

# LEGAL ADVISOR



## A PilieroMazza Update for Federal Contractors and Commercial Businesses

### GOVERNMENT CONTRACTING

#### The All Small Mentor/Protégé Program, One Year Later: Lessons Learned and a Key Milestone

By Katie Flood



In October, it will be one year since SBA began accepting applications to its All Small Mentor-Protégé Program, which was modeled after its existing 8(a) Mentor/Protégé Program. During this time, we have been able to draw some lessons regarding how SBA has approached the All Small Mentor/Protégé Program application

process, including the types of questions that applicants have received as SBA has vetted their submissions. In addition, now that we are also approaching the one-year mark of the approval of the first All Small Mentor/Protégé relationships, one of the first major program compliance milestones will soon be upon us, in that protégés will soon need to file their first annual reports regarding the benefits they have received from their mentors.

Unlike the 8(a) Mentor/Protégé Program, SBA has processed applications for admission to the All Small Program at a rapid clip: SBA reports that its average approval time for an All Small Mentor/Protégé application is 8-12 business days, as opposed to the typical months-long application process for the 8(a) Mentor/Protégé Program.

There is also a stark difference in the amount of documentation applicants need to produce for the All Small application. Indeed, if the protégé is seeking assistance from the mentor under its primary NAICS code, the applicants need only submit a copy of the mentor/protégé agreement; the protégé's business plan; the

mentor's and protégé's completed certificates of training for the [certify.sba.gov](http://certify.sba.gov) portal; and the mentor's DUNS number. If the protégé is applying under a secondary code, the protégé will also need to submit evidence that it has performed prior work in that particular industry – for example, a copy of a contract, subcontract, invoices, or other type of indication that the protégé has done work under that code. Unlike in the 8(a) Mentor/Protégé Program, unless a specific question arises, a potential mentor is not required to prove its qualifications or “fitness” to serve in the mentoring role, such as through the production of financial information or tax returns.

Once the application has been submitted, SBA will question applicants that submit under secondary codes if they have failed to provide sufficient evidence of the work performed under that code. SBA will also ask applicants to produce copies of existing mentor/protégé agreements that either the mentor or protégé have entered into, to verify that the assistance provided by the mentor to the protégé is not duplicative of assistance the protégé already receives under another mentoring agreement.

Application considerations aside, now that we are approaching the program's one year mark, those early applicants that were approved in the program's early days must look towards compliance reporting obligations. One of the major compliance metrics of the mentor/protégé agreement is that the protégé must report, within 30 days of the anniversary of SBA's approval of the mentor/protégé agreement, the following information for the preceding year:

- All technical and/or management assistance provided by the mentor to the protégé;
- All loans to and/or equity investments made by the mentor in the protégé;

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- All subcontracts awarded to the protégé by the mentor and all subcontracts awarded to the mentor by the protégé, and the value of each subcontract;
- All federal contracts awarded to the mentor-protégé relationship as a joint venture (designating each as a small business set-aside, small business reserve, or unrestricted procurement), the value of each contract, and the percentage of the contract performed and the percentage of revenue accruing to each party to the joint venture; and
- A narrative describing the success such assistance has had in addressing the developmental needs of the protégé and addressing any problems encountered.

The protégé is also required to report the mentoring services it receives by category and hours, and certify to SBA whether there has been any change in the terms of the mentor/protégé agreement.

In turn, SBA will review the protégé's report on the mentor/protégé relationship and may decide not to approve continuation of the agreement if it finds that the mentor has not provided the assistance set forth in the mentor/protégé agreement or that the assistance has not resulted in any material benefits or developmental gains to the protégé. SBA has indicated that it will provide protégés with a 60-day notice regarding the benefits reporting requirement.

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Mentors and protégés that form joint ventures must also ensure that they are complying with their obligation to report to SBA on their compliance with the performance of work requirements. In addition to the certification made upon contract award, the protégé is required to submit a report to the relevant contracting officer and

to SBA, signed by an authorized official of each partner to the joint venture, explaining how the performance of work requirements are being met for each contract set aside or reserved for small business that is performed by the joint venture during the year. A similar report must be filed at the conclusion of contract performance, detailing how the joint venture met the performance of work requirements for the contract.

To date, there have been no reported decisions at SBA's Office of Hearings and Appeals ("OHA") which discuss how SBA will treat specific affiliation considerations between mentors and protégés under the new All Small Mentor/Protégé Program. For example, will OHA treat affiliation considerations differently under the All Small Mentor/Protégé Program than it does under the 8(a) Mentor/Protégé Program? But, based on the rapid approval rate of these applications, and the number of mentor/protégé joint ventures that are currently or soon to be performing contracts, we are sure to see some unique situations arise for these All Small Mentor/Protégé relationships. This will be especially true with regard to the compliance milestones that will be cropping up with the one year anniversary of SBA's acceptance of applications.

If you have any questions regarding the All Small Mentor/Protégé Program, joint venture formation, or compliance considerations, please do not hesitate to contact us.

ABOUT THE AUTHOR: Katie Flood is counsel with PilieroMazza in the Government Contracts Group. She may be reached at [kflood@pilieromazza.com](mailto:kflood@pilieromazza.com).

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