



The New All Small Mentor-Protégé Program

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All Small Mentor Protégé Program (ASMPP) Update

2



Please note that a Mentor-Protégé relationship should be established before starting the application – the ASMPP is not a

The SBA began accepting applications on October 1, 2016.

Applications must now be submitted via certify.sba.gov. No paper applications will be accepted.

Website:

[https://www.sba.gov/allsm
allmpp](https://www.sba.gov/allsmallmpp)

Program Administration

3

- Centralized in HQ, rather than the distributive 8(a) model
- Online Application – certify.sba.gov
- Online course tutorial requirement
- Annual Review and Evaluation
- Template agreements i.e. MPA, joint venture
- Incremental staff augmentation at HQ – demand driven

ASMPP Highlights

4

- Protégé may only have one Mentor at a time, and a maximum of two. (2 SBA MPAs in lifetime)
- Mentors cannot have more than 3 Protégés in the aggregate, at any one time.
- Protégés and Mentors must either be for-profit entities or agricultural cooperatives.
- Participants can be both a Protégé and a Mentor if no competition or conflict exists.
- Participants self-certify as small in the NAICS in which they're seeking business

ASMPP Highlights (continued)

5

- SBA won't authorize MPAs in secondary NAICs in which the firm hasn't performed work.
- No reapplication required for 8(a) firms in the last 6 months of the 8(a) program wishing to transfer their existing MPA to the ASMPP.
- No financial statements or tax returns required.
- Business plan (SBA-approved or other) required for consideration.

Approved forms of Mentor Assistance

6

- ❑ **Management & Technical Assistance** (internal business management systems)
- ❑ **Financial Assistance** (in the form of equity investments and/or loans)
- ❑ **Contracting Assistance** (contracting processes, capabilities acquisitions & performance)
- ❑ **Trade Education** (learn how to export, IT business plan, finding markets)
- ❑ **Business Development Assistance** (strategy, finding contracting and partnership opportunities)
- ❑ **General and/or Administrative Assistance** (business processes and support)

Note: May be one, two, or all areas of assistance

Small Business Joint Ventures

7

- An approved Protégé and Mentor may joint venture as a small business for any government prime contract or subcontract, provided the protégé qualifies as small for the procurement.
 - a. Applies to every Federal Agency whether they participate in the ASMPP program or not including NASA and DOD.

Resources

8

- ▣ SBA webpage <https://www.sba.gov/allsmallmpp>
- ▣ All Small Mentor Protégé Program Tutorial
<https://www.sba.gov/tools/sba-learning-center/training/sbas-all-small-mentor-protege-program>

ASMPP

9

For more information on the ASMPP

Please contact:

allsmallmpp@sba.gov



Other Small Business Regulation and Legislation Updates

Jan Kaiser

**Procurement Center Representative
Office of Government Contracting, Area IV**

Limitations on Subcontracting

11

- Section 1651 National Defense Authorization Act of 2013
- In the case of a contract for services, may not expend on subcontractors more than 50 percent of the amount **paid** to the concern under the contract
- In the case of a contract for supplies (other than from a regular dealer in such supplies), may not expend on subcontractors more than 50 percent of the amount, less the cost of materials, **paid** to the concern under the contract
- **Similarly Situated Entities** - Contract amounts expended by a covered small business concern on a subcontractor that is a similarly situated entity shall not be considered subcontracted
- SBA Final Rule – 81 FR 34243 (May 31) effective June 30, 2016

NDAA 2013 Final Rule - LOS

12

- Similarly situated entity is a subcontractor that has the same small business program status as the prime contractor.
- This means that: for a HUBZone requirement, a subcontractor that is a qualified HUBZone small business concern; for a small business set-aside, partial set-aside, or reserve a subcontractor that is a small business concern; for a SDVO small business requirement, a subcontractor that is a self-certified SDVO SBC; for an 8(a) requirement, a subcontractor that is an 8(a) certified Program Participant; for a WOSB or EDWOSB contract, a subcontractor that has complied with the requirements of part 127.
- 13 CFR 125.1

NDAA 2013 Final Rule - LOS

13

- In addition to sharing the same small business program status as the prime contractor, a similarly situated entity must also be small for the NAICS code that the prime contractor assigned to the subcontract the subcontractor will perform.
- 13 CFR 125.1

NDAA 2013 Final Rule - LOS

14

- In the case of a contract for services (except construction), it will not pay more than 50% of the amount paid by the government to it to firms that are not similarly situated.
- Any work that a similarly situated subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded.
 - 13 CFR 125.6(a)(1)

NDAA 2013 Final Rule - LOS

15

- In the case of a contract for supplies or products (other than from a nonmanufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not similarly situated.
- Any work that a similarly situated subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded.
- Cost of materials are excluded and not considered to be subcontracted.
 - 13 CFR 125.6(a)(2)(i)

NDAA 2013 Final Rule - LOS

16

- In the case of a contract for general construction, it will not pay more than 85% of the amount paid by the government to it to firms that are not similarly situated.
- Any work that a similarly situated subcontractor further subcontracts will count towards the 85% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.
 - 13 CFR 125.6(a)(3)

NDAA 2013 Final Rule - LOS

17

- In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime may be paid to firms that are not similarly situated.
- Any work that a similarly situated subcontractor further subcontracts will count towards the 75% subcontract amount that cannot be exceeded.
- Cost of materials are excluded and not considered to be subcontracted.
 - 13 CFR 125.6(a)(4)

NDAA 2013 Final Rule - LOS

18

- Determining compliance with applicable limitation on subcontracting. The period of time used to determine compliance for a total or partial set-aside contract will be the base term and then each subsequent option period. For an order set aside under a full and open contract or a full and open contract with reserve, the agency will use the period of performance for each order to determine compliance unless the order is competed among small and other-than-small businesses (in which case the subcontracting limitations will not apply).
 - 13 CFR 125.6(e)

NDAA 2013 Final Rule - JVs

19

- Exception to affiliation for certain joint ventures. (i) A joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement, subcontract or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract.
 - 13 CFR 121.103(h)(3)

NDAA 2013 Final Rule - Affiliation

20

- Firms owned or controlled by married couples, parties to a civil union, parents, children, and siblings are presumed to be affiliated with each other if they conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another. This presumption may be overcome by showing a clear line of fracture between the concerns. Other types of familial relationships are not grounds for affiliation on family relationships.
 - 13 CFR 121.103(f)(1)

NDAA 2013 Final Rule – Size

21

- For purposes of architect-engineering, design/build or two-step sealed bidding procurements, a concern must qualify as small as of the date that it certifies that it is small as part of its initial bid or proposal (which may or may not include price).
 - 13 CFR 121.404(f)

NDAA 2013 Final Rule – Recert.

22

- (i) In the case of a merger, sale, or acquisition, where contract novation is not required, the contractor must, within 30 days of the transaction becoming final, recertify its small business size status to the procuring agency, or inform the procuring agency that it is other than small. * * *
- (ii) * * *
- (D) If the merger, sale or acquisition occurs after offer but prior to award, the offeror must recertify its size to the contracting officer prior to award.
 - 13 CFR 121.404(g)(2)

NDAA 2013 Final Rule – 15(j)

23

- Inapplicability of limitations on subcontracting.
The limitations on subcontracting do not apply to: (1) small business set-aside contracts with a value less than 150,000, or (2) subcontracts (except where a prime is relying on a similarly situated entity to meet the applicable limitations on subcontracting).
 - 13 CFR 125.6(f)

NDAA 2013 Final Rule – 8(a)

24

- Procurements for construction services (e.g., the building of a specific structure) are generally deemed to be new requirements. However, recurring indefinite delivery or indefinite quantity task or delivery order construction services are not considered new (e.g., a recurring procurement requiring all construction work at base X).
 - 13 CFR 124.504(c)(1)(ii)(B)

NDAA 2013 Final Rule - Subk

25

- (8) A prime contractor that identifies a small business by name as a subcontractor in a proposal, offer, bid or subcontracting plan must notify those subcontractors in writing prior to identifying the concern in the proposal, bid, offer or subcontracting plan
- (9) Anyone who has a reasonable basis to believe that a prime contractor or a subcontractor may have made a false statement to an employee or representative of the Federal Government, or to an employee or representative of the prime contractor, with respect to subcontracting plans must report the matter to the SBA Office of Inspector General. All other concerns as to whether a prime contractor or subcontractor has complied with SBA regulations or otherwise acted in bad faith may be reported to the Government Contracting Area Office where the firm is headquartered.
 - 13 CFR 125.3(c)

Lower Tier Subk Final Rule

26

- 81 FR 94246 (12/23/16), Implements Section 1614 of NDAA of 2014, 15 USC 637(d)(16)

Where the prime contractor has an individual subcontracting plan, the prime contractor shall establish two sets of small business subcontracting goals, one goal for the first tier and one goal for lower tier subcontracts awarded by other than small subcontractors with individual subcontracting plans.

Under individual subcontracting plans the prime contractor shall receive credit for small business concerns performing as first tier subcontractors (first tier goal) and subcontractors at any tier pursuant to the subcontracting plans required under paragraph (c) of this section in an amount equal to the dollar value of work awarded to such small business concerns (lower tier goal).

Other-than-small, lower tier subcontractors must have their own individual subcontracting plans if the subcontract is at or above the subcontracting plan threshold, and are required to make a good faith effort to meet their subcontracting plan goals. The prime contractor and any subcontractor with a subcontracting plan are responsible for reporting on subcontracting performance under their contracts or subcontracts at their first tier.

Lower Tier Subk Final Rule

27

The prime contractor's performance under its individual subcontracting plan will be calculated using its own reporting at the first tier for its first tier goal and its subcontractors' first tier reports under their plans for the lower tier subcontracting goals.

The prime contractor's performance under the individual subcontracting plan must be evaluated based on its combined performance under the first tier and lower tier goal.

Other-than-small prime contractors and subcontractors with subcontracting plans shall report on their subcontracting performance on the Summary Subcontracting report (SSR) at their first tier only.

Lower Tier Subk Final Rule

28

- The contractor must assign to each subcontract, and to each solicitation, if a solicitation is utilized, the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract (see § 121.410 of this chapter).
- A formal solicitation is not required for each subcontract, but the contractor must provide some form of written notice of the NAICS code and size standard assigned to potential offerors prior to acceptance and award of the subcontract.
- The prime contractor (or subcontractor) may rely on a subcontractor's electronic representations and certifications, if the solicitation for the subcontract contains a clause which provides that the subcontractor verifies by submission of the offer that the size or socioeconomic representations and certifications are current, accurate and complete as of the date of the offer for the subcontract.
- Electronic submission may include any method acceptable to the prime contractor (or subcontractor) including, but not limited to, size or socioeconomic representations and certifications made in SAM (or any successor system).
- A prime contractor (or subcontractor) may not require the use of SAM (or any successor system) for purposes of representing size or socioeconomic status in connection with a subcontract

Lower Tier Subk Final Rule

29

- Except when subcontracting for commercial items, the prime contractor must require all subcontractors (except small business concerns) who receive subcontracts in excess of \$1,500,000 in the case of a subcontract for the construction of any public facility, or in excess of \$700,000 in the case of all other subcontracts, and which offer further subcontracting possibilities, to adopt a subcontracting plan of their own consistent with this section, and must ensure at a minimum that all subcontractors required to maintain subcontracting plans pursuant to this paragraph will review and approve subcontracting plans submitted by their subcontractors; monitor their subcontractors' compliance with their approved subcontracting plans; ensure that subcontracting reports are submitted by their subcontractors when required; acknowledge receipt of their subcontractors' reports; compare the performance of their subcontractors to their subcontracting plans and goals; and discuss performance with their subcontractors when necessary to ensure their subcontractors make a good-faith effort to comply with their subcontracting plans

Lower Tier Subk Final Rule

30

- The prime contractor must provide a written statement of the types of records it will maintain to demonstrate procedures which have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the subcontracting plan established in accordance with paragraph (c)(1)(x) of this section, including the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; the efforts to identify and award subcontracts to such small business concerns; and size or socioeconomic certifications or representations received in connection with each subcontract.

Section 825 of NDAA of 2015

31

- SBA must conduct new study of industries where WOSBs are underrepresented by January 2016 – Study sent to Congress
 - 81 Fed. Reg. 11340 (Effective March 3, 2016)
 - 80 EDWOSB NAICS
 - 365 WOSB NAICS
 - 445 Total 6-digit NAICS

- www.sba.gov/wosb

FAR Subcontracting Improvements Final Rule

32

- (1) Requiring prime contractors to make good faith efforts to utilize their proposed small business subcontractors during performance of a contract to the same degree the prime contractor relied on the small business in preparing and submitting its bid or proposal. To the extent a prime contractor is unable to make a good faith effort to utilize its small business subcontractors as described above, the prime contractor is required to explain, in writing, within 30 days of contract completion, to the contracting officer the reasons why it is unable to do so.
- (2) Authorizing contracting officers to calculate subcontracting goals in terms of total contract dollars in addition to the required goals in terms of total subcontracted dollars.
- 81 FR 45833 (July 14, 2016) effective November 1, 2016

FAR Subcontracting Improvements Final Rule

33

- (3) Providing contracting officers with the discretion to require a subcontracting plan in instances where a small business rerepresents its size as an other than small business.
- (4) Requiring subcontracting plans even for modifications under the subcontracting plan threshold if said modifications would cause the contract to exceed the plan threshold.
- (5) Requiring prime contractors to assign North American Industry Classification System (NAICS) codes to subcontracts.

FAR Subcontracting Improvements Final Rule

34

- (6) Restricting prime contractors from prohibiting a subcontractor from discussing payment or utilization matters with the contracting officer.
- (7) Requiring prime contractors to resubmit a corrected subcontracting report within 30 days of receiving the contracting officer's notice of report rejection.
- (8) Requiring prime contractors to provide the socioeconomic status of the subcontractor in the notification to unsuccessful offerors for subcontracts.

FAR Subcontracting Improvements Final Rule

35

- (9) Requiring prime contracts with subcontracting plans on task and delivery order contracts to report order level subcontracting information after November 2017.
- (10) Funding agencies receiving small business subcontracting credit.
- (11) On indefinite-delivery, indefinite-quantity contracts, the contracting officer may establish subcontracting goals at the order level (but not a new subcontracting plan).

FAR Final Rule on Payment of Subcontractors

36

- (g) Past performance evaluations shall include an assessment of the contractor's—
 - (1) Performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219–9, Small Business Subcontracting Plan; and
 - (2) Reduced or untimely payments (as defined in 19.701), made to small business subcontractors, determined by the contracting officer to be unjustified. The contracting officer shall—
 - (i) Consider and evaluate a contractor's written explanation for a reduced or an untimely payment when determining whether the reduced or untimely payment is justified; and
 - (ii) Determine that a history of unjustified reduced or untimely payments has occurred when the contractor has reported three or more occasions of unjustified reduced or untimely payments under a single contract within a 12-month period (see 42.1503(h)(1)(vi) and the evaluation ratings in Table 42–2).
- The following payment or nonpayment situations are not considered to be unjustified:
 - (A) There is a contract dispute on performance.
 - (B) A partial payment is made for amounts not in dispute.
 - (C) A payment is reduced due to past overpayments.
 - (D) There is an administrative mistake.
 - (E) Late performance by the subcontractor leads to later payment by the prime contractor.
- 81 FR 93481 (December 20, 2016) effective January 19, 2017

HUBZone Direct Final Rule

37

- Qualified Base Closure Area
- Qualified Disaster Area
- Native Hawaiian Organization
- 81 FR 51312 (August 4, 2016), effective October 3, 2016
- Implements Section 866 of the NDAA 2016, P.L. 114-92, 11/25

FAR Multiple Award Contracting

38

- Implements SBA Final Rule (78 FR 61114, October 2, 2013) implementing Section 1331 of the Jobs Act of 2010
- Interim FAR rule (76 FR 68032, Nov. 2, 2011)
- Reserves, partial set-asides and order set-asides under multiple award contracts
- Proposed Rule 81 FR 88072 (December 6, 2016)

NDAA 2017

39

- 1812 – OSDBU responsible for reviewing credit card acquisitions in FPDS between \$3,500 and \$150,000
- 1813 – OSDBU, Mentors, SBA, PCRAs shall provide resources on compliance with regulations
- 1814 – SBA shall provide DAU, FAI, SBDCs, PTACs list of regulatory changes

NDAA 2017

40

- 1821 – Failure to file subcontracting reports may be material breach and considered in past performance evaluation
- OSDDBU responsible for reviewing Subcontracting Plans
- SBA will issue examples of good faith compliance with Subcontracting Plan

NDAA 2017

41

- 1822 – Pilot Program for Subcontractor to Obtain Past Performance ratings
 - Subcontractor does not have rating in CPARs, and is first tier subcontractor under subcontracting plan
 - Subcontractor applies with proposed rating
 - Submitted to OSDBU and Prime Contractor
 - If OSDBU and Prime agree, or one agrees, enter into CPARs
 - If OSDBU or Prime do not agree, or both do not respond, Subcontractor can submit rebuttal and neither favorable nor unfavorable rating is entered into CPARs

NDAA 2017

42

- 1822 – Subcontractor may use subcontract past performance as prime contract past performance
- Pilot lasts 3 years from time first small business receives rating
- GAO will issue report
- Application to CMR, Other SBA Employee, or OSDBU

NDAA 2017

43

- 1823 – DoD may request size determination for DoD Mentor Protégé, may not approve if SBA found Mentor Protégé affiliated
- 1831 – Size Standard for Agriculture Enterprises; Subject to Rolling Review
- 1832 – VA will use SBA definition for SDVO
 - ESOP (Employee Stock Ownership Plan) and Surviving Spouse allowed
 - Appeals to SBA OHA

RESOURCE

44

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www.regulations.gov

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