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Small Business Administration sees strong early response to its newly expanded protégé program

By **CHAD HALCOM**

Small business may be in the middle of a teachable moment, as October demand ramped up to participate in an expanded federal mentor-protégé contracting program, based on new rules from the **U.S. Small Business Administration**.

The SBA on Oct. 1 launched a web portal for small businesses to team up with other companies on federal contracts for which they may have the right skills but lack the capital, staff or proficiency with government practices to fulfill on their own. The small-business mentor-protégé program, traditionally available only to companies majority-owned by disadvantaged minorities or other groups, became more widely available to all qualifying small businesses under a new SBA regulation that took effect Aug. 24.



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And demand has been healthy so far, said Holly Schick, director of the newly formed all-small mentor-protégé program at SBA. About 450 of the 5,000 disadvantaged businesses in the SBA's "8(a) program" had active mentor-protégé agreements at the time of the rule change, but 300 more have requested applications for the program online, and 20 have been approved for it, Schick said, just since it became accessible to other small businesses a month ago.

"And we've been doing this all as a soft launch; there have not been any announcements or blogs and tweets promoting this," Schick said. "We are still in a period of testing the (online application) process and fixing glitches. We are hoping in November or December to be looking at some more formal and active marketing.

"We anticipate once we do that, these organically generated application numbers will start to go up. So we really don't know yet what level of pent-up demand for this there might be."

The small-business mentor-protégé program is a three-year collaboration (that can be renewed once for three more years) between a qualifying small business and another, usually larger and more experienced mentor firm that can assist in filling its "development gaps" with managerial experience, past performance qualifications and federal project implementation skills.

Those kinds of collaborations sometimes run afoul of SBA rules on "affiliation," or a larger business having too much ownership or control over a smaller one when vying for a set-aside federal contract. If SBA finds two companies are affiliated, or have a joint venture in some cases, they are combined via revenue or headcount to determine whether the applicant is still a small business by SBA standards for its industry.

But in the mentor-protégé program, a larger company can own up to 40 percent of the protégé business, or form joint venture companies with the protégé for the purposes of contract bids, without being affiliated — so long as they comply with the other program guidelines for contract bids.



Bret Wacker, Clark Hill PLC

The original SBA program for qualifying disadvantaged companies remains intact, while the new and separate “all small” mentor-protégé program is available for all categories of small businesses and is structured to be as consistent with the original as possible, said Schick and Bret Wacker, attorney and government contracting practice leader at **Clark Hill PLC**.

“The mentor doesn’t necessarily have to be a large business, it just has to be a company that can add value to the protégé business and its contract bid standing,” Wacker said.

“Typically it’s not a long approval process, it’s (a matter of) weeks. The program wouldn’t have much benefit if it takes too long to process an application, because contracting opportunities come and go. That’s what will motivate people to consider the program — because at the time you submit the contract bid you’d need to be already approved (for a mentor).”

The online portal calls for the protégé to apply, while the mentor provides supporting documents. Applicants must select their own mentor before applying, and Schick said the SBA is hoping to produce new materials within 30-60 days to help companies find their own mentor. The SBA is hoping for completed applications to be viewed within four hours after they’re submitted, she said.

Erin Toomey, partner and head of the government procurement practice for the Detroit office of **Foley & Lardner LLP**, said the mentor in the SBA program must demonstrate it will provide sufficient assistance for the protégé to make real developmental business gains during the period of the agreement.

She also said mentor-protégé is just one of several new rules that SBA finalized this year to make government contracting more accessible to small business. Among them: a new small-business subcontracting rule that took effect June 30 gives a small-business contractor an exemption to the federal limit on subcontracting for business given to “similarly situated entities.”

In other words, a small business that qualifies for special set-aside federal contracts through various SBA programs had to previously agree not to subcontract more than 50 percent of the value of the contract to other companies. But the new rule essentially states that other small businesses qualifying for the federal contract do not count toward the subcontractor limit.

Both new SBA rules are applying language of the 2013 National Defense Authorization Act, and both rules also eased restrictions on joint ventures bidding on small-business contracts.

The June 30 rule allows joint venture companies to count as a small business for government procurement purposes so long as each company within the venture qualifies under the industry category of the bid solicitation — even if collectively they exceed the SBA size threshold.

“It’s hoping to get small businesses to team together, and SBA essentially said if you have small-business joint venture partners, their numbers don’t affect your bid,” Toomey said. “If they’re individually small, then as a team they remain small.”

Toomey also said the new rules all seek to court greater small-business participation and development via contracting. She said she was not certain how much business interest in the new mentor-protégé agreement program would emerge, but added it’s still “not carte blanche” to pursue set-aside contracts and farm the work to a large company.

The Small Business Administration mentor-protégé application portal is at <https://certify.sba.gov/>.

Bret Wacker is a member of Clark Hill PLC’s Government Relations and Public Affairs Practice Group. Bret’s law practice focuses on counseling clients in all areas of federal government procurement and market development, including reviewing solicitations; drafting proposals; drafting contracts and subcontracts; assisting with contract negotiations; and performing government contract due diligence for mergers and acquisitions. Bret also works with clients in the assessment, development and implementation of federal procurement compliance programs, as well as counseling contractors during government audits and investigations and dispute resolution proceedings.

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