

## SBA Proposes Rules to Establish a Mentor-Protégé Program for all Small Businesses

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On February 5, 2015, the SBA issued proposed rules that would establish a government-wide mentor-protégé program for all small business types, including participants in the HUBZone, Women-Owned Small Business and Service Disabled Veteran Owned Small Business programs. These rules would implement provisions of the Small Business Jobs Act of 2010 and the National Defense Authorization Act for Fiscal Year 2013. **If you are interested in commenting, the SBA has asked for comments to be filed by April 6, 2015.**

Below are some of the highlights of the proposed rules:

1. **Affiliation Exception.** Generally, under SBA regulations, two companies that form a joint venture are considered affiliates. The proposed rules will establish an exception in that a mentor and protégé under the new program will not be considered affiliates on the basis of the approved mentor-protégé joint venture. This is already permitted for 8(a) contractors, but is proposed to be expanded to other small businesses.
2. **Certification.** The proposed rules require the mentor-protégé to provide additional certifications and reports. These certifications will lead to a higher level of scrutiny by the government and an increase in the risk of a contractor being investigated for misrepresentation or fraud. Also, small business performance of work standards may be implicated by the new mentor-protégé program rules.
3. **Mentor-Protégé Agreements.** Under the proposed rules, the mentor-protégé agreements must be in writing and must demonstrate that the assistance to be provided by the mentor will result in real development gains for the protégé. In addition to the initial SBA approval of the mentor-protégé agreement, the SBA will require annual reviews of the mentor-protégé relationship to determine continued approval. Also, the proposed rules will limit the duration of a mentor-protégé agreement to three years. The SBA has invited comments on whether to limit the time for “open” or “closed” mentor-protégé applications during which the SBA will accept and review applications or whether the SBA should limit the number of applications reviewed and approved during a year. The SBA has also invited comments on the three-year duration limit of the mentor-protégé agreement.
4. **Mentors and Protégés.** The proposed rules have included guidelines for both mentors and protégés. The proposed rules limit the number of protégés a mentor can have to three. A protégé cannot become a mentor and also retain a protégé status. Contrary to the current rules, the proposed rules will permit any firm that qualifies as small to qualify as a protégé in either the small business or 8(a) mentor-protégé programs. Thus, any business that is small (annual

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receipts less than \$36M) can qualify as a protégé. In order to ensure that only small businesses qualify as protégés, the proposed rules will require an affirmative determination of size, similar to the size protest or determination process, not self-certification. For those contractors already certified as small as part of a size determination or appeal, the contractor will be required to certify that there have been no changes to its size status since the determination.

5. **Joint Ventures under a Mentor-Protégé Agreement.** Joint venture agreements must be in writing. A joint venture may exist as a partnership, a limited liability company or other legal form. The proposed rules will restrict whether a joint venture may be populated or not. Under the current rules, the joint venture partners are free to choose whether to populate the joint venture, i.e., whether to hire employees to perform the contract or just hire administrative employees or not hire any employees. The proposed rules will prohibit a joint venture from populating the joint venture with employees “intended to perform the contract.” The proposed change will allow the SBA to more effectively determine that the protégé benefits from and controls the joint venture and to more readily determine that the protégé is performing the minimum required 40% of the work with its own forces as required by the SBA’s performance of work requirements. The proposed rules will permit populating the joint venture with administrative employees only.
6. **HUBZone Joint Ventures.** Under the proposed rules, HUBZone contractors will be allowed to joint venture with a SBA-approved mentor.
7. **New Joint Ventures Certifications and Performance of Work Reports.** Joint ventures will be required to submit an annual report to the contracting officer and the SBA certifying compliance with the SBA regulations and the joint venture agreement. The report will also be required to explain how the joint venture has met the small business performance of work requirements for the contract. This new requirement is a method to detect fraudulent contracting and to deter wrongdoing.
8. **Tracking Joint Venture Awards.** The SBA states that it wants to track awards to joint ventures, but it has not yet determined what approach will be used. The SBA stated that the purpose of tracking joint venture awards is to deter fraudulent or improper conduct.

You may submit comments, identified by RIN: 3245-AG24: (1) electronically at Federal eRulemaking Portal, available at [www.Regulations.gov](http://www.Regulations.gov), follow the instructions for submitting comments, or (2) by mail or hand-delivery to Brenda Fernandez, US Small Business Administration, Office of Government Contracting, 409 3rd Street SW, 8th Floor, Washington, DC 20416.

You may also access the proposed rules [here](#).

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*Kathy concentrates her practice on construction, real estate, business litigation and business matters. She is experienced in handling public and private construction claims and disputes, including contract issues, mechanic's lien, stop notice and payment bond claims, and delay, disruption and inefficiency claims. Kathy is also experienced in handling general business litigation, including, contractual disputes, real property title disputes, easement disputes, partnership disputes and alter ego liability. She has represented general contractors, subcontractors, public and private owners, sureties and title companies in various matters and capacities over the course of her career.*