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# Mentor-Protégé and Joint Venture Agreements

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NAVFAC Atlantic Industry Forum  
June 22, 2010

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# Federal Mentor-Protégé Programs

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Fourteen federal agencies now have Mentor-Protégé programs for small businesses:

DOD, DOE, FAA, HHS, EPA, GSA, VA, USAID, GSA, NASA, HHS, DHS, DOS, Treasury and SBA 8(a)

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# Qualifications for Participation

Varies depending on the agency:

- **DOD:** WOSB, SDB, SDVOSB, HUBZone, or a qualifying organization employing the severely disabled.
- **DHS:** All small businesses
- **VA:** Veteran and SDVO Small Businesses
- **DOE:** WOSB, SDB, SDVOSB, and HBCUs

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# Protégé - Benefits of Participation

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*All aim for the provision of developmental assistance to enhance the business and technical capabilities of proteges to perform as contractors, subcontractor, and suppliers.*

- Encourages teaming
- Special allowances or incentives for mentors to sub-contract to proteges
- Encourages joint-venture agreements
- 8(a): Allows a MP joint venture to be small on any federal procurement. Allows capital investment by mentor.

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# Mentor-Benefits

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- Ability to award sub-contracts directly or sole source
- Assists in achieving sub-contract goals
- Sub-contracting Opportunities
- Reimbursement/credit (DoD)
- Goodwill
- 8(a): JV as small business
- Development of supply chain enhances bottom line

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# 8(a) Mentor-Protégé Program

***Requirements: A Mentor Can Be an 8(a) Participant in the Transitional Stage, a Firm That Has Graduated From the 8(a) Program, Another Small Business, or a Large Business. A Mentor Must Show Both a Commitment and the Ability to Assist a Protégé in the Program***

***A Mentor Must Demonstrate That It:***

- ☞ Possesses Favorable Financial Health***
- ☞ Possesses Good Character***
- ☞ Is Not on the Federal Debarred or Suspended List***
- ☞ Can Provide Valuable Support to a Protégé***



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# 8(a) Mentor-Protégé Program

## *Requirements to Become a Protégé:*

- ☞ Be an 8(a) Participant That Is in the Program Developmental Stage, or*
- ☞ Be an 8(a) Participant That Has Never Received an 8(a) Contract, or Is Less Than Half the Size Standard Corresponding to Its Primary NAICS Code, and*
- ☞ Be an 8(a) Participant in Good Stan*

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# 8(a) Mentor-Protege Program

## *What Must a MPA Include?*

- ☞ Must Be in Writing*
- ☞ Must Include an Assessment of the Protégé's Needs*
- ☞ Must Include a Description of the Specific Assistance and timeline for the delivery of that assistance.*
- ☞ Must be for at least one year*
- ☞ Must include a provision that either party can terminate with 30 days advance notice to the other party and SBA*

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# 8(a) Mentor-Protégé Program

## Process

- *The Agreement is submitted to the BDS in the protégé's District Office*
- *District Office Recommends Approval or Disapproval of the Agreement and forwards the Agreement to Headquarters*
- *Associate Administrator for 8(a) Business Development approves or disapproves the Agreement*

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# 8(a) Mentor-Protégé Program

## *When Will SBA Not Approve a Mentor-Protégé Agreement?*

*☞ If the Assistance to be Provided is Not Sufficient to Promote Any Real Developmental Gains to the Protégé*

*☞ If the Agreement is Just a Mechanism to Enable a Non-8(a) Participant to Receive 8(a) Contracts*

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# 8(a) Mentor-Protégé Agreements

- MPA regulations, requirements for program and MPA template are available on SBA's website:

[www.sba.gov/8abd](http://www.sba.gov/8abd) - click on Mentor-Protégé Program

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Proposed changes to SBA MP Program and related size Regulations are pending.  
Final rule expected 9/30/10

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# Proposed Changes 8(a) MP

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- Developmental assistance tied to 8(a) firm's business plan
- Allow non-profits to be mentors
- Allow mentors to prove 2 year profitability with financial statements
- Remove allowance of JV small status from other than 8(a) contracts

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# Joint Venture Agreements

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Joint Ventures Arrangements between two or more businesses is now a routine, and often encouraged, practice in federal procurement.

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Joint Ventures are subject to size issues addressed under affiliation in the size regulations:

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13 CFR § 121.103(h)

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# Joint Venture Defined

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13 CFR 121.103(h) reads:

A joint venture is an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally.

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# SBA SBA Definition

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- This means that the joint venture entity cannot submit more than three offers over a two year period, starting from the date of the submission of the first offer. A joint venture may or may not be in the form of a separate legal entity. The joint venture is viewed as a business entity in determining power to control its management. SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists, pursuant to paragraph (h)(4) of this section

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# Advantages of Joint Ventures

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- The JV is able to compete for larger more technically complex contracts by combining the capabilities and assets of various team members.
- Relaxed affiliation rules for SB joint ventures on procurements that meet **certain requirements**
- Relaxed performance of work requirements on procurements that meet **certain requirements**

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# What is Affiliation?

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## Normal Rule of Affiliation

13 CFR 121.103(h)(2)

- The members of a joint venture are considered to be affiliated for size purposes.
  - The size of each team member contributes to the total size of the joint venture or team.
  - The joint venture or team is small only if the combined annual receipts or employees of all the firms in the JV meet the size standard for the procurement

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# Relaxed Affiliation Rules

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- There is an exception to the normal rules of affiliation for joint ventures on procurements that meet **certain requirements**:
  - A bundled procurement of any dollar value; or
  - For a procurement having a receipts based size standard, the dollar value of the procurement exceeds  $\frac{1}{2}$  the size standard; or
  - For a procurements having an employee based size standard, the dollar value of the procurement exceeds \$10 million.
- For these procurements, the JV is considered small so long as each member is small under the size standard assigned to the procurement

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# In Other Words

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- Relaxed affiliation means that so long as each JV venturer *individually* qualifies as a small business, then the JV or teaming arrangement qualifies as small.
- Relaxed affiliation rules apply to SB JV's only on procurements that meet **certain requirements.**

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# What are Performance of Work Requirements?

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- Included in contract only if contractor must be small to be eligible for award
  - FAR clause 52.219-14, “Limitations on Subcontracting”
- Specifies per cent of contract work that must be performed by the small business prime contractor.
- Addressed in detail at 13 CFR 125.6

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# Relaxed Performance Requirements

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- 13 CFR 125.6(h)(i)
- Where an offeror is exempt from affiliation under § 121.103(h)(3) (*relaxed affiliation rules*) of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the joint venture, not its individual members.

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# Small Business JVs

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- Two or more concerns form a joint venture creating a new legal entity to pursue federal procurements.
- For procurements that meet **certain requirements:**
  - The JV is small if each member of the team qualifies as small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.

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# Small Business JVs

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- For procurements that do not meet **certain requirements**
  - the JV is small if the aggregate size of all the members meets the size standard assigned to the procurement.
  - Performance of work requirements still apply to the cooperative effort of the JV since the new JV entity is the prime contractor.

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# SB Joint Ventures

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- For any federal government procurement:
  - an 8(a) protégé firm may joint venture with its SBA approved mentor.
  - The JV is small so long as the 8(a) protégé qualifies as small for the procurement.
  - Performance of work requirements apply to the cooperative effort of the JV.

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# Small Business JVs

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- Contract is in the name of the JV entity
- Contract performance responsibility lies with the JV
- A JV entity may submit up to three offers over a two year period that starts with submission of first offer (13 CFR 121.103(h)).

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# 8(a) Joint Ventures

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- For competitive 8(a) procurements that meet **certain requirements**:
  - 8(a) firm can JV with one or more other businesses and the JV is considered small so long as each JV member is small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.
  - The size of at least one 8(a) member of the JV must be less than  $\frac{1}{2}$  the size standard for the procurement

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# SBA 8(a) JVs

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- For sole source and competitive procurements that do not meet **certain requirements**.
  - the JV is small only if the combined annual receipts or employees of all firms in the JV meet the size standard for the procurement
  - Performance of work requirements still apply to the cooperative effort of the JV.

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# SBA 8(a) JVs

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- For any 8(a) procurement
  - Any JV between 8(a) protégé firm and its approved SBA mentor is considered small so long as the 8(a) protégé is small for the procurement
    - Mentor firm may be a large business concern
    - Performance of work requirements apply to the cooperative effort of the JV.

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# SBA 8(a) JVs

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- The 8(a) JV agreement must:
  - Set forth the purpose of the JV
  - Designate the 8(a) participant as the managing venturer and an employee of the managing venturer as the project manager
  - State that 51% of the net profits of the JV go to the 8(a) participant(s).
  - Provide for the establishment of a bank account in the name of the JV
  - Contain all the provisions listed in 13 CFR 124.513(c).

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# SBA SDVOSB JVs

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- For competitive SDVOSB procurements that meet **certain requirements:**
  - SDVOSB firm can JV with one or more other businesses so long as each JV member is small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.

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# SBA SDVOSB JVs

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- For sole source and competitive procurements that do not meet **certain requirements:**
  - the JV is small only if the combined annual receipts or employees of all firms in the JV meet the size standard for the procurement
  - Performance of work requirements still apply to the cooperative effort of the JV since the new JV entity is the prime contractor.

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# SBA SDVOSB JVs

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- SDVOSB JV agreement must:
  - Set forth purpose of JV
  - Designate SDVOSB as managing venturer and an employee of managing venturer as project manager
  - State that at least 51% of the net profits earned by the JV go to the SDVOSB venturer(s).
  - Contain other provisions as required by 13 CFR 125.15(b).
- SDVOSB prime/sub teaming does not appear to be an option contemplated by the regulations.

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# SBA HUBZone JVs

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- For HUBZone procurements that meet **certain requirements**:
  - HZSB firm can JV with one or more other HUBZone certified firms to submit an offer for a HUBZone contract so long as each JV member is small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.

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# SBA HUBZone JVs

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- For procurements that do not meet **certain requirements:**
  - the JV is small only if the combined annual receipts or employees of all firms in the JV meet the size standard for the procurement.
  - Performance of work requirements still apply to the cooperative effort of the JV.

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# Federal Regulations

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Federal Regulations (CFR) on-line:

- <http://ecfr.gpoaccess.gov>

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Size regulations -- 13 CFR Part 121

8(a) & SDB regulations -- 13 CFR Part 124

Government Contracting Programs – 13  
CFR Part 125.6

HUBZone Program – 13 CFR Part 126

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# JV Proposed Rule Changes

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## 13 CFR § 121:

- May or may not be a separate legal entity
- May or may not be populated
- Change number of offers to number of awards
- 8(a) approved JV entities bidding non 8(a) contracts must utilize SBA format and requirements.

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# JV Proposed Rule Changes

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## 8(a) Regulation 13CFR § 124:

- Profit split commensurate with performance
- Define percentage of work to be performed by 8(a) partner – 40%
- Possibly exclude the small status of JVs between mentors and proteges on non 8(a) contracts.

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# GAO Findings & Decisions

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- Discussion of on point decisions and reports issued by Government Accountability Office and other offices providing oversight and audits.

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# SBA Richmond District Office

For more information about  
SBA programs & resources go to:

[www.sba.gov/va](http://www.sba.gov/va)

**804-771-2400 ext. 116**

[Tammy.proffitt@sba.gov](mailto:Tammy.proffitt@sba.gov)

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