

SBA's New Mentor-Protégé Program Is a Powerful Business Development Tool

By Jon Williams and Ambika Biggs

Working with the federal government is not for the faint of heart. Whether you have done it for years, or are just thinking about entering the federal market, there are many rules of the road you need to know – and the rules are constantly changing. You also need to have the right mix of past experience, capabilities, and capacity to win work from federal agencies. Particularly for small businesses, the realities of the federal market can be daunting and difficult to navigate on your own.

Fortunately, businesses looking to work with federal agencies do not have to go it alone. Last year, the U.S. Small Business Administration (“SBA”) established a new mentoring program designed to pair small businesses with larger business mentors in their industries. The objective of SBA’s mentoring program is to help small businesses obtain critical technical, management, financial, and other assistance needed to grow their businesses and be more competitive for federal contracting opportunities. At the same time, the program gives the larger business mentors

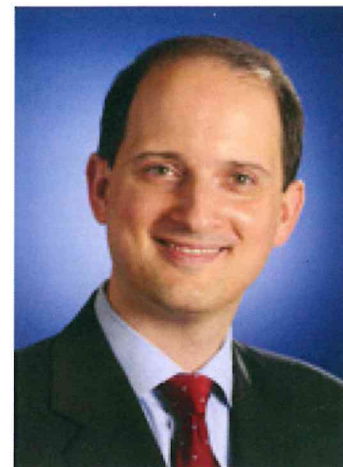
greater access to federal contracts that are reserved for small businesses.

We have been eagerly anticipating this new mentor-protégé program since 2010, when Congress first told SBA to create it. Many of the small and minority-owned businesses we represent are excited that this new program is now open for business. Dozens of firms already have been accepted into the program and are starting to take advantage of it.

This article provides an overview of the mentoring program, the eligibility requirements, and how the mentoring relationship benefits both small and large businesses. Is SBA’s new mentoring program right for you? Read on to find out.

Overview of the Program

SBA’s new Mentor Protégé Program, or “MPP,” is modeled on a program that SBA has used for several years in its 8(a) Business Development Program. To be admitted into the 8(a) MPP, a small business must first be certified by SBA in the 8(a) Program. In the Small Business Jobs Act of 2010 and the National Defense Authorization Act of 2013,



Jon Williams

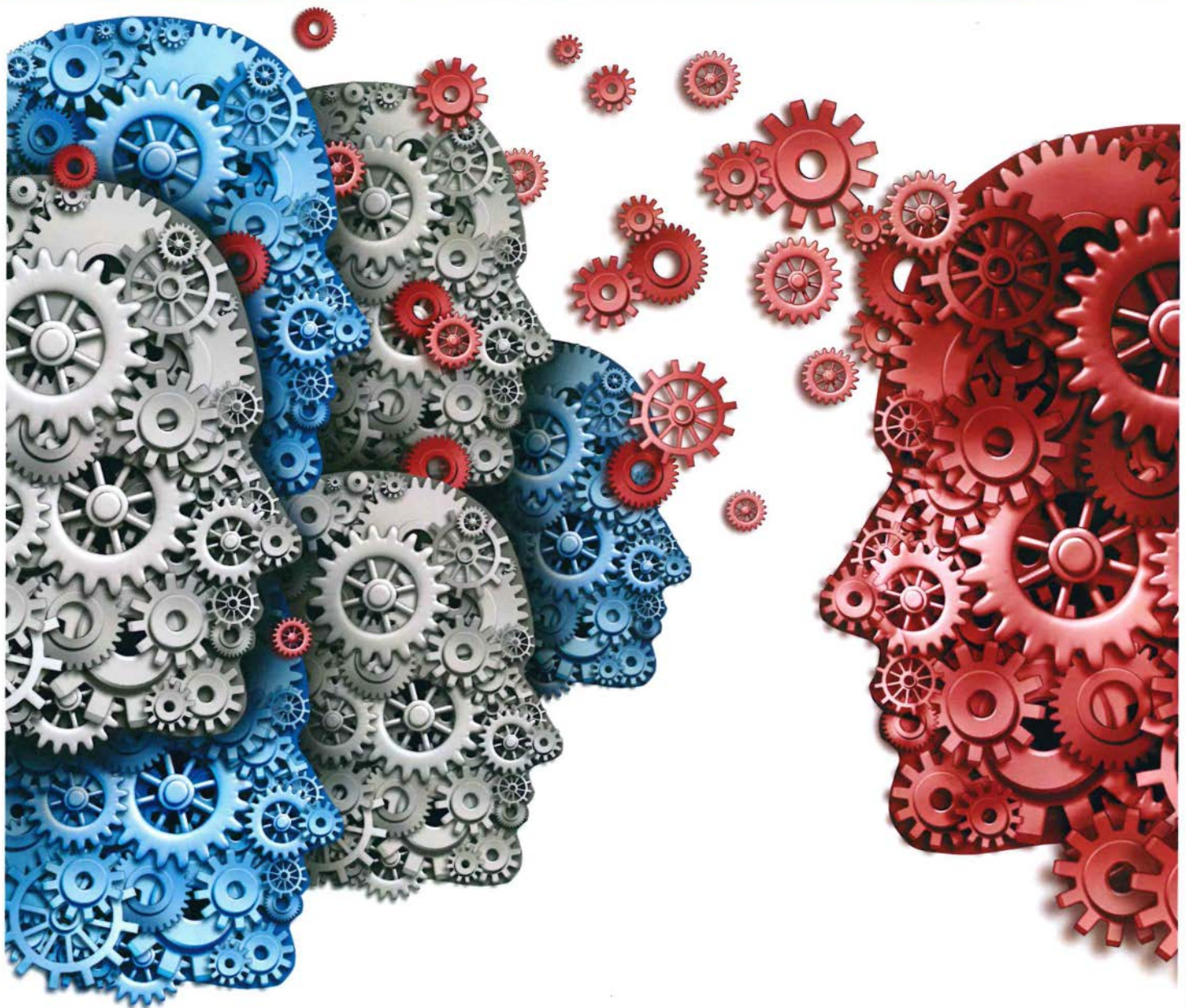


Ambika Biggs

Congress directed SBA to expand the MPP to make it available to all small businesses. This was a great development for all small businesses because it means the benefits of the mentoring relationship, which were previously available only to 8(a) participants, are now open to woman-owned small businesses, veteran-owned small businesses, HUBZone firms, and all other types of small businesses.

Under the new MPP program, a mentor firm provides its protégé with various forms of business development assistance and helps the protégé improve its ability to compete in the government contracts arena. The assistance from the mentor can include working on subcontracts and joint ventures together for federal projects, as well as providing financial support

Government News



to the protégé in exchange for up to a 40% ownership interest in the protégé. Mentors also may provide assistance to protégés with proposal writing, internal management processes and procedures, and technical and skill development, among many other areas.

SBA has streamlined the eligibility requirements for the new MPP. To qualify as a protégé, a firm simply needs to be a small business in its primary industry (as determined by the North American Industry Classification System, or “NAICS”) and it must be in need of mentoring. A mentor,

on the other hand, may be a large or small business that is for profit (non-profits cannot be mentors). Additionally, a mentor must have good character and must be able to provide the mentoring the protégé needs.

A protégé will typically have only one mentor at one time, and the same is true for mentors. However, SBA will permit a protégé to have up to two mentors at one time, if the protégé can demonstrate that both relationships would be beneficial and not duplicative. Similarly, SBA will permit mentors to have up to three protégés

at one time if the mentor can support the three relationships.

Additionally, SBA does not limit the number of protégés a mentor may have in its lifetime as a business – a mentor may not have more than three protégés at one time, but it can have an unlimited number of protégés throughout its existence. Unfortunately, the rules are much more restrictive for protégés in this regard. A protégé may only have two mentors – ever. We are hopeful SBA may relax this requirement in the future. However, based on the current rules, a potential

protégé has to be very selective and perform careful due diligence on prospective mentors because small businesses only have two opportunities for mentoring relationships in SBA's MPP.

Adequately vetting your potential partner is also critical because the relationship could be short lived. An SBA mentor-protégé relationship can last up to six years, one three-year term followed by a second three-year term. However, the arrangement is only guaranteed to last for one year. Both parties have to commit to the arrangement for 12 months, and after that, either party can terminate the relationship upon 30 days' notice. SBA, which will monitor the arrangements, may also decide to cancel it. Therefore, to give yourself the best chance of maximizing the benefits and term of the relationship, it is advisable to spend time getting to know your potential partner before committing to the relationship.

Application Process

SBA began accepting applications for the new MPP in October 2016, and its online application was available as of November 2016. Now, all applications should be submitted online, at www.certify.sba.gov.

As of this writing, SBA is processing applications very quickly. The main component of the application is the Mentor-Protégé Agreement. SBA has a template agreement on its website, which simplifies the drafting process. However, the agreement is not a cookie-cutter document. Your application and your mentoring relationship will benefit if you spend time upfront with your partner to carefully identify the needs of the protégé and how the mentor can help to meet those needs. This information should be spelled out in the Mentor-Protégé Agreement, with a proposed timeline for the assistance and metrics for how the parties will measure the success of the relationship.

Taking Advantage of the Program

Once SBA approves your application, you are ready to begin taking full advantage of the program. One of the main advantages of the new MPP is that it allows a small business protégé to form a joint venture with a large business mentor. Under SBA's joint venture rules, a small business can only joint venture with other small businesses for federal contracts that are set aside for small businesses. However, there is an exception to this rule for companies in SBA-approved mentor-protégé relationships. The exception allows a large business to participate in a joint venture with its SBA-approved protégé to pursue federal contracts reserved for small businesses.

A joint venture involves forming a separate entity owned by the protégé and mentor and combines the personnel, capabilities, and resources of both firms. This structure can provide a real competitive advantage when pursuing small business contracts. A joint venture provides advantages to the large business mentor, in terms of greater work share and visibility with the customer, which the mentor would not enjoy in the traditional subcontractor role. The joint venture benefits the protégé because it allows the protégé to pursue larger projects that it would not otherwise be able to pursue and win on its own. In short, although joint venturing is not the only reason to pursue a mentor-protégé relationship, it is a significant advantage that should be strongly considered by protégés and mentors.

Another advantage of the program is that SBA provides an exemption from affiliation for the assistance provided under the mentoring relationship. Under SBA's rules, the agency may find that a small business is "affiliated" with a large business if the two firms have such a close relationship that the small business is too dependent on the large business, or the large business otherwise has the ability to control the small firm. If SBA finds

that a small business is affiliated with a large business, SBA will combine the two firms and, as a result, the small business will no longer be eligible for small business contracts. Because affiliation can have such disastrous consequences for small businesses (and their large business partners), it is critical to mitigate or avoid affiliation. An SBA-approved mentor-protégé relationship does not avoid all types of affiliation, but it does provide a critical exemption from affiliation based on the assistance provided under the mentoring relationship.

Even if a company does not ordinarily compete for federal contracts, entering into a mentor-protégé relationship can be beneficial to the growth of a protégé firm. Entering into such a relationship can help the protégé firm in setting its goals for future growth and assessing what it needs to reach them. Conversely, the large business is better able to meet its supplier diversity program goals with a more robust small business supplier base, making the relationship a true win-win for the protégé and the mentor.

Conclusion

SBA's new MPP is an exciting development for all small businesses as well as large businesses looking to work with the federal government or to meet commercial supplier diversity goals. We see a lot of growth potential for firms taking advantage of this program, and many of our clients have been early adopters. For these reasons, the new MPP should be on your radar and we recommend taking the time to explore if an SBA-mentoring relationship is right for you.

Jon Williams is a partner with PilieroMazza PLLC, focusing on government contracting and small business issues, and Ambika Biggs is an associate working in the same areas as well as litigation. Jon and Ambika may be reached at (202) 857-1000 or jwilliams@piliromazza.com and abiggs@piliromazza.com.