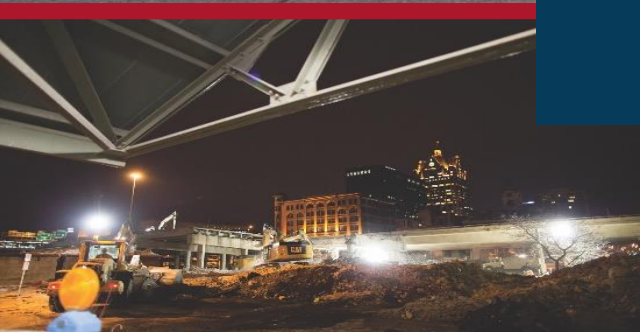


The background of the top half of the slide is a photograph of the Wisconsin State Capitol building in Madison, Wisconsin, taken at dusk. The building's iconic green dome is illuminated, and the facade is lit up, showing the classical architecture with columns and arches. The sky is a deep blue, and some trees with autumn foliage are visible in the foreground.

# IMPACT OF MENTOR-PROTÉGÉ, JOINT VENTURE, AND AFFILIATION REGULATIONS ON BUSINESSES.

JANUARY 23, 2020



# WHAT WE WILL COVER TODAY

## SBA's Proposed Rule issued 11/8/19

[84 FR 60846](#)

- Combining the 8(a) and the SBA All Small Mentor-Protégé Programs
- Proposed Changes to Affiliation regulations
- Changes/clarifications to Joint Venture regulations
- MAC/IDIQ Task order contracts

# MERGING SBA MENTOR PROTÉGÉ (MP) PROGRAMS

# MENTOR PROTÉGÉ (MP) PROGRAM – BACKGROUND

**1998** – The Mentor Protégé (MP) Program was only for the 8 (a) businesses to partner with a mentor.

**2010** – Small Business Jobs Act – authorized SBA to develop separate Mentor Protégé programs for Service Disable Veteran Owned Small Business program, HUBZone Program and Women Owned Small Business (WOSB) Program .

**2013** – NDAA authorized SBA to established a mentor protégé program for all small businesses.

# MENTOR PROTÉGÉ (MP) PROGRAM - BACKGROUND

**2016** - SBA published a final rule combining the authorities in the 2010 Small Business Jobs Act and 2013 NDAA to create a MP program for all small businesses.

So currently SBA has the 8(a) MP program and the All Small Business MP Program.

# MENTOR PROTÉGÉ (MP) PROGRAM – PROPOSED

- The All Small MP Program and 8(a) MP Program would be merged.
- Pre-approval of 8(a) JV Agreements would not be required.

# PROPOSED CLARIFICATIONS ON MENTORS

- SBA is considering limiting the mentors to only those firms with average annual revenues of less than \$100 Million .
- SBA seeks to clarify...
  - that it will review the quality and qualifications of a mentor to confirm its capability to perform its obligation under an MP arrangement
  - Where a mentor has more than one protégé, it cannot submit competing bids/offers via different JVs.

# PROPOSED CLARIFICATIONS AND CHANGES ON AFFILIATION

# PROPOSED CLARIFICATION TO NEWLY ORGANIZED CONCERN RULE

**Current Newly Organized Concern Rule** –If a new entity has employees or management/officers that formerly worked for a prior entity in the same or similar business, then the two entities can be determined affiliated.

**Proposed Newly Organized Concern Rule** – Affiliation can also arise where the employees or management/officers of the new entity are still currently employed by the prior entity

# PROPOSED CHANGES TO AFFILIATION – FAMILY MEMBERS

## Currently

Affiliation of 2 businesses exists when they are owned by separate immediate family members in the same or similar line of business or industries.

## Proposed

If 2 immediate family members are in the same or similar line of business they will not be affiliated as long as there is no common ownership or management and they conduct business at arms length.

# PROPOSED CHANGES TO JOINT VENTURES

# PROPOSED CHANGES TO JOINT VENTURES

**Current 3 – 2 rule** – a Joint Venture can only receive three contract awards in a two-year period from the receipt of the first award.

**Proposed 2 year Rule - SBA** proposes to eliminate the three-contracts limitation but keep the 2 year limitation. (i.e. An MP JV could seek and receive virtually an unlimited number of awards during the 2 years.)

# PROPOSED CHANGES TO JOINT VENTURES

**Currently** - In the 2016 Expansion of the MP program to All Small Businesses, SBA stated that JVs should be “unpopulated”—i.e. the JV should not have its own employees.

**Proposed** - SBA proposes to allow an MP JV to have limited direct administrative personnel, including a Facility Security Officer. (Note- SBA is seeking comments on whether the JV must have its own security clearance.)

# PROPOSED CHANGES TO JOINT VENTURES

For purposes of determining size, the small business protégé must include its percentage share of the JV receipts and employees as its own receipts or employees.

# PROPOSED CHANGES TO MULTIPLE AWARD CONTRACTS

# PROPOSED CHANGES TO MULTIPLE AWARD CONTRACTS

- The Contracting Officer must assign a single NAICS code for each task order issued under a Multiple Award Contract (MAC).
- The Assigned NAICS code must be based on the work awarded in the order and must be part of the underlying MAC.

# PROPOSED CHANGES TO MULTIPLE AWARD CONTRACTS

- If an order is placed under a MAC contract that was already set aside for small businesses, the size status of the offerors will generally be determined as of the date of the initial base MAC proposal. That size status can remain for the life of the MAC contract (up to five years).
- Note – the Contracting Officer always has the right to seek small business re-certification post-award.

# PROPOSED CHANGES TO MULTIPLE AWARD CONTRACTS

- Except for BPA's and orders under FSS contracts...
  - If an order under an unrestricted multiple award contract is set aside for small businesses, an awardee under that MAC must recertify its size status and qualify as small at the time that it submits its initial offer for the Order .
  - The recertification is also automatically required for task order proposals for any order that is set-aside based upon a different socio-economic status from the underlying set-aside MAC.

# PROPOSED CHANGES TO MULTIPLE AWARD CONTRACTS

**Currently** - A size protest can be filed on a MAC Order only if the Contracting Officer required re-certification for the specific order.

**Proposed** - A Size Protest can be filed under an unrestricted MAC if the order is set-aside. Also a socio-economic status protest can be filed where the order is set aside based on a different socio-economic status than that for which the MAC was awarded.

# QUESTIONS?

