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IN FOCUS

September 2, 2025

Small Business Joint Ventures in Federal Procurement

Joint ventures are teams of businesses that work together to obtain and perform a federal contract or subcontract. Certain joint ventures may seek and perform contracts specifically designated for "small" business contractors. For these contracts, joint ventures may consist of two or more firms and may consist of all small businesses, or a pair of firms with a mentor-protégé agreement in which one firm, the protégé, qualifies as a small business (13 C.F.R. §125.8). This In Focus provides an overview of the requirements and benefits for joint ventures seeking federal contracts, in addition to select policy issues of congressional concern.

Firm Size Standards for Small Businesses

Outside of a joint venture formed by a mentor-protege pair, each firm must be small under the size standard corresponding to the North American Industry Classification System (NAICS) code assigned to the contract. Size standards are maintained by the Small Business Administration (SBA) and expressed in terms of the number of employees or revenue (average annual receipts). These measures vary by industry and each standard is a threshold which a business (including its subsidiaries and affiliates) must fall below in order to remain classified as a small business. Size standards are maintained "to ensure that a concern that meets a specific size standard is not dominant in its field of operation" (13 C.F.R. §121.102(b)). For joint venture teams that consist of a small and non-small business (a mentor-protégé team), the protégé must qualify as a small business concern.

Mentor-Protégé Programs

Small business mentor-protégé programs allow small businesses to work on federal contracts with more experienced businesses in mutually beneficial relationships. Mentors and their protégés may form joint ventures that are eligible to perform federal contracts set aside or reserved for small businesses. A key goal of these programs is to help small businesses become competitive contractors.

The SBA offers a government-wide mentor-protégé program and certain other agencies offer similar programs specific to their contractors. For example, the Department of Defense (DOD) has a mentor-protégé program for suppliers on DOD contracts and the Department of Homeland Security has its own program. Apart from the DOD program, a department or agency may not carry out a mentor-protégé program unless the SBA Administrator approves the plan for such a program (13 C.F.R. §125.10(a)). Examples of other agency-specific, SBA-approved mentor-protégé programs include the Department of Energy's program and NASA's program.

The current SBA mentor-protégé program dates to the 112th Congress when P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013, authorized the SBA to establish a mentor-protégé program for "all" small businesses, generally identical to an existing 8(a) Mentor-Protégé Program for 8(a) Business Development Program participants. This new "All Small Mentor-Protégé Program" became effective August 24, 2016, and eventually merged with SBA's 8(a) Mentor-Protégé on November 16, 2020, becoming the present-day SBA Mentor-Protégé Program.

SBA Program Participant Requirements

To qualify for SBA's mentor-protégé program, mentor firms must be able to "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" (13 C.F.R. §125.9(b)(1)(iii)). A mentor can be any for-profit business "that demonstrates a commitment and the ability to assist small business concerns," including another small firm, but non-small firms often act as mentors (13 C.F.R. §125.9(b)). If forming a joint venture with a small business protégé, a mentor's joint venture can qualify as a small business for any government prime contract or subcontract if the protégé qualifies as small; and may seek contracts for specific types of small businesses (i.e., small business set-aside, 8(a), HUBZone, Service-Disabled Veteran-Owned Small Business, or Women-Owned Small Business set-aside) for which the protégé firm qualifies (13 C.F.R. §125.9(d)(1)).

A protégé firm must qualify as small for the size standard corresponding to its primary NAICS code or "identify that it is seeking business development assistance with respect to a secondary NAICS code" and qualify as small for that industry (13 C.F.R. §125.9(c)(1)). Although a protégé firm can generally have one mentor at a time, SBA can grant approval for a second mentor (13 C.F.R. §125.9(c)(2)).

Protégé firms are responsible for certain mentor-protégé program participation reporting requirements, described at 13 C.F.R. §125.9(g). Annually, protégés must submit information to the SBA for an evaluation of its mentor-protégé relationship, including

- technical and/or management assistance provided by its mentor;
- loans to and/or equity investments made by its mentor;
- federal contracts awarded to the mentor-protégé relationship as a joint venture;

- subcontracts awarded to the protégé by the mentor and all subcontracts awarded to the mentor by the protégé;
- a narrative about how a mentor's assistance helped address the "developmental needs of the protégé."

SBA Program Mentor-Protégé Agreements

If a joint venture that includes a non-small business wishes to perform a contract that is set aside or reserved for small businesses, the SBA requires a written mentor-protégé agreement, approved by the SBA's Associate Administrator for Business Development or designee (13 C.F.R. §125.9(e)(3)). Mentor-protégé agreements may also be used by mentor-protégé pairs of small businesses.

SBA will not approve a mentor-protégé agreement "if SBA determines that the agreement is merely a vehicle to enable the mentor to receive small business contracts," but is instead looking for an agreement that provides "real developmental gains to the protégé" (13 C.F.R. §125.9(e)(3)). Various required agreement provisions are described at 13 C.F.R. §125.9(e), including a description of "how the assistance will help the protégé enhance its growth." The mentor-protégé agreement must be approved prior to submission of an offer for a small business contract to (13 C.F.R. §125.9(d)(1)(i)).

The term of a mentor-protégé agreement may not exceed six years (13 C.F.R. §125.9(e)(5)). However, a mentor firm may find other protégés with which to do business. A mentor may have more than one protégé at a time but generally may not have more than three at one time (13 C.F.R. §125.9(b)(3)(ii)). There are also limitations on the contracts that mentors may pursue and hold when they have more than one protégé (13 C.F.R. §125.9(b)(3)(i); 13 C.F.R. §125.9(b)(4)).

In some circumstances, the SBA may decline to approve continuation of a mentor-protégé agreement when evaluating a particular mentor-protégé relationship (13 C.F.R. §125.9(g)(5)). This might occur when a mentor has not provided the agreed-upon assistance or the assistance "has not resulted in any material benefits or developmental gains to the protégé."

Joint Venture Agreements

Regardless of whether a joint venture is a mentor-protégé team, it must have a written joint venture agreement to contract for the government as a team. If a joint venture is between a mentor and protégé, among other requirements, the joint venture agreement must designate a small business as the managing venturer of the joint venture, which "is responsible for controlling the day-to-day management and administration of the contractual performance of the joint venture." A joint venture agreement must also contain a provision that "the small business participant(s) must receive profits from the joint venture commensurate with the work performed by them" (13 C.F.R. §125.8(b)(2)(iv)). Additionally, the small business must own at least 51% of the joint venture entity (13 C.F.R. §125.8(b)(2)(iii)).

Once a joint venture receives a contract, the small business partner must perform at least 40% of the work and the work performed by the small business partner in the joint venture must be "more than administrative or ministerial functions so that it gains substantive experience" (13 C.F.R. §125.8(c)). Failure to enter into a compliant joint venture agreement or to perform a contract in accordance with one may be considered as grounds for suspension or debarment from receiving future federal financial assistance (e.g., contracts or grants; 13 C.F.R. §125.8(i)).

Congressional Issues

Congressional interest in mentor-protégé programs has been driven primarily by concerns over program consolidation and consistency. P.L. 111-240, the Small Business Jobs Act of 2010, required the U.S. Government Accountability Office (GAO) to study mentor-protégé programs "to determine whether the programs and relationships [were] effectively supporting the goal of increasing the participation of small business concerns in government contracting." That GAO study found variation across agency-specific mentor-protégé programs. During the 112th Congress, P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013, sought to reduce such variation by requiring SBA approval of programs.

Since the completion of the GAO study and SBA consolidation of its own mentor-protégé programs, a 2019 report from the SBA Office of the Inspector General (IG) found that SBA officials did not collect all required evaluation reports or conduct all required annual evaluations of mentor-protégé relationships. Specifically, the IG found that fewer than 24% of the mentor-protégé relationships had been evaluated during the study period. The report also stated that "SBA leadership did not prioritize the program in terms of staffing levels." Congress may consider additional assessments of the program to support program oversight and monitor resource needs. Congress may also be interested in further studies of the program's impact on small businesses in the federal market.

Congress may request further reporting on the contracts and award dollars obligated to joint ventures. Although protégé reporting exists, aggregated information summarizing the role that joint ventures have taken among contractors could potentially assist with program evaluation and shed light on how other small business contractors may be affected by joint venture participation in the federal market. SBA regulations currently require each protégé to annually report their joint venture contracts, "designating each as a small business set-aside, small business reserve, or unrestricted procurement," and denoting the value of each contract. For instance, DOD's mentor-protégé program has reporting requirements for both mentors and protégés, including protégé data on contract participation. Aggregated data on the total number of contracts and amount of contract awards obligated to joint ventures may offer insights not currently available to policymakers and program stakeholders.

Ultimately, Congress may seek to ensure it has the information and data needed to debate whether or not, and how well, mentor-protégé programs and joint ventures are promoting a federal small business supplier base and benefiting the federal government.

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IF13095

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