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# **Federal Contractor's Guide to the SBA's October 2020 Final Rule –**

## **Part II: Joint Venture Requirements and the Consolidation of the SBA Mentor Protégé Programs**

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# Today's Agenda

- **Final Rule Consolidates Mentor-Protégé Programs**
- **Additional Changes to Mentor-Protégé Relationships**
- **Final Rule Changes to Joint Ventures**
- **Discussion of Practical Application for Federal Contractors (Large and Small)**
- **Preview: Upcoming Webinar Training Sessions**



# Consolidation of the Mentor-Protégé Programs

- One of the biggest Final Rule changes: consolidation of the 8(a) Mentor-Protégé Program with the All-Small Mentor-Protégé Program
- Current SBA-approved 8(a) mentor-protégé relationships will automatically transition to the All-Small Mentor-Protégé Program
  - Time remaining on 8(a) mentor-protégé agreements will carry over
  - 8(a) mentor-protégé relationships will count towards a protégé's lifetime limit in the All-Small Program



# Other Changes to Mentor-Protégé Relationships

- **Use of Protégé Secondary NAICS Codes:** a small business may apply as a protégé using its secondary NAICS code
  - But, the small business must demonstrate **prior experience** in the secondary NAICS code
- Mentors may have protégés with **the same NAICS code** as long as it can demonstrate they will not be in competition
- **Lifetime Limit:** the SBA will **not count** relationships terminated within **18 months** of approval
  - But protégés cannot abuse this grace-period



# Other Changes to Mentor-Protégé Relationships, *cont'd*

- **SBA Intervention on Behalf of Protégé:** protégé may request the SBA to intervene on its behalf at any point to address an underperforming mentor
  - The SBA may terminate relationships if the mentor fails to overcome the protégé's allegations
- **Protégés with Principal Offices in Puerto Rico:** mentors who have maxed out with 3 protégés may take on two additional protégés located in Puerto Rico



# Changes to Joint Venture Rules and Requirements

- **Elimination of the “Three-in-Two” Rule:** JVs may last for **two years** from the date of first contract award, **regardless of how many contracts** it performs in that time
  - The Clock starts when you win your first contract.
- JVs submitting offers for their **first contract** award near the **end of the two-year mark may still qualify** for that contract even if the award occurs after the two-year period



# Changes to Joint Venture Rules and Requirements: Joint Venture Structure

- The **size** of the JV **will not change** if one venturer becomes “other than small” during the course of contract performance
  - But watch out for set-aside orders on unrestricted MACs
- JVs **may be populated** by administrative personnel
- JVs may distribute **profits** to the small business venturer **in excess** of the percentage of work performed
- The subcontracting limitations of 13 C.F.R. 125.6 apply to joint ventures, but a protégé **may not subcontract any of its 40% work requirement** to similarly situated entities



# Changes to Joint Venture Rules and Requirements: 8(a) Joint Ventures

- 8(a) JVs **no longer need SBA approval** of JV agreements prior to award of *competitive* 8(a) set-aside contracts
  - SBA approval is still required for sole-source 8(a) contracts
  - Welcome change for 8(a) JVs that will no longer have to race for SBA approval
- The SBA believes the option for disappointed offerors to **protest the size** of an awardee will keep competitive 8(a) set-aside contract awards in check



# Practical Advice Moving Forward: Industry Perspective

Take advantage of the elimination of the 3 in 2 Rule.

- Be attentive to when the clock actually starts.
- MATOC/IDIQ count as one award
- JV awarded a BPA(Blanket Purchase Agreement) or a BOA(Blanket Order Agreement) do count as separate contracts and will start the clock.
- Subcontracts start the clock.

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# Practical Advice Moving Forward: Industry Perspective

- Utilize the Mentor Protégé Program
- Less complicated application process with the All-small mentor protégé program.

If you are interested in learning more about Atkins, be sure to connect with us and use this link for more information:

<https://www.atkinsglobal.com/en-GB/north-america/about-us/subs-and-suppliers>

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# Upcoming Webinars

The next installment in this series will be on **December 8, 2020** and we will be covering the changes for Small Business and affiliation rules generally.

The last remaining installment will cover updates and changes to the SBA 8(a) Program.

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