



## **8(a) firms have choice in mentor-protégé programs: how to compare?**

Small businesses certified as 8(a) Business Development Program participants by the Small Business Administration now have a greater choice of mentor-protégé programs.

The 8(a) companies can choose from either the SBA's longstanding 8(a) Mentor Protégé Program or its newer All Small Mentor-Protégé Program, John W. Klein, associate general counsel for procurement law at the SBA, confirmed to *Set-Aside Alert* in an email.

And while having more options could be beneficial, it also may be creating challenges.

### **8(a) Mentor-Protégé Program**

For many years, the SBA offered only one mentoring program, which was exclusively for 8(a)s. The SBA's 8(a) mentoring program was designed to give those disadvantaged firms a leg up in forming partnerships with larger companies.

The 8(a) mentor-protégé program was the most robust among civilian agencies. SBA officials have said in recent months that about 400 to 450 mentor-protégé agreements are in effect in the 8(a) Mentor-Protégé Program.

### **All Small Mentor-Protégé**

In the defense authorization bill of 2013, Congress granted authority for, but did not order, the creation of a governmentwide mentor-protégé program open to all small businesses.

The SBA launched the All Small Mentor Protégé Program in October 2016. It has been very popular, with 250 mentor-protégé agreements approved thus far, according to the SBA website.

### **8(a) choices**

The 8(a)s now must choose between the two mentorship programs.

"8(a)s have a choice. They can choose either option or both, but each program has different attributes. It is too early to tell which one is more advantageous," Jon M. DeVore, government contracting attorney with Birch, Horton, Bittner and Cherot PC, told *Set-Aside Alert*.

### **8(a) joint ventures**

One major difference is that in the 8(a) Mentor-Protégé Program, any 8(a) joint venture with its mentor requires SBA District Office “involvement and approval,” according to Klein. That means any joint ventures formed in the 8(a) mentoring program need to be individually approved by the SBA district office assigned to that 8(a).

That is not the case for the All Small mentoring program. Joint ventures formed by 8(a)s or any other small business under the All Small program do not require any SBA approvals. There may be some benefits to the 8(a) companies in having their joint venture agreements reviewed and approved by the SBA district office, DeVore said.

“It can assure that the small business is not agreeing to egregious terms,” DeVore said.

At the same time, requiring SBA district office approval for each joint venture has the potential to slow down the process significantly, delaying the ability to win contracts, according to Brad Reaves, government contracting attorney with Reaves Coley PLLC. Gaining SBA district office approvals “is a much more bureaucratic and drawn-out process,” Reaves told *Set-Aside Alert* in an interview.

“It would be difficult (to get a joint venture approved) with any speed,” he said. Another potential difficulty is that with the popularity of the All Small program, and its ease of creating joint ventures, it potentially creates competition with the 8(a) Mentor-Protégé program, Reaves said. By allowing all types of small businesses to form joint ventures it may “dilute” the appeal of joint ventures with 8(a)s, Reaves added.

### **8(a) exemption from affiliation**

In both mentorship programs, the 8(a) joint venture with its larger business partner would get an exclusion from the prohibition on affiliation, according to Klein. That means that a joint venture is considered “small” if the protégé “qualifies as small individually under the size standard corresponding to the NAICS code assigned to the contract, and (if) the joint venture meets SBA's rules requiring control in the protégé,” Klein says.

Such a joint venture is then eligible to perform any contract for which the protégé is eligible to perform, Klein wrote. In other words, if an 8(a) forms a joint venture under either mentorship program, the joint venture can perform an 8(a) contract.

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*Written by Alice Lipowicz, Editor*