 8(a) STARS II).	SBA must generally approve release of any follow-on requirement when an agency seeks to reprocur the requirement through an existing limited contracting vehicle which is not available to all 8(a) participants (e.g., 8(a) STARS II).

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13 C.F.R. § 124.504	NA	All agency requests to remove a follow-on procurement from the 8(a) program for any reason must be in writing.	All agency notifications of removal of a follow-on procurement from the 8(a) program due to required use of a mandatory source must be in writing at least 30 days before end of contract period.
13 C.F.R. § 124.504	NA	Requests comments regarding whether SBA should consider a bridge contract in the new requirement analysis.	Bridge contract is not typically a part of new requirement analysis. Preamble states that it might be a part of the new requirement analysis if there is some basis to believe that the agency is altering the duration of the option periods to avoid particular regulatory requirements.
13 C.F.R. § 124.505	NA	NA	Allows for an appeal by SBA to the head of an agency of a decision by a CO that a particular procurement is a new requirement that is not subject to regulatory requirements regarding release by SBA from the 8(a) program.
13 C.F.R. § 124.509	Requires AA/BD to approve 1) waiver requests allowing an 8(a) firm to receive additional 8(a) sole-source contracts when the firm has not fulfilled its non-8(a) contracting obligations and 2) similar waiver requests from requiring agencies.	Changes AA/BD references to SBA references generally, and moves waiver requirements to an SOP instead of a regulation, meaning waiver approval can occur at the district office level instead of only at SBA's headquarters.	Changes AA/BD references to SBA references generally, and moves waiver requirements to an SOP instead of a regulation, meaning waiver approval can occur at the district office level instead of only at SBA's headquarters.

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14 C.F.R. § 124.509	8(a) concerns in the transitional stage are prohibited from receiving more 8(a) sole source awards when the concerns do not meet their non-8(a) business activity target for any reason unless it complies with the targets.	NA	8(a) concerns are only prohibited from receiving more 8(a) sole source awards if they have not made a good faith effort to comply with their non-8(a) business activity target; in the event a concern fails to meet its target but has shown that it has made a good-faith effort to do so, SBA may condition 8(a) sole source awards to that concern on various requirements, such as seeking additional BD assistance from an SBA resource partner and/or attend seminars relating to management assistance, business development, financing, marketing, accounting, or proposal preparation. Award may be withheld until the concern meets those requirements. SBA also reduced the BAT percentages to 35% in the 3rd transitional year, 40% in the 4th transitional year, and 50% in the fifth transitional year.
13 C.F.R. § 124.513	Requires SBA to approve JVs prior to award of an 8(a) contract to the JV for both competitive and sole-source procurements.	Extends non-8(a) JV size protest process to 8(a) JVs and removes JVA approval requirement for <u>competitive</u> 8(a) contracts (but leaves approval for sole-source awards in place).	Extends non-8(a) JV size protest process to 8(a) JVs and removes JVA approval requirement for <u>competitive</u> 8(a) contracts (but leaves approval for sole-source awards in place).

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Current Rule Citation	Current Rule	Proposed Changes	Final Rule
13 C.F.R. § 124.513(c)	Sets forth required provisions in 8(a) JV agreements.	8(a) JV agreement may state that that the 8(a) Participant may receive profits from the JV that exceed the percentage commensurate with the work performed by the 8(a) Participant if the parties agree to that percentage.	With respect to 8(a) JV agreement required provisions, the name of the "project manager" is changed to "Responsible Manager." The managing venturer is responsible for controlling the day-to-day management and administration of the contractual performance of the JV, but other partners may participate in all corporate governance activities and decisions of the JV as is commercially customary. Clarifies that JV managers responsible for orders issued under an IDIQ contract need not be employees of the protégé, these managers must report to and be supervised by the Responsible Manager. The JV agreement may state that the 8(a) Participant may receive profits from the JV that exceed the percentage commensurate with the perform performed by the 8(a) Participant if the parties agree to that percentage. The JV agreement must state that the Special Bank Account requires the signature or consent of all parties to the JV for any payments made by the JV to its members for services performed.
13 C.F.R. § 124.514	A procuring activity CO may exercise a priced option to an 8(a) contract whether the concern that received the award has graduated or been terminated from the 8(a) BD program or is no longer eligible if to do so is in the best interests of the Government.	NA	Except for 8(a) contracts exceeding five years (including MACs) a procuring activity CO may exercise a priced option to an 8(a) contract whether the concern that received the award has graduated or been terminated from the 8(a) BD program or is no longer eligible if to do so is in the best interest of the Government.

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13 C.F.R. § 124.515(d)	SBA determines the eligibility of an acquiring Participant under paragraph (b)(2) of this section by referring to the items identified in § 124.507(b)(2) and deciding whether, at the time of the request for waiver (and prior to the transaction), the acquiring Participant is a responsible and eligible concern with respect to each contract for which a waiver is sought. As part of the waiver request, the acquiring firm must certify that it is a small business for the size standard corresponding to the NAICS code assigned to each contract for which a waiver is sought.	SBA determines the eligibility of an acquiring Participant under paragraph (b)(2) of this section by referring to the items identified in § 124.501(g) and deciding whether, at the time of the request for waiver (and prior to the transaction), the acquiring Participant is an eligible concern with respect to each contract for which a waiver is sought. As part of the waiver request, the acquiring concern must certify that it is a small business for the size standard corresponding to the NAICS code assigned to each contract for which a waiver is sought. SBA will not grant a waiver for any contract if the work to be performed under the contract is not similar to the type of work previously performed by the acquiring concern.	SBA determines the eligibility of an acquiring Participant under paragraph (b)(2) of this section by referring to the items identified in § 124.501(g) and deciding whether, at the time of the request for waiver (and prior to the transaction), the acquiring Participant is an eligible concern with respect to each contract for which a waiver is sought. As part of the waiver request, the acquiring concern must certify that it is a small business for the size standard corresponding to the NAICS code assigned to each contract for which a waiver is sought. SBA will not grant a waiver for any contract if the work to be performed under the contract is not similar to the type of work previously performed by the acquiring concern.
13 C.F.R. § 124.518	Where a procuring activity CO demonstrates to SBA that an 8(a) contract will otherwise be terminated for default, SBA may authorize another Participant to complete performance and, in conjunction with the procuring activity, permit novation of the contract without invoking the termination for convenience or waiver provisions of § 124.515.	NA	SBA may authorize another Participant to complete performance and, in conjunction with the procuring activity, permit novation of an 8(a) contract without invoking the termination for convenience or waiver provisions of § 124.515 where a procuring activity CO demonstrates to SBA that the Participant that was awarded the 8(a) contract is unable to complete performance, where an 8(a) contract will otherwise be terminated for default, or where SBA determines that substitution would serve the business development needs of both 8(a) Participants.
13 C.F.R. § 124.519	8(a) firms with receipts-based primary NAICS codes cannot receive 8(a) sole-source contracts once its 8(a) contract total exceeds 5x the amount of its size standard or \$100 million, whichever is less; 8(a) firms with employee-based NAICS codes use \$100 million limit only.	8(a) firm may not receive 8(a) sole-source awards after its combined total of competitive and sole-source 8(a) contracts has exceeded \$100 million throughout its 8(a) program term, regardless of primary NAICS code; whether firm has reached limit is determined by revenues already received, not projected revenues based on IDIQs, MACs, or options/modifications.	8(a) firm may not receive 8(a) sole-source awards after its combined total of competitive and sole-source 8(a) contracts has exceeded \$100 million throughout its 8(a) program term, regardless of primary NAICS code; whether firm has reached limit is determined by revenues actually received, not projected revenues based on IDIQs, MACs, or options/modifications.

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Current Rule Citation	Current Rule	Proposed Changes	Final Rule
13 C.F.R. § 124.519	8(a) contracts under \$100,000 do not count toward the 8(a) revenue limit.	Replace references to \$100,000 with references to simplified acquisition threshold.	Replace references to \$100,000 with references to simplified acquisition threshold.
13 C.F.R. § 124.520	Sets forth rules regarding 8(a) mentor-protégé program.	Abolishes 8(a) mentor-protégé program; states that 8(a) firms can participate in the ASMPP. Also provides that in order for JVs to receive exclusion from affiliation for 8(a) sole source or competitive contracts, the JVs must meet the requirements regarding the required contents of JV agreements and performance of work requirements in SBA 8(a) regulations.	Abolishes 8(a) mentor-protégé program; states that 8(a) firms can participate in the ASMPP. Also provides that in order for JVs to receive exclusion from affiliation for 8(a) sole source or competitive contracts, the JVs must meet the requirements regarding the required contents of JV agreements and performance of work requirements in SBA 8(a) regulations.
13 C.F.R. § 124.521	In the context of recertification, where a concern later fails to qualify as an 8(a) Participant, the procuring agency may exercise options and still count the award as an award to a SDB.	NA	Except for 8(a) contracts, including MACs with durations of more than five years, where a concern later fails to qualify as an 8(a) Participant, the procuring agency may exercise options and still count the award as an award to a SDB.
13 C.F.R. § 125.2	NA	Requires COs to consider past performance and experience of first-tier subcontractors for bundled/consolidated contracts and MACs above the agency's "substantial bundling" threshold, in accordance with 15 USC 644; requests comments on whether such issues should be considered in all cases or only those statutorily required.	Requires COs to consider the capabilities and past performance of first-tier subcontractors where the first-tier subcontractors are specifically identified in the proposal and the capabilities and past performance of the small business prime do not independently demonstrate capabilities and past performance necessary for award.

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13 C.F.R. § 125.2	Notwithstanding the fair opportunity requirements set forth in 10 U.S.C. 2304c and 41 U.S.C. 253j, the CO has the authority to set aside orders against MACs, including contracts that were set aside for small business. This includes order set-asides for 8(a) Participants, HUBZone SBCs, SDVO SBCs, and WOSBs (and, where appropriate, EDWOSBs).	NA	Notwithstanding the fair opportunity requirements set forth in 10 U.S.C. 2304c and 41 U.S.C. 4106(c), a CO may set aside orders for small businesses, eligible 8(a) Participants, certified HUBZone small business concerns, SDVO small business concerns, WOSBs, and EDWOSBs against full and open MACs. In addition, a CO may set aside orders for eligible 8(a) Participants, certified HUBZone small business concerns, SDVO small business concerns, WOSBs, and EDWOSBs against total small business set-aside MACs, partial small business set-aside MACs, and small business reserves of MACs awarded in full and open competition. Although a CO can set aside orders issued under a small business set-aside Multiple Award Contract or reserve to any subcategory of small businesses, COs are encouraged to review the award dollars under the Multiple Award Contract and aim to make available for award at least 50% of the award dollars under the Multiple Award Contract to all contract holders of the underlying small business set-aside Multiple Award Contract or reserve. However, a CO may not further set aside orders for specific types of small business concerns against MACs that are set-aside or reserved for eligible 8(a) Participants, certified HUBZone small business concerns, SDVO small business concerns, WOSBs, and EDWOSBs.
13 C.F.R. § 125.3	NA	ANC-owned firms are not required to submit a subcontracting plan as they are statutorily considered small businesses for purposes of subcontracting goals.	Any entity that is statutorily considered a small business (e.g., ANC) for purposes of subcontracting goals need not submit a subcontracting plan.
13 C.F.R. § 125.5	The COC Program is applicable to all Government procurement actions.	Clarifies that SBA does not use COC procedures for 8(a) sole-source contracts.	Clarifies that SBA does not use COC procedures for 8(a) sole-source contracts.

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13 C.F.R. § 125.5	NA	NA	States that an offeror seeking a COC has the burden of proof to demonstrate that it possesses all relevant elements of responsibility and that it has overcome the CO's objection.
13 C.F.R. § 125.5	NA	Changes threshold for COC appeals from \$100,000 to SAT.	Changes threshold for COC appeals from \$100,000 to SAT.
13 C.F.R. § 125.6	Controls application of limitation on subcontracting rule and performance of work requirements to "mixed" contracts for supplies and services.	Adds construction to definition of "mixed" contract.	Adds construction to definition of "mixed" contract; procurement should be set aside where at least 50 percent of the contract value comes from small business manufacturers or any business that supplies items subject to nonmanufacturer waiver.
13 C.F.R. § 125.6	For a multiple item procurement where a nonmanufacturer waiver is granted for one or more items, compliance with the limitation on subcontracting requirement will not consider the value of items subject to a waiver. As such, more than 50% of the value of the products to be supplied by the nonmanufacturer that are not subject to a waiver must be the products of one or more domestic small business manufacturers or processors.	NA	For a multiple item procurement where there is a nonmanufacturing waiver, compliance with the limitation on subcontracting requirement will be determined by combining the value of the items supplied by domestic small business manufacturers or processors with the value of the items subject to a waiver. As such, as long as the value of the items to be supplied by domestic small business manufacturers or processors plus the value of the items to be supplied that are subject to a waiver account for at least 50% of the value of the contract, the limitations on subcontracting requirement is met.
13 C.F.R. § 125.8	JV agreements must state that each participant must receive profits from the JV commensurate with the work performed by the concern.	Permits JV parties in their JV agreements to state that profits may be distributed such that SB participant(s) receive(s) profits <u>greater than</u> those commensurate with work they have performed.	Permits JV parties in their JV agreements to state that profits may be distributed such that SB participant(s) receive(s) profits greater than those commensurate with work they have performed, and that at the conclusion of the JV contract(s) and/or the termination of a JV, any funds remaining in the JV bank account shall be distributed at the discretion of the JV members according to percentage of ownership.

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Current Rule Citation	Current Rule	Proposed Changes	Final Rule
13 C.F.R. § 125.8	JV agreements must state that (a) quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the JV's principals) must be submitted to SBA not later than 45 days after each operating quarter of the JV; and (b) a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.	JV agreements must state that (a) annual performance- of-work statements required by SBA regulations must be submitted to SBA and the relevant CO not later than 45 days after each operating year of the JV; and (b) the project-end performance-of-work required by SBA regulations must be submitted to SBA and the relevant CO no later than 90 days after completion of the contract.	JV agreements must state that (a) annual performance- of-work statements required by SBA regulations must be submitted to SBA and the relevant CO not later than 45 days after each operating year of the JV; and (b) the project-end performance-of-work required by SBA regulations must be submitted to SBA and the relevant CO no later than 90 days after completion of the contract.
13 C.F.R. § 125.8	Additional required JV agreement provisions.	NA	With respect to 8(a) JV agreement required provisions, the name of the "project manager" is changed to "Responsible Manager." The managing venturer is responsible for controlling the day-to-day management and administration of the contractual performance of the JV, but other partners may participate in all corporate governance activities and decisions of the JV as is commercially customary. Clarifies that JV managers responsible for orders issued under an IDIQ contract need not be employees of the protégé, these managers must report to and be supervised by the Responsible Manager. The JV agreement must state that the Special Bank Account requires the signature or consent of all parties to the JV for any payments made by the JV to its members for services performed.
13 C.F.R. § 125.8	NA	NA	The 40% calculation for protégé workshare follows the same rules as those set forth in the SBA limitations on subcontracting regulations concerning supplies, construction, and mixed contracts, including the exclusion of the same costs from the limitation on subcontracting calculation (e.g., cost of materials excluded from the calculation in construction contracts). However, work performed by a similarly situated entity will not count toward the requirement that a protégé must perform at least 40% of the work performed by a JV.

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13 C.F.R. § 125.8	When evaluating the past performance and experience of an entity submitting an offer for a contract set aside or reserved for small business as a JV established pursuant to this section, a procuring activity must consider work done individually by each partner to the JV as well as any work done by the JV itself previously.	When evaluating the past performance, experience, business systems and certifications of an entity submitting an offer for a contract set aside or reserved for small business as a JV established pursuant to this section, a procuring activity must consider work done and qualifications held individually by each partner to the JV as well as any work done by the JV itself previously.	When evaluating the capabilities, past performance, experience, business systems and certifications of an entity submitting an offer for a contract set aside or reserved for small business as a JV established pursuant to this section, a procuring activity must consider work done and qualifications held individually by each partner to the JV as well as any work done by the JV itself previously. A procuring activity may not require the protégé firm to individually meet the same evaluation or responsibility criteria as that required of other offerors generally. The partners to the JV in the aggregate must demonstrate the past performance, experience, business systems and certifications necessary to perform the contract.
13 C.F.R. § 125.8	At the completion of every contract set aside or reserved for small business that is awarded to a JV between a protégé small business and a mentor authorized by § 125.9, the small business partner to the JV must submit a report to the relevant CO and to the SBA, signed by an authorized official of each partner to the JV, explaining how and certifying that the performance of work requirements were met for the contract, and further certifying that the contract was performed in accordance with the provisions of the JV agreement that are required under paragraph (b) of this section.	At the completion of every contract set aside or reserved for small business that is awarded to a JV between a protégé small business and a mentor authorized by § 125.9, and upon request by the SBA or the relevant CO, the small business partner to the JV must submit a report to the relevant CO and to the SBA, signed by an authorized official of each partner to the JV, explaining how and certifying that the performance of work requirements were met for the contract, and further certifying that the contract was performed in accordance with the provisions of the JV agreement that are required under paragraph (b) of this section.	At the completion of every contract set aside or reserved for small business that is awarded to a JV between a protégé small business and a mentor authorized by § 125.9, and upon request by SBA or the relevant CO, the small business partner to the JV must submit a report to the relevant CO and to SBA, signed by an authorized official of each partner to the JV, explaining how and certifying that the performance of work requirements were met for the contract, and further certifying that the contract was performed in accordance with the provisions of the JV agreement that are required under paragraph (b) of this section.

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13 C.F.R. § 125.9	Mentor qualifications are to determine whether it (i) is capable of carrying out its responsibilities to assist the protégé firm under the proposed mentor-protégé agreement; (ii) possesses good character; (iii) does not appear on the federal list of debarred or suspended contractors; (iv) can impart value to a protégé firm due to lessons learned and practical experience gained or through its knowledge of general business operations and government contracting.	Reorganizes regulation to clarify that SBA uses three-pronged analysis for mentor qualification: 1) mentor is capable of carrying out responsibilities to protégé under MPA, 2) mentor is not debarred or suspended, and 3) mentor can impart value to protégé due to lessons learned and practical experience gained or through its knowledge of general business operations and government contracting.	Reorganizes regulation to clarify that SBA uses three-pronged analysis for mentor qualification: 1) mentor is capable of carrying out responsibilities to protégé under MPA, 2) mentor is not debarred or suspended, and 3) mentor can impart value to protégé based on lessons learned and practical experience gained or through its knowledge of general business operations and government contracting.
13 C.F.R. § 125.9	Provides that assistance by mentor may include technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts (either from the mentor to the protégé or from the protégé to the mentor); trade education; and/or assistance in performing prime contracts with the Government through JV arrangements.	NA	Provides that assistance by the mentor may include management and/or technical assistance; loans and/or equity investments; bonding; use of equipment; export assistance; assistance as a subcontractor under prime contracts being performed by the protégé; cooperation on JV projects; or subcontracts under prime contracts being performed by the mentor.
13 C.F.R. § 125.9	SBA must make affirmative good character determination for each mentor.	SBA does not need to make an affirmative good character determination for each mentor, but may decline mentors if it determines that it lacks good character, a favorable financial position, employs or otherwise controls the managers of the protégé, or is otherwise affiliated with the protégé. Once approved, SBA may terminate the mentor-protégé agreement if the mentor does not possess good character or a favorable financial position, was affiliated with the protégé at time of application, or is affiliated with the protégé for reasons other than the mentor-protégé agreement or assistance provided under the agreement.	SBA does not need to make an affirmative good character determination for each mentor, but may decline mentors if it determines that it lacks good character, a favorable financial position, employs or otherwise controls the managers of the protégé, or is otherwise affiliated with the protégé. Once approved, SBA may terminate the mentor-protégé agreement if the mentor does not possess good character or a favorable financial position, was affiliated with the protégé at time of application, or is affiliated with the protégé for reasons other than the mentor-protégé agreement or assistance provided under the agreement.
13 C.F.R. § 125.9	Mentor required to submit SBA copies of federal tax returns or financial statements to demonstrate that it is capable of carrying out its responsibilities under the proposed mentor-protégé agreement and must annually certify that it continues to possess good character and a favorable financial position.	Mentor need not comply with these requirements.	Mentor no longer required to submit SBA copies of federal tax returns or financial statements to demonstrate that it is capable of carrying out its responsibilities under the proposed mentor-protégé agreement or annually certify that it continues to possess good character and a favorable financial position.

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Current Rule Citation	Current Rule	Proposed Changes	Final Rule
13 C.F.R. § 125.9	NA	No MP JV may submit competing offers on the same solicitation as another MP JV that has the same mentor.	No MP JV may submit competing offers on the same solicitation as another MP JV that has the same mentor.
13 C.F.R. § 125.9	Mentor cannot have more than three protégés at once.	Three-protégé limit does not apply to up to two firms located in Puerto Rico (PR) (so a mentor could have up to five protégés provided at least two are located in PR).	Three-protégé limit does not apply to up to two firms located in PR (so a mentor could have up to five protégés provided at least two are located in PR); in other words, the first two protégés located in PR do not count against the mentor's three-protégé limit, but additional protégés located in PR would still count.
13 C.F.R. § 125.9	NA	Mentors subcontracting with protégés in PR may receive "positive consideration" for such subcontracts and may apply costs incurred for providing training to PR protégé toward subcontracting goals.	Mentors subcontracting with protégés in PR may receive "positive consideration" for such subcontracts in their past performance evaluations, and may apply costs incurred for providing training to PR protégé toward subcontracting goals in the mentor's subcontracting plan.
13 C.F.R. § 125.9	Firm that is large under its primary NAICS code can qualify as a protégé under a secondary NAICS code if it is small under that code, can show that the mentor-protégé relationship is a logical business progression for the firm and will further develop or expand current capabilities, and the firm has some experience in that secondary code.	Firm that is any size under its primary NAICS code can qualify as a protégé under a secondary NAICS code if it is small under that code, can show that the mentor-protégé relationship is a logical business progression for the firm and will further develop or expand current capabilities, and has some experience in that secondary code.	Firm that is any size under its primary NAICS code can qualify as a protégé under a secondary NAICS code if can shows that the MP relationship will help it further or expand its current capabilities in that secondary NAICS code. SBA will not approve a mentor-protégé relationship in a secondary NAICS code in which the small business concern has no prior experience. SBA may approve a mentor-protégé relationship where the small business concern can demonstrate that it has performed work in one or more similar NAICS codes or where the NAICS code in which the small business concern seeks a mentor-protégé relationship is a logical business progression from work previously performed by the concern.

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13 C.F.R. § 125.9	A protégé and mentor may JV as a small business for any government prime contract or subcontract, provided the protégé qualifies as small for the procurement. Such a JV may seek any type of small business contract (i.e., small business set-aside, 8(a), HUBZone, SDVO, or WOSB) for which the protégé firm qualifies (e.g., a protégé firm that qualifies as a WOSB could seek a WOSB set-aside as a JV with its SBA-approved mentor).	NA	A protégé and mentor may JV as a small business for any government prime contract, subcontract or sale, provided the protégé qualifies as small for the procurement or sale. Such a JV may seek any type of small business contract (i.e., small business set-aside, 8(a), HUBZone, SDVO, or WOSB) for which the protégé firm qualifies (e.g., a protégé firm that qualifies as a WOSB could seek a WOSB set-aside as a JV with its SBA-approved mentor). Similarly, a JV between a protégé and mentor may seek a subcontract as a HUBZone small business, SDB, SDVO small business, or WOSB provided the protégé individually qualifies as such.

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Current Rule Citation	Current Rule	Proposed Changes	Final Rule
13 C.F.R. § 125.9	<p>Once a protégé firm no longer qualifies as a small business for the size standard corresponding to its primary NAICS code, it will not be eligible for any further contracting benefits from its mentor-protégé relationship. However, a change in the protégé's size status does not generally affect contracts previously awarded to a JV between the protégé and its mentor.</p>	<p>Once a protégé firm no longer qualifies as a small business for the size standard corresponding to the NAICS code under which SBA approved its mentor- protégé relationship, any JV between the protégé and its mentor will not continue to receive the exclusion from affiliation authorized by paragraph (a) of this section. However, a change in the protégé's size status does not generally affect contracts previously awarded to a JV between the protégé and its mentor. And, for contracts with durations for more than five years, no more than 120 days prior to exercising any option thereafter, once the protégé no longer qualifies as small for the size standard corresponding to the NAICS code assigned to the contract, the JV will not be able re-certify itself to be a small business for that contract. The rules set forth in § 121.404(g)(3) of this chapter apply in such circumstances.</p>	<p>A JV between a protégé and its mentor will qualify as a small business for any procurement for which the protégé individually qualifies as small. Once a protégé firm no longer qualifies as a small business for the size standard corresponding to the NAICS code under which SBA approved its mentor-protégé relationship, any JV between the protégé and its mentor will no longer be able to seek additional contracts or subcontracts as a small business for any NAICS code having the same or lower size standard. A JV between a protégé and its mentor could seek additional contract opportunities in NAICS codes having a size standard for which the protégé continues to qualify as small. A change in the protégé's size status does not generally affect contracts previously awarded to a JV between the protégé and its mentor. And, for contracts with durations of more than five years (including options), where size re-certification is required for contracts of over five years no more than 120 days prior to the end of the fifth year of the contract and no more than 120 days prior to exercising any option thereafter, once the protégé no longer qualifies as small for the size standard corresponding to the NAICS code assigned to the contract, the JV will not be able re-certify itself to be a small business for that contract. The rules set forth in § 121.404(g)(3) of this chapter apply in such circumstances.</p>

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13 C.F.R. § 125.9	SBA will review the mentor-protégé relationship annually to determine whether to approve its continuation for another year. Unless rescinded in writing as a result of the review, the mentor-protégé relationship will automatically renew without additional written notice of continuation or extension to the protégé firm. The term of a mentor-protégé agreement may not exceed three years, but may be extended for a second three years. A protégé may have two three-year mentor-protégé agreements with different mentors, and each may be extended an additional three years provided the protégé has received the agreed-upon business development assistance and will continue to receive additional assistance through the extended mentor-protégé agreement.	Each mentor-protége agreement may be for an initial period of three years and may be extended an additional three years provided the protégé has received the agreed-upon business development assistance and will continue to receive additional assistance through the extended mentor-protégé agreement.	The term of a mentor-protégé agreement may not exceed six years. If an initial mentor-protégé agreement is for less than six years, it may be extended by mutual agreement prior to the expiration date for an additional amount of time that would total no more than six years from its inception (e.g., if the initial mentor-protégé agreement was for two years, it could be extended for an additional four years by consent of the two parties; if the initial mentor-protégé agreement was for three years, it could be extended for an additional three years by consent of the two parties). Unless rescinded in writing as a result of an SBA review, the mentor-protégé relationship will automatically renew without additional written notice of continuation or extension.
13 C.F.R. § 125.9	NA	NA	If during the evaluation of the mentor-protégé relationship, SBA determines that a mentor has not provided the business development assistance set forth in its mentor-protégé agreement or that the quality of the assistance provided was not satisfactory, SBA may allow the protégé to substitute another mentor for the time remaining in the mentor-protégé agreement without counting against the two-mentor limit.
13 C.F.R. § 125.9	NA	An MP relationship does not count toward the lifetime limit if it is terminated within a year of SBA approval of the MPA.	An MP relationship does not count toward the lifetime limit if it is terminated within 18 months of SBA approval of the MPA (the rationale is that protégé is not benefiting from mentor and shows this through early termination of MPA); if specific small business protégé appears to use 18-month test as means of using many short-term MP relationships, SBA may determine that the business has exhausted its participation in program and won't approve additional MP relationships.

PilieroMazza Overview of Proposed and Final Changes to SBA's Mentor Protégé Rules

Current Rule Citation	Current Rule	Proposed Changes	Final Rule
13 C.F.R. § 125.9	Written agreement must address how the assistance to be provided through the agreement will help the protégé firm meet its goals as defined in its business plan.	Written agreement must specifically identify the business development assistance to be provided and address how the assistance will help the protégé enhance its growth and/or foster or acquire needed capabilities.	Written agreement must specifically identify the business development assistance to be provided and address how the assistance will help the protégé enhance its growth and/or foster or acquire needed capabilities.
13 C.F.R. § 125.9	Protégé may make changes to MPA and seek reconsideration within 45 days of SBA decision to decline MPA; protégé may resubmit new MPA for another mentor 60 days after final decision, reconsidered or not.	Removes reconsideration provision, but permits seeking of another MPA agreement with the same mentor 60 days after the date of the final decision. The protégé may submit another mentor-protégé agreement with a different mentor at any time after the SBA's final decline decision.	Removes reconsideration provision, but permits seeking of another MPA agreement with the same mentor 60 days after the date of the final decision. The protégé may submit another mentor-protégé agreement with a different mentor at any time after the SBA's final decline decision.
13 C.F.R. § 125.9	SBA will review the protégé annual report and may decide not to approve continuation of the agreement if the mentor has not provided assistance or the assistance has not resulted in material benefits or development gains to the protégé.	SBA will review the mentor-protégé relationship annually. SBA will ask the protégé for its assessment of how the mentor-protégé relationship is working, whether or not the protégé received the agreed upon business development assistance, and whether the protégé would recommend the mentor to be a mentor for another small business in the future. SBA may not approve continuation of the MPA where the mentor has not provided the assistance set forth in the mentor-protégé agreement; the assistance provided by the mentor has not resulted in any material benefits or developmental gains to the protégé; or the protégé does not provide information relating to the mentor-protégé relationship in its annual report.	Requires protégé to provide assessment of mentor's performance to SBA during annual review. At any point during the mentor-protégé relationship, protégé can request SBA to intervene on its behalf with mentor if mentor is not providing the business development assistance required in the mentor-protégé agreement that the quality of the assistance provided did not meet its expectations. SBA may not approve continuation of the MPA where the mentor has not provided the assistance set forth in the mentor-protégé agreement; the assistance provided by the mentor has not resulted in any material benefits or developmental gains to the protégé; or the protégé does not provide information relating to the mentor-protégé relationship in its annual report.

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Current Rule Citation	Current Rule	Proposed Changes	Final Rule
13 C.F.R. § 125.9	<p>Where SBA determines that a mentor has not provided to the protégé firm the business development assistance set forth in its mentor-protégé agreement, SBA will notify the mentor of such determination and afford the mentor an opportunity to respond. The mentor must respond within 30 days of the notification, explaining why it has not provided the agreed upon assistance and setting forth a definitive plan as to when it will provide such assistance. If the mentor fails to respond, does not supply adequate reasons for its failure to provide the agreed upon assistance, or does not set forth a definite plan to provide the assistance, SBA will terminate MP relationship when mentor does not provide adequate assistance to protégé. In this case, mentor is ineligible to enter into new MP relationships for two years following termination. If MP JV is performing contracts, SBA may substitute protégé into contracts if protégé is capable of performing alone.</p>	NA	<p>Where SBA determines that a mentor may not have provided to the protégé firm the business development assistance set forth in its mentor-protégé agreement or that the quality of the assistance provided may not have been satisfactory, SBA will notify the mentor of such determination and afford the mentor an opportunity to respond. The mentor must respond within 30 days of the notification, presenting information demonstrating that it did satisfactorily provide the assistance set forth in the mentor-protégé agreement or explaining why it has not provided the agreed upon assistance and setting forth a definitive plan as to when it will provide such assistance. If the mentor fails to respond, does not adequately provide information demonstrating that it did satisfactorily provide the assistance set forth in the mentor-protégé agreement, does not supply adequate reasons for its failure to provide the agreed upon assistance, or does not set forth a definite plan to provide the assistance, SBA will terminate MP relationship when mentor does not provide adequate assistance to protégé. In this case, mentor is ineligible to enter into new MP relationships for two years following termination. If MP JV is performing contracts, SBA may substitute protégé into contracts if protégé is capable of performing alone.</p>

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13 C.F.R. § 125.18	<p>An SDVO SBC must submit the following representations with its initial offer (which includes price) on a specific contract:</p> <ul style="list-style-type: none"> (1) It is an SDVO SBC; (2) It is small under the NAICS code assigned to the procurement; (3) It will comply with the limitations on subcontracting requirements set forth in § 125.6; (4) If applicable, it is an eligible JV; and (5) If applicable, it is an eligible nonmanufacturer. 	<p>In order for a business concern to submit an offer and be eligible for the award of a specific SDVO contract, the concern must submit the appropriate representations and certifications at the time it submits its initial offer (which includes price or another formal response to a solicitation) to the CO, including, but not limited to, the fact that:</p> <ul style="list-style-type: none"> (1) It is small under the size standard corresponding to the NAICS code(s) assigned to the contract; (2) It is an SDVO SBC and clarifies what representations and certifications an SDVOSB must submit as part of its offer; and (3) There has been no material change in any of its circumstances affecting its SDVO SBC eligibility. 	<p>In order for a business concern to submit an offer and be eligible for the award of a specific SDVO contract, the concern must submit the appropriate representations and certifications at the time it submits its initial offer (which includes price or another formal response to a solicitation) to the CO, including, but not limited to, the fact that:</p> <ul style="list-style-type: none"> (1) It is small under the size standard corresponding to the NAICS code(s) assigned to the contract; (2) It is an SDVO SBC; and (3) There has been no material change in any of its circumstances affecting its SDVO SBC eligibility.
13 C.F.R. § 125.18	Required provisions of SDVO JV agreements.	NA	Revised required provisions of SDVO JV agreement analogous to the revised required provisions for 8(a) JVs.
13 C.F.R. § 126.606	SBA authorized to release a follow-on requirement previously performed through the 8(a) BD program for award as a HUBZone contract only where neither the incumbent nor any other 8(a) Participant can perform the requirement.	NA	A procuring activity may request that SBA release an 8(a) requirement for award as a HUBZone contract under the procedures set forth in § 124.504(d).
13 C.F.R. §§ 126.616, 126.618	References 8(a) MPP.	Remove references to 8(a) MPP as it will be part of ASMPP.	Remove references to 8(a) MPP as it will be part of ASMPP.
13 C.F.R. §§ 127.503(h), 127.504	NA	More clearly defines WOSB/EDWOSB eligibility requirements and conforms requirements to those of other socioeconomic categories, including general eligibility, JVs, orders and BPAs against MACs, limitations on subcontracting, non-manufacturers, and recertification.	Changes section heading of 127.504 to "What requirements must an EDWOSB or WOSB meet to be eligible for an EDWOSB or WOSB contract?"; moves recertification procedures for WOSBs from 127.503(h) to 127.504(e). More clearly defines WOSB/EDWOSB eligibility requirements, conforms requirements to those of other socioeconomic categories, including general eligibility, JVs, orders and BPAs against MACs limitations on subcontracting, non-manufacturers, ostensible subcontractor, and recertification.

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13 C.F.R. § 127.506	Required provisions of EDOWSB or WOSB JV agreements.	NA	Revised required provisions of EDWOSB JV agreement analogous to the revised required provisions for 8(a) JVs.
13 C.F.R. §§ 134.318, 121.1103	CO must stay the solicitation if she/he receives service copy of NAICS code appeal.	CO must stay the date of closing of receipt of offers; CO must amend solicitation to reflect any NAICS change OHA requires based on appeal.	CO must stay the date of closing of receipt of offers upon receipt of notice of NAICS appeal to OHA; if OHA grants the appeal, CO must amend solicitation to reflect new NAICS code, and all future solicitations for the same supplies or services must also use the new NAICS code.

FOR YOUR EYES ONLY