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Small Business Mentor-Protégé Programs

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Summary

Mentor-protégé programs typically seek to pair new businesses with more experienced businesses in mutually beneficial relationships. Protégés may receive financial, technical, or management assistance from mentors in obtaining and performing federal contracts or subcontracts, or serving as suppliers under such contracts or subcontracts. Mentors may receive credit toward subcontracting goals, reimbursement of certain expenses, or other incentives.

The federal government currently has several mentor-protégé programs to assist small businesses in various ways. For example, the 8(a) Mentor-Protégé Program is a government-wide program designed to assist small businesses "owned and controlled by socially and economically disadvantaged individuals" participating in the Small Business Administration's (SBA's) Minority Small Business and Capital Ownership Development Program (commonly known as the 8(a) program) in obtaining and performing federal contracts. Toward that end, mentors may (1) form joint ventures with protégés that are eligible to perform federal contracts set aside for small businesses; (2) make certain equity investments in protégé firms; (3) lend or subcontract to protégé firms; and (4) provide technical or management assistance to their protégés. The Department of Defense (DOD) Mentor-Protégé Program, in contrast, is agency-specific. It is designed to assist various types of small businesses and other entities in obtaining and performing DOD subcontracts and serving as suppliers on DOD contracts. Mentors may (1) make advance or progress payments to their protégés that DOD reimburses; (2) award subcontracts to their protégés on a noncompetitive basis when they would not otherwise be able to do so; (3) lend money to or make investments in protégé firms; and (4) provide or arrange for other assistance.

Other agencies also have agency-specific mentor-protégé programs designed to assist various types of small businesses or other entities in obtaining and performing subcontracts under agency prime contracts. The Department of Homeland Security (DHS), for example, has a mentor-protégé program wherein mentors may provide protégés with rent-free use of facilities or equipment, temporary personnel for training, property, loans, or other assistance. Because these programs are not based in statute, unlike the SBA and DOD programs, they generally rely upon preexisting authorities (e.g., authorizing use of evaluation factors) or publicity to incentivize mentor participation. See **Table A-1** for a summary comparison. Although there are some issues with the accuracy and thoroughness of some federal agency records, there are currently more than 700 mentor-protégé agreements in place.

P.L. 111-240, the Small Business Jobs Act of 2010, authorized the SBA to establish mentor-protégé programs for small businesses owned and controlled by service-disabled veterans, small businesses owned and controlled by women, and small businesses located in a HUBZone. P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013, authorized the SBA to establish a mentor-protégé program for all small businesses, and generally prohibits agencies from carrying out mentor-protégé programs that have not been approved by the SBA.

Based on the authority provided by these two laws, the SBA published a final rule in the *Federal Register* on July 25, 2016, modifying the 8(a) Mentor-Protégé Program and establishing, effective August 24, 2016, "a government-wide mentor-protégé program for all small business concerns, consistent with the SBA's mentor-protégé program for participants in the SBA's 8(a) Business Development program." The all small business Mentor-Protégé Program began accepting applications on October 1, 2016.

The SBA noted in the final rule that because its new small business mentor-protégé program will apply to all federal small business contracts and federal agencies, "conceivably other agency-specific mentor-protégé programs would not be needed." Recognizing that one or more agency-specific mentor-protégé programs may be discontinued and several of these programs provide

incentives in the contract evaluation process to firms that provide significant subcontracting work to their protégés, the SBA will allow procuring agencies, in appropriate circumstances, to provide subcontracting incentives to mentor firms participating in its mentor-protégé programs as well.

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Introduction

Mentor-protégé programs are designed to assist small business development, focusing on enhancing the protégé's capacity to serve as either a prime contractor or a subcontractor in federal contracts. These programs typically seek to pair new businesses and more experienced businesses in mutually beneficial relationships. Protégés may receive financial, technical, or management assistance from mentors in obtaining and performing federal contracts or subcontracts, or serving as suppliers under such contracts or subcontracts, whereas mentors may receive credit toward subcontracting goals, reimbursement of certain expenses,[1] or other incentives for assisting protégés.

Four federal agencies have SBA-approved mentor-protégé programs:

- Department of Energy,
- Department of Homeland Security (DHS),
- National Aeronautics and Space Administration, and
- U.S. Small Business Administration (SBA).[2]

Two federal agencies have mentor-protégé programs that do not require SBA's approval because their programs are not covered by the Small Business Act:

- Department of Defense (DOD) and
- Federal Aviation Administration.

Three federal agencies have mentor-protégé programs that are awaiting SBA's approval:

- Department of Health and Human Services,
- Department of Transportation, and
- Department of the Treasury.[3]

Mentor-protégé programs seek to assist small businesses in various ways.[4] For example,

- the 8(a) Mentor-Protégé Program assists "small businesses owned and controlled by socially and economically disadvantaged individuals" participating in the SBA's Minority Small Business and Capital Ownership Development Program

[1] Three federal departments and agencies provide mentors reimbursement for certain expenses related to providing assistance to protégés: the Department of Defense (DOD), Department of Energy, and Federal Aviation Administration.

[2] U.S. Small Business Administration (SBA), "Report to Congress on Mentor-Protégé Programs for Fiscal Year 2016," May 17, 2017, at https://www.sba.gov/sites/default/files/resources_articles/Report_to_Congress_on_FY16Mentor_Protege_Programs_2017_05_03.pdf.

[3] Three federal agencies (Department of Education, Department of Housing and Urban Development, and Department of Veterans Affairs) do not have active mentor-protégé programs. Also, four federal agencies are retiring their mentor-protégé programs, largely due to the implementation of the new all small business program (Department of State, Environmental Protection Agency, General Services Administration, and United States Agency for International Development). See SBA, "The Federal Mentor-Protégé Program Landscape."

[4] For purposes of federal procurement law, a business is "small" if it is independently owned and operated; is not dominant in its field of operations; and meets any definitions or standards established by the SBA. 15 U.S.C. §632(a)(1)-(2)(A). These standards focus primarily upon the size of the business as measured by the number of employees or its gross income, but they also take into account the size of other businesses within the same industry. 13 C.F.R. §§121.101-121.108.

(commonly known as the 8(a) program) in obtaining and performing contracts with executive-branch agencies;

- the SBA's all small business Mentor-Protégé Program is "a government-wide mentor-protégé program for all small business concerns, consistent with the SBA's mentor-protégé program for participants in the SBA's 8(a) Business Development program."[5]
- the DOD Mentor-Protégé Program assists various types of small businesses and other entities in performing as subcontractors or suppliers on DOD contracts; and
- other agency-specific mentor-protégé programs, such as that of the DHS, provide mentor firms incentives to subcontract agency prime contracts with small businesses.

Congressional interest in small business mentor-protégé programs has increased in recent years, in part because of reports that large businesses serving as mentors have improperly received federal contracting assistance intended for small businesses.[6] The SBA's suspension (and later reinstatement) of a mentor in the 8(a) Mentor-Protégé Program for possible fraud, as well as reports of other fraud in several of the SBA's contracting programs, has also contributed to congressional interest.

During the 111th Congress, P.L. 111-240, the Small Business Jobs Act of 2010, authorized the SBA to establish mentor-protégé programs for small businesses owned and controlled by service-disabled veterans, small businesses owned and controlled by women, and small businesses located in a HUBZone "modeled" on the 8(a) Mentor-Protégé Program.[7] P.L. 111-240 also required the Government Accountability Office (GAO) to assess the effectiveness of mentor-protégé programs generally.[8] GAO's findings were reported on June 15, 2011.[9]

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[5] SBA, "Small Business Mentor Protégé Program; Small Business Size Regulations; Government Contracting Programs; 8(a) Business Development/Small Disadvantaged Business Status Determinations; HUBZone Program; Women-Owned Small Business Federal Contract Program; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals," 80 *Federal Register* 6618, February 5, 2015.

[6] For example, in one notable instance, in October 2010, the SBA suspended a mentor participating in the 8(a) Mentor-Protégé Program from government contracting because of allegations that the firm used "front companies" to obtain the majority of the work and revenue under contracts set aside for small businesses. See, e.g., SBA, "Statement from Administrator Mills on the Suspension of GTSI from Federal Contracting Program," October 1, 2010, at https://www.sba.gov/content/statement-administrator-mills-suspension-gtsi-federal-contracting-program; and SBA, "Administrative Agreement, between GTSI Corp. ("GTSI") and the United States Small Business Administration ("SBA")," October 19, 2010, at https://www.sba.gov/content/gtsi-administrative-agreement-10-19-2010. Also see GAO, *Small Business Administration: Undercover Tests Show HUBZone Program Remains Vulnerable to Fraud and Abuse*, GAO-10-920T, July 28, 2010, pp. 2-4, at http://www.gao.gov/new.items/d10920t.pdf; GAO, *8(a) Program: Fourteen Ineligible Firms Received $325 Million in Sole-Source and Set-Aside Contracts*, GAO-10-425, March 30, 2010, pp. 7-22, 29, at http://www.gao.gov/new.items/d10425.pdf; GAO, *Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts*, GAO-10-108, October 23, 2009, pp. 4-13, at http://www.gao.gov/new.items/d10108.pdf.

[7] SBA, "Small Business Jobs Act: Small Business Mentor-Protégé Programs," 75 *Federal Register* 79869, December 20, 2010; SBA, "Semiannual Regulatory Agenda, Small Business Jobs Act: Small Business Mentor-Protégé Programs," 76 *Federal Register* 40140, July 7, 2011; SBA, "Small Business Jobs Act: Small Business Mentor-Protégé Programs," 78 *Federal Register* 1492, January 8, 2013; SBA, "Small Business Mentor-Protégé Programs," 78 *Federal Register* 44334, July 23, 2013; and SBA, "Small Business Mentor-Protégé Programs," 79 *Federal Register* 1089, January 7, 2014.

[8] Small Business Jobs Act of 2010, P.L. 111-240, §§1345 & 1347, 124 Stat. 2546-47 (September 27, 2010).

[9] GAO, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, GAO-11-548R, June 15, 2011, p. 1, at http://www.gao.gov/new.items/d11548r.pdf. The statute required that the report be submitted by March 26, 2011—180 days after the act's date of enactment, which was September 27, 2010. (continued...)

During the 112th Congress, P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013, authorized the SBA to establish a mentor-protégé program for "all" small businesses that is generally "identical" to the 8(a) Mentor-Protégé Program. In an effort to promote uniformity, the act, with some exceptions, prohibits agencies from carrying out mentor-protégé programs that have not been approved by the SBA.[10]

Based on the authority provided by these two laws, the SBA published a proposed rule in the *Federal Register* on February 5, 2015, "to establish a government-wide mentor-protégé program for all small business concerns, consistent with SBA's mentor-protégé program for participants in the SBA's 8(a) Business Development program in order to make the mentor-protégé rules for each of the programs as consistent as possible."[11] The SBA decided that it would not implement additional mentor-protégé programs for service-disabled veteran-owned and -controlled small businesses, women-owned and -controlled small businesses, and HUBZone small businesses because they "would be necessarily included within any mentor-protégé program targeting all small business concerns."[12] The SBA also announced that "having five separate small business mentor-protégé programs could become confusing to the public and procuring agencies and hard to implement by the SBA."[13] The SBA estimated at that time that approximately 2,000 small businesses could become active in the proposed mentor-protégé program for small businesses.[14]

On July 25, 2016, the SBA published a final rule in the *Federal Register* establishing, effective August 24, 2016, the new, government-wide mentor-protégé program for all small businesses. The final rule also modified the SBA's 8(a) Mentor-Protégé Program in an effort to make the two programs as consistent as possible.[15] As a result, 8(a) small businesses may participate in either program.

The SBA began to accept applications for the all small business Mentor-Protégé Program on October 1, 2016.

The SBA noted in the final rule that because its new small business mentor-protégé program will apply to all federal small business contracts and federal agencies, "conceivably other agency-specific mentor-protégé programs would not be needed."[16] In recognition that one or more agency-specific mentor-protégé programs may be discontinued and that several of these programs provide incentives in the contract evaluation process to mentor firms that provide significant subcontracting work to their protégés, the SBA allows procuring agencies, in appropriate

(...continued)

P.L. 111-240, §1345(c), 124 Stat. 2546.

[10] The Senate version of the bill (S. 3254) did not include these provisions, but the conference report to H.R. 4310, which was agreed to by the House on December 20, 2012, and by the Senate on December 21, 2012, included them. The program under P.L. 112-239 need not be identical to the 8(a) Mentor-Protégé Program insofar as differences may be "necessary" given the types of small businesses included in the program as protégés.

[11] SBA, "Small Business Mentor Protégé Program; Small Business Size Regulations; Government Contracting Programs; 8(a) Business Development/Small Disadvantaged Business Status Determinations; HUBZone Program; Women-Owned Small Business Federal Contract Program; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals," 80 *Federal Register* 6618, February 5, 2015.

[12] Ibid., pp. 6618-6619.

[13] Ibid., p. 6619.

[14] Ibid., p. 6628; and SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48574, July 25, 2016.

[15] SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48558-48595, July 25, 2016.

[16] Ibid., p. 48565.

circumstances, to provide subcontracting incentives to mentor firms participating in its mentor-protégé programs as well.[17]

This report provides an overview of the federal government's various small business mentor-protégé programs. As is discussed below, while all these programs are intended to assist small businesses in performing as contractors, subcontractors, or suppliers on federal or federally funded contracts, the programs differ in their scope and operations. **Table A-1** in the **Appendix** provides an overview of key differences among the programs.

Mentor-Protégé Programs Administered by the SBA

The SBA administers three mentor-protégé programs, one for firms participating in the 8(a) program, another for firms in its Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs,[18] and one for all small businesses.

8(a) Mentor-Protégé Program

Amendments made to the Small Business Act in 1978 directed the SBA to develop a program to "assist" small businesses owned and controlled by socially and economically disadvantaged individuals that are eligible to receive contracts under Section 8(a) of the act ("8(a) small businesses") in performing these contracts.[19] The SBA implemented this direction, in part, by establishing a mentor-protégé program on July 30, 1998,[20] wherein mentors "enhance the capabilities" of 8(a) firms and "improve [their] ability to successfully compete for contracts" by providing various forms of assistance.[21] Such assistance may include technical or management assistance; financial assistance in the form of equity investments or loans; subcontracts; trade education; and assistance in performing prime contracts with the government through joint venture agreements.[22]

Although the SBA was directed to establish this mentor-protégé program and SBA rules govern participation in the program, as discussed below, the 8(a) Mentor-Protégé Program is government-wide in the sense that firms in the program may enjoy the benefits of participation in it while performing the contracts of any federal agency.[23]

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[17] Ibid., p. 48566.

[18] For additional information and analysis concerning the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, see CRS Report R43695, *Small Business Innovation Research and Small Business Technology Transfer Programs*, by John F. Sargent Jr.

[19] An Act to Amend the Small Business Act and the Small Business Investment Act of 1958, P.L. 95-507, §204, 92 Stat. 1766 (codified, as amended, at 15 U.S.C. §636(j)(10)).

[20] SBA, "Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals: Final Rule," 63 *Federal Register* 35739, June 30, 1998.

[21] 13 C.F.R. §124.520(a). See also GAO, *Small Business: SBA Could Better Focus Its 8(a) Program to Help Firms Obtain Contracts*, GAO/RCED-00-196, July 20, 2000, p. 14, at http://www.gao.gov/new.items/rc00196.pdf.

[22] 13 C.F.R. §124.520(a).

[23] For example, mentor-protégé joint ventures may qualify as "small" for purposes of contracts set aside for small businesses by any executive branch agency, not just by the SBA. The same is not necessarily true for joint ventures involving mentors and protégés in agency-specific programs. See, e.g., SBA, "Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations," 74 *Federal Register* 55694, October 28, 2009 ("[A]n exception to affiliation for protégés in other Federal mentor/protégé programs will be recognized by SBA only where specifically authorized by statute (e.g., DOD's mentor/protégé program) or where SBA has authorized an exception to affiliation for a mentor/protégé program of another Federal agency under the procedures set forth in (continued...)

In fact, when agencies that do not have their own mentor-protégé programs, such as those discussed below, are involved, the 8(a) Mentor-Protégé Program may be referred to as if it were that agency's program.[24]

The SBA's 8(a) Mentor-Protégé Program is administered by the SBA's Office of Business Development. This makes it somewhat different from the agency-specific mentor-protégé programs, discussed later, which generally are the responsibility of the agency's Office of Small and Disadvantaged Business Utilization (OSDBU) and may involve coordination with agency contracting offices.[25]

As of February 27, 2018, there were 493 active 8(a) mentor-protégé agreements.[26]

"Socially and economically disadvantaged individuals," for purposes of the 8(a) program

Individuals who belong to one of the following racial or ethnic groups, or who can prove that they are personally socially disadvantaged, and who have a personal net worth of $250,000 or less at the time of application to the program ($750,000 for continuing eligibility) may be approved by the SBA to participate in the 8(a) program for up to nine years:

Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China [including Hong Kong], Taiwan, Laos, Cambodia [Kampuchea], Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands [Republic of Palau], Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal); and members of other groups designated from time to time by SBA.

Source: 13 C.F.R. §§124.103-124.104.

Regulations Governing the 8(a) Mentor-Protégé Program

SBA regulations govern various aspects of the 8(a) Mentor-Protégé Program, including who may qualify as a mentor or protégé, the content of written agreements between mentors and protégés, and the SBA's evaluation of the mentor-protégé relationship. Under these regulations, "Any [for profit] concern that demonstrates a commitment and the ability to assist developing 8(a) Participants may act as a mentor," including large firms, other small businesses, firms that have graduated from the 8(a) program, and other 8(a) firms that are in the "transitional stage," or final five years of the 8(a) program.[27] Only firms approved by the SBA may serve as mentors, and SBA regulations require that each mentor (1) demonstrate that it "is capable of carrying out its responsibilities to assist the protégé firm under the proposed mentor-protégé agreement";[28] (2) possess "good character";[29] (3) not be debarred or suspended

(...continued)

§121.903."). This requirement was incorporated in the final rule. See SBA, "Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations," 76 *Federal Register* 8222-8223, February 11, 2011.

[24] See, e.g., Listing of Mentor Protégé Programs, at http://www.eds-gov.com/mentorprotege/links.asp (characterizing the Department of Agriculture as having a "mentor-protégé office"). This is a reference to the Department of Agriculture's Office of Small and Disadvantaged Business Utilization, which provides information about the 8(a) Mentor-Protégé Program and other federal mentor-protégé programs. The department does not have its own mentor-protégé program.

[25] GAO, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, GAO-11-548R, June 15, 2011, p. 3, at http://www.gao.gov/new.items/d11548r.pdf.

[26] SBA, "All Small Mentor Protégé Program," February 27, 2018.

[27] 13 C.F.R. §124.520(b). Previously, nonprofit entities were eligible to serve as mentors. For discussion concerning restricting eligibility to for profit entities, see SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48562, 48563, July 25, 2016.

[28] Previously, SBA regulations required that prospective mentors submit their federal tax returns for the past two years (continued...)

from government contracting; and (4) be able to "impart value to a protégé firm due to lessons learned and practical experienced gained because of the [8(a) program], or through its knowledge of general business operations and government contracting."[30]

Protégés, in turn, are required by SBA regulations to be small businesses "owned and controlled by socially and economically disadvantaged individuals" that are in good standing in the 8(a) program. Protégés must also qualify as small for the size standard corresponding to their primary (or, under specified circumstances, their secondary) North American Industry code and demonstrate how the business development assistance to be received through the mentor-protégé relationship would advance the goals and objectives set forth in their business plans.[31]

Initially, mentors could only have one protégé, and protégés could have only one mentor.[32] However, these restrictions were removed effective March 14, 2011.[33] SBA's regulations now provide that mentors are generally expected to have no more than one protégé at a time. However, mentors may have up to three protégés at one time provided that they can demonstrate that "the additional mentor/protégé relationship[s] will not adversely affect the development of either protégé firm."[34] Protégés are also generally expected to have no more than one mentor at a time. However, protégés may, under specified circumstances, have two mentors.[35]

The SBA requires that mentors and protégés enter a written agreement, approved by the SBA's Associate Administrator for Business Development, which sets forth the protégé's needs and describes the assistance the mentor will provide.[36] This agreement generally obligates the mentor

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to the SBA for review to demonstrate their "favorable financial health." 13 C.F.R. §124.520(b)(3) (2010). This requirement changed effective March 14, 2011, to authorize the submission of audited financial statements and Securities and Exchange Commission filings, as well as tax returns. See SBA, "Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations," 76 *Federal Register* 8243, February 11, 2011. Approved mentors are also required to certify annually that they continue to possess good character and a favorable financial position. 13 C.F.R. §124.520(b)(4). For discussion concerning the change from "favorable financial health" to "capable of carrying out its responsibilities," see SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48563, July 25, 2016.

[29] *Good character* is not defined for purposes of this provision, although SBA regulations otherwise address what it means for individuals applying to the 8(a) program to possess good character. See 13 C.F.R. §124.108(a).

[30] 13 C.F.R. §124.520(b)(1)(i)-(iv).

[31] Previously, protégés were required to (1) be in the "developmental stage," or the first four years of the 8(a) program; (2) have never received an 8(a) contract; or (3) have a size that is less than half the size standard corresponding to their primary North American Industry code. For discussion of the change in these requirements, see SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48564, 48565, July 25, 2016.

[32] 13 C.F.R. §124.520(b)(2) & (c)(3) (2010).

[33] See SBA, "Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations," 76 *Federal Register* 8243, February 11, 2011.

[34] 13 C.F.R. §124.520(b)(2).

[35] 13 C.F.R. §124.520(c)(3). The specified circumstances are that the AA/BD [Associate Administrator for Business Development] may approve a second mentor for a particular protégé firm in which the second relationship will not compete or otherwise conflict with the business development assistance set forth in the first mentor/protégé relationship and either (1) the second relationship pertains to a secondary NAICS code or (2) the protégé firm is seeking to acquire a specific expertise that the first mentor does not possess. Note: …the AA/BD may authorize a participant to be both a protégé and a mentor at the same time where the participant can demonstrate that the second relationship will not compete or otherwise conflict with the first mentor-protégé relationship. See SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48584, July 25, 2016.

[36] 13 C.F.R. §124.520(e)(1). Pursuant to these regulations, the SBA will not approve the agreement if it determines that the assistance to be provided is insufficient to promote any developmental gains by the protégé, or if the SBA determines that the agreement is merely a vehicle to enable a non-8(a) firm to receive 8(a) contracts. 13 C.F.R. §124.520(e)(2). The regulations also provide that the SBA must approve all changes to the agreement in advance. 13 (continued...)

to furnish assistance to the protégé for at least one year,[37] although it does allow either mentor or protégé to terminate the agreement with 30 days' advance notice to the other party and the SBA.[38] In addition, the agreement provides that the SBA will review the mentor-protégé agreement annually to determine whether to approve its continuation.[39] The SBA's evaluation is based, in part, on the protégé's annual reports regarding its contacts with its mentor and the benefits it has received from the mentor-protégé relationship, including (1) all technical or management assistance the mentor has provided to the protégé; (2) all loans to or equity investments made by the mentor in the protégé; (3) all subcontracts awarded to the protégé by the mentor; and (4) all federal contracts awarded to a joint venture of the mentor and protégé.[40]

Unless rescinded in writing, the mentor-protégé agreement will automatically renew for another year. The term of a mentor-protégé agreement is limited to three years but may be extended for a second three-year period.[41] Protégés may have two three-year mentor-protégé agreements with different mentors, and each agreement may be extended an additional three years provided the protégé has received, and will continue to receive, the agreed-upon business development assistance.[42] The SBA may terminate the mentor-protégé agreement at any time if it determines that the protégé is not adequately benefiting from the relationship or that the parties are not complying with any of the agreement's terms or conditions.[43]

Participant Benefits

Participation in the 8(a) Mentor-Protégé Program is intended to benefit both mentors and protégés. Serving as a mentor to an 8(a) firm counts toward any subcontracting requirements to which the mentor firm may be subject under Section 8(d) of the Small Business Act.[44] Section 8(d) requires that all federal contractors awarded a contract valued in excess of $700,000 ($1.5 million for construction contracts) that offers subcontracting possibilities agree to a "subcontracting plan" which ensures that small businesses have "the maximum practicable opportunity to participate in [contract] performance."[45] In addition, in certain circumstances, mentors may form joint ventures with their protégés that are eligible to be awarded an 8(a) contract or another contract set aside for small businesses.[46] Mentor firms and joint ventures involving mentor firms would otherwise generally be ineligible for such contracts because they

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C.F.R. §124.520(e)(5).

[37] 13 C.F.R. §124.520(e)(1)(iii).

[38] 13 C.F.R. §124.520(e)(3).

[39] 13 C.F.R. §124.520(e)(4).

[40] 13 C.F.R. §124.112(b)(6); 13 C.F.R. §124.520(g)(1)(i)-(v).

[41] SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48585, July 25, 2016.

[42] Ibid.

[43] Ibid.

[44] 13 C.F.R. §125.3(b)(3)(ix).

[45] 15 U.S.C. §637(d)(3)(A).

[46] 13 C.F.R. §124.513(b)(3); 13 C.F.R. §124.520(d)(1). For the joint venture to be eligible for the award, the protégé must qualify as small for the size standard corresponding to the NAICS code assigned to the procurement, and, in the case of sole-source 8(a) procurements, has not "reached the dollar limit set forth in §124.519." 13 C.F.R. §124.520(d)(1). Section 124.519 generally prohibits 8(a) firms from receiving additional sole-source awards once they have received a combined total of competitive and sole-source awards in excess of $100 million, in the case of firms whose size is based on their number of employees, or in excess of an amount equivalent to the lesser of (1) $100 million or (2) five times the size standard for the industry, in the case of firms whose size is based on their revenues.

would not qualify as "small" under the SBA regulations.[47] Mentor firms may also acquire an equity interest of up to 40% in the protégé firm in order to help the protégé firm raise capital.[48] Because mentor firms are not 8(a) participants, they would generally be prohibited from owning more than 10%-20% of an 8(a) firm.[49] However, their participation in the 8(a) Mentor-Protégé Program permits them to acquire a larger ownership share.

Protégés not only receive various forms of assistance from their mentors, but also may generally retain their status as "small businesses" while doing so.[50] If they received similar assistance from entities other than their mentors, they could risk being found to be other than "small" because of how the SBA determines size. The SBA combines the gross income of the firm, or the number of its employees, with those of its "affiliates" when determining whether the firm is small,[51] and the SBA could potentially find that firms are affiliates because of assistance such as that which mentors provide to protégés.[52] However, SBA regulations provide that "[n]o determination of affiliation or control may be found between a protégé firm and its mentor based on the mentor-protégé agreement or any assistance provided pursuant to the agreement."[53]

GAO's Reports, SBA Regulations, and Recent Legislative Action

The 8(a) Mentor-Protégé Program has been the subject of congressional and agency attention for a number of reasons, including reports of fraud in the program.[54] In addition, in 2010, GAO reported that the "SBA did not maintain an accurate inventory of 8(a) Mentor-Protégé Program participant data, which limited the agency's ability to monitor these firms,"[55] and concluded that the "SBA has not been able to properly oversee this program."[56]

Legislation adopted during the 111th Congress (P.L. 111-240) required GAO to conduct a study of the 8(a) program and "other relationships and strategic alliances pairing a larger business and a small business concern" to gain access to federal contracts.[57] The study's purpose was "to determine whether the programs and relationships are effectively supporting the goal of

[47] See generally 13 C.F.R. §121.103.

[48] 13 C.F.R. §124.520(d)(2).

[49] 13 C.F.R. §124.105(h)(1)-(2). Ownership is limited to 10% when the 8(a) firm in is the "developmental stage" of the 8(a) program and 20% when it is in the "transitional stage." Ibid. The developmental stage consists of the first four years of the 8(a) program, while the transitional stage consists of the last five years.

[50] 13 C.F.R. §124.520(d)(3). But see 13 C.F.R. §121.103(b)(6) (noting that, while a protégé is not an affiliate of its mentor because it receives assistance from its mentor under the mentor-protégé program, "[a]ffiliation may be found … for other reasons").

[51] 13 C.F.R. §§121.101-121.108. Firms are "affiliates" when "one controls or has the power to control the other, or a third party or parties controls or has the power to control both." 13 C.F.R. §121.103(a)(1).

[52] See generally 13 C.F.R. §121.103.

[53] 13 C.F.R. §124.520(d)(4).

[54] For additional information and analysis of the 8(a) program, see CRS Report R44844, *SBA's "8(a) Program": Overview, History, and Current Issues*, by Robert Jay Dilger.

[55] GAO, *Small Business Administration: Steps Have Been Taken to Improve Administration of the 8(a) Program, but Key Controls for Continued Eligibility Need Strengthening*, GAO-10-353, March 30, 2010, preface, at http://www.gao.gov/new.items/d10353.pdf.

[56] Ibid., p. 24.

[57] P.L. 111-240, §1345(a), 124 Stat. 2546.

increasing the participation of small business concerns in government contracting."[58] GAO's report was submitted to the House and Senate Committees on Small Business on June 15, 2011.[59]

In this report, GAO examined mentor-protégé programs in 13 federal agencies it identified as having a mentor-protégé program, including the SBA. It reported that most federal mentor-protégé programs had "similar policies and procedures," but that some differences exist.[60] For example, GAO noted that "different agencies have varying guidance regarding the length of mentor-protégé agreements and whether protégés are allowed to have more than one mentor," and the "DOD mentor-protégé program is the only mentor-protégé program mandated by law and receiving appropriated funding."[61] GAO also reported that "most agencies have policies and reporting requirements to help ensure that protégés are benefiting from participation in their mentor-protégé programs."[62] However, it found that only DOD, the National Aeronautics and Space Administration, and the U.S. Agency for International Development "have policies in place to collect information on protégé progress after the mentor-protégé agreements have terminated."[63] GAO recommended that all of the agencies it examined "consider collecting and maintaining protégé post-completion information" because that information "could be used to help [the agencies] further assess the success of their programs and help ensure that small businesses are benefiting from participation in the programs as intended."[64]

Prior to the release of GAO's report, the SBA announced, on February 11, 2011, revisions to its regulations pertaining to the 8(a) program.[65] Among the changes, which took effect on March 14, 2011, are some pertaining to the 8(a) Mentor-Protégé Program. These changes

- required that assistance provided through the mentor-protégé relationship be tied to the protégé's SBA-approved business plan;
- allowed mentors to have up to three protégés;
- allowed firms seeking to become mentors to submit audited financial statements or other evidence to demonstrate their "favorable financial health" (this provision was revised in 2016);
- explicitly recognized nonprofits as potential mentors (this provision was eliminated in 2016);
- permitted protégés to have a second mentor in certain circumstances;[66]
- prohibited SBA from approving a mentor-protégé agreement if the proposed protégé has less than six months remaining in its term in the 8(a) program (this provision was eliminated in 2016);

[58] Ibid.

[59] See GAO, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, GAO-11-548R, June 15, 2011, p. 1, at http://www.gao.gov/new.items/d11548r.pdf.

[60] Ibid., p. 4.

[61] Ibid., pp. 4-5.

[62] Ibid., p. 9.

[63] Ibid.

[64] Ibid.

[65] SBA, "Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations," 76 *Federal Register* 8222-8223, February 11, 2011.

[66] To obtain a second mentor, a protégé would have to demonstrate that (1) the second relationship pertains to an unrelated secondary NAICS code; (2) the first mentor does not possess the specific expertise that is the subject of the mentor-protégé agreement with the second mentor; and (3) the two relationships will not compete or otherwise conflict with each other.

- permitted firms to request reconsideration of SBA's denial of a proposed mentor-protégé agreement;
- required firms whose proposed mentor-protégé agreement is rejected to wait at least 60 calendar days before submitting a new mentor-protégé agreement with the same proposed mentor;
- authorized SBA to recommend the issuance of a "stop work" order on any executive branch contract performed by a mentor-protégé joint venture when it determines that the mentor has not provided the protégé with the development assistance set forth in the mentor-protégé agreement; and
- prohibited mentors who are terminated for failure to provide assistance under their mentor-protégé agreement from serving as a mentor for two years.[67]

The SBA also made several changes to the regulations governing joint ventures between 8(a) mentors and protégés to ensure that "non-sophisticated 8(a) firms" are not "taken advantage of by certain non-8(a) joint venture partners."[68] Specifically, the SBA now requires that (1) the 8(a) firm receive profits from the joint venture commensurate with the work it performs; (2) the 8(a) firm perform at least 40% of the work done by the joint venture; and (3) each 8(a) firm that performs an 8(a) contract through a joint venture report to the SBA how it performed the required percentages of the work (i.e., how the joint venture performed at least 50% of the work of the contract, as well as how the 8(a) participant to the joint venture performed at least 40% of the work done by the joint venture).[69] Further, under the amended regulations, non-8(a) firms that form joint ventures with 8(a) firms to perform sole-source contracts in excess of $4 million ($7.0 million for manufacturing contracts) are generally prohibited from serving as subcontractors (at any tier) on the contract.[70] However, this latter provision is arguably most relevant to joint ventures involving 8(a) firms owned by Alaska Native Corporations or other entities which, until recently, were eligible for sole-source awards of any amount without any justifications or approvals required from the procuring agency.

In addition, the final rule establishing the new SBA small business mentor-protégé program amended the current joint venture provisions to clarify the conditions for creating and operating joint venture partnerships.[71]

P.L. 112-239 also sought to reduce the variation that GAO found among agency-specific mentor-protégé programs by requiring that any such programs be approved by the SBA pursuant to regulations, "which shall ensure that such programs improve the ability of protégés to compete for Federal prime contracts and subcontracts."[72] The SBA administrator was required to issue

[67] SBA, "Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations," 76 *Federal Register* 8244-8247, February 11, 2011.

[68] Ibid., p. 8243.

[69] Ibid., pp. 8242-8243. Under the revised regulations, joint ventures established and approved by SBA would also be eligible to receive additional contracts if an addendum to the joint venture agreement setting forth the performance requirements on such contracts is provided to and approved by the SBA prior to the contract award.

[70] Ibid., p. 8241. The non-8(a) firm may serve as a subcontractor only if the SBA's Associate Administrator for Business Development determines that other potential subcontractors are not available.

[71] SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48559-48562, 48583- 48584, July 25, 2016.

[72] Any federal mentor-protégé program in effect at the date of the bill's enactment must submit plans to the SBA for approval within 6 months of the SBA's promulgation of rules with respect to mentor-protégé programs and receive final approval or denial within 180 days after receipt. In addition, DOD's Mentor-Protégé Program and mentoring assistance under the Small Business Innovation Research Program and the Small Business Technology Transfer Program were made exempt from the approval process.

regulations with respect to mentor-protégé programs not later than 270 days after the bill's enactment, which was January 2, 2013 (the regulations were issued on July 25, 2016). At a minimum, these regulations must address 10 criteria, including (1) eligibility for program participants, (2) the types of developmental assistance provided to protégés, (3) the length of mentor-protégé relationships, (4) the benefits that may accrue to the mentor as a result of program participation, and (5) the reporting requirements during and following program participation.[73] DOD's Mentor-Protégé Program and mentoring assistance under the Small Business Innovation Research Program and the Small Business Technology Transfer Program are exempt from the approval process.

Effective August 24, 2016, federal agencies (other than DOD and the two exempt programs) were provided a year to submit a plan to the SBA Administrator for approval to continue a previously existing mentor-protégé program. Approval is contingent on whether the proposed program will assist protégés to compete for federal prime contracts and subcontracts and whether it complies with the rules and regulations of the SBA's mentor-protégé programs (as set forth in 13 C.F.R. §§125.9 and 124.520).[74]

As mentioned previously, four federal agencies currently have SBA-approved mentor-protégé programs (Department of Energy, Department of Homeland Security, National Aeronautics and Space Administration, and the SBA); two federal agencies have mentor-protégé programs that do not require SBA's approval because their programs are not covered by the Small Business Act (DOD and the Federal Aviation Administration); and three federal agencies have mentor-protégé programs that are awaiting SBA's approval (Department of Health and Human Services, Department of Transportation, and Department of the Treasury).

In addition, before starting a new mentor-protégé program, agency heads must submit a plan and receive the SBA Administrator's approval.[75] Agencies sponsoring an agency-specific mentor-protégé program must report annually to the SBA specific information, such as the number and type of small business participants, the assistance provided, and the protégés' progress in competing for federal contracts.[76]

Mentoring Networks Under the Federal and State Technology Partnership Program

In 2000, Congress amended the Small Business Act by directing the SBA Administrator to establish the Federal and State Technology (FAST) Partnership Program in order to "strengthen the technological competitiveness of small business concerns in the States"[77] by providing a wide range of assistance, including mentoring. Congress further authorized SBA to make grants and enter cooperative agreements with states and state-endorsed nonprofit organizations as part of the FAST program so as to enhance

[73] These provisions originated with H.R. 3985, the Building Better Business Partnerships Act of 2012. The Senate version of the bill (S. 3254) did not include these provisions, but they were included in the bill's conference report, which was agreed to by the House on December 20, 2012, and by the Senate on December 21, 2012. The bill was signed by President Obama on January 2, 2013.

[74] SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48589, July 25, 2016.

[75] Ibid.

[76] Ibid., p. 48590.

[77] Consolidated Appropriations Act, 2001, P.L. 106-554, §111, 114 Stat. 2764A-674 to 2764A-680 (December 21, 2000) (codified at 15 U.S.C. §657d(b)). The program expired on September 30, 2005, and was reauthorized under the Consolidated Appropriations Act, 2010, P.L. 111-117, "Small Business Administration"—"Salaries and Expenses," 123 Stat. 3198 (December 16, 2009) (codified at 15 U.S.C. §657d(b)).

> outreach, financial support, and technical assistance to technology-based small business concerns participating in or interested in participating in an SBIR program, including initiatives … to establish or operate a Mentoring Network within the FAST program to provide business advice and counseling that will assist small business concerns that have been identified by FAST program participants, program managers of participating SBIR agencies, the [SBA], or other entities that are knowledgeable about the SBIR and STTR program as good candidates for the SBIR and STTR programs, and that would benefit from mentoring.[78]

Such mentoring networks are to (1) provide business advice and counseling; (2) identify volunteer mentors to guide small businesses in proposal writing, marketing, etc.; (3) have experience working with small businesses participating in the SBIR and STTR programs; and (4) agree to reimburse volunteer mentors for out-of-pocket expenses related to service as a mentor.[79]

In FY2017, the SBA awarded FAST partnership awards of up to $125,000 each to 16 state and local economic development agencies, business development centers, and colleges and universities and awards of up to $200,000 each to five small business technology development centers to support technology-driven small businesses.[80] The program received an appropriation of $2 million each year from FY2010 to FY2015 and $3 million each year from FY2016 to FY2018.[81]

Recent Developments

During the 114th Congress, P.L. 114-88, the Recovery Improvements for Small Entities After Disaster Act of 2015 (RISE After Disaster Act), directed the SBA Administrator to provide special consideration to a FAST applicant that is located in an area affected by a catastrophic incident.

During the 115th Congress, the Trump Administration recommended that funding for the FAST program be eliminated.[82]

SBA's All Small Business Mentor-Protégé Program

The SBA's all small business mentor-protégé program is generally required to be "identical" to the SBA's 8(a) Mentor-Protégé Program, except that the SBA may make modifications to the extent necessary given the types of small businesses included in the program as protégés. For example, among other things, the small businesses mentor-protégé program requires a protégé to qualify as small for the size standard corresponding to its primary (or, under specified circumstances, its secondary) NAICS code. The 8(a) Mentor-Protégé Program also requires protégés to be small businesses unconditionally owned and controlled by socially and

[78] 15 U.S.C. §657d(c)(1)(E)(ii).

[79] 15 U.S.C. §657e(c)(1)-(5).

[80] SBA, "SBA Awards Grants to 21 State and Local Economic Development Entities, SBDCs. and Universities to Support R&D Commercialization and Small Business Innovation," August 14, 2017, at https://www.sbir.gov/sites/default/files/17-48%20SBA%20Awards%20Small%20Business%20Innovation%20Grants.pdf.

[81] P.L. 111-117; P.L. 112-8; P.L. 112-74, "Small Business Administration"—"Salaries and Expenses"; P.L. 112-175; P.L. 113-76; P.L. 113-235, P.L. 114-113, P.L. 115-31, and P.L. 115-141.

[82] SBA, "FY2018 Congressional Budget Justification and FY2016 Annual Performance Report," pp. 11, 75, at https://www.sba.gov/sites/default/files/aboutsbaarticle/FINAL_SBA_FY_2018_CBJ_May_22_2017c.pdf; and SBA, "FY2019 Congressional Budget Justification and FY2017 Annual Performance Report," pp. 68, 69, at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_FY_19_508-Final-FINAL.PDF.

economically disadvantaged individuals, to demonstrate potential for success, and to be eligible to receive contracts under Section 8(a) of the Small Business Act.

The SBA initially proposed to permit only firms that have been affirmatively determined by the SBA to be small to qualify as protégés for the small business mentor-protégé program because small businesses in the 8(a) program are certified as being small by the SBA.[83] However, given the expected volume of applications for the small business mentor-protégé program, the SBA decided in the final rule to allow applicants to the new program to self-certify as small. The SBA will rely on size protest procedures to prevent ineligible businesses from unduly benefitting from its mentor-protégé relationship under the new program.[84]

In addition, the SBA's Office of Business Development administers the 8(a) Mentor-Protégé Program. Given that "the volume of firms seeking mentor-protégé relationships [under the new small business mentor-protégé program] could excessively delay SBA's processing of applications," the SBA decided, after considering various options, "to establish a separate unit within the Office of Business Development whose sole function [is] to process mentor-protégé applications and review the MPAs [mentor-protégé agreements] and the assistance provided under them once approved."[85] The SBA indicated that "the efficiencies gained by having a dedicated staff for the small business mentor-protégé program will allow SBA to timely process applications … and [reduce] the need for open and closed enrollment periods."[86]

As of April 5, 2018, there were 473 active all small business mentor-protégé agreements.[87]

DOD Mentor-Protégé Program

Congress authorized a pilot mentor-protégé program for DOD in 1990. The program's purposes are to

> (1) enhance the capabilities of disadvantaged small business concerns to perform as subcontractors and suppliers under Department of Defense contracts and other contracts and subcontracts; and (2) increase the participation of such business concerns as subcontractors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.[88]

DOD's Mentor-Protégé Program began on October 1, 1991, and was the first federal mentor-protégé program to become operational. Originally scheduled to expire in 1994,[89] it has been

[83] SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48564-48565, July 25, 2016.

[84] Ibid., p. 48565.

[85] Ibid., p. 48562.

[86] Ibid.

[87] SBA, "Active mentor-protégé agreements," at https://www.sba.gov/document/support—active-mentor-protege-agreements. There were 102 active all small business mentor-protégé agreements on March 2, 2017, 377 on January 1, 2018, and 443 on February 27, 2018. See SBA, "All Small Mentor-Protégé Program Resources: Active Mentor-Protégé Agreements," at https://www.sba.gov/sites/default/files/articles/ASMPP_MPA_Approval_List_as_of_01.01.18.xlsx; and SBA, "All Small Mentor-Protégé Program," February 27, 2018.

[88] P.L. 114-92, the National Defense Authorization Act for Fiscal Year 2016, §861 (codified, as amended, at 10 U.S.C. §2302 note). See P.L. 101-510, An Act to Authorize Appropriations for Fiscal Year 1991 for Military Activities of the Department of Defense, for Military Construction, and for Defense Activities of the Department of Energy, to Prescribe Personnel Strengths for the Armed Forces and for Other Purposes, §831, 104 Stat. 1607-08 (November 5, 1990) for earlier language. The wording of the program's purpose was modified somewhat by P.L. 114-92 in an effort to better reflect the goals of the mentor-protégé programs sponsored by the SBA and other civilian agencies.

[89] P.L. 101-510, An Act to Authorize Appropriations for Fiscal Year 1991 for Military Activities of the Department of Defense, for Military Construction, and for Defense Activities of the Department of Energy, to Prescribe Personnel (continued...)

repeatedly extended, most recently through FY2018 for the formation of new agreements, and FY2021 for the reimbursement of incurred costs under existing agreements.[90]

DOD's Mentor-Protégé Program differs from the SBA's 8(a) Mentor-Protégé Program and all small business Mentor-Protégé Program in that its primary focus is upon small businesses performing subcontracts and as suppliers on federal contracts, not upon small businesses performing federal contracts. In addition, mentors in the DOD program may provide assistance to their protégés that is somewhat different than that which mentors may provide to protégés in the 8(a) and new small business mentor-protégé programs. Notably, such assistance may include advance payments, which federal agencies are generally prohibited from making, and progress payments, which are generally discouraged under federal procurement law.[91]

Mentors may also (1) award subcontracts on a noncompetitive basis to their protégés even if they are otherwise subject to "competition in subcontracting" requirements;[92] (2) make investments in protégé firms in exchange for an ownership interest in the firm (not to

"Socially and economically disadvantaged individuals," for purposes of the DOD Mentor-Protégé Program

Individuals who belong to one of the following racial or ethnic groups, or who can prove that they are personally socially disadvantaged, *and* who have a personal net worth of $750,000 or less may qualify as socially and economically disadvantaged without being certified as such by SBA:

Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China [including Hong Kong], Taiwan, Laos, Cambodia [Kampuchea], Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands [Republic of Palau], Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal); and members of other groups designated from time to time by SBA.

Source: 13 C.F.R. §124.1002

(...continued)

Strengths for the Armed Forces and for Other Purposes, at §831(j)(1), 104 Stat. 1610 (providing that firms eligible to participate in the program may enter mentor-protégé agreements during the period commencing on October 1, 1991, and ending on September 30, 1994). Under this provision, firms could incur costs for reimbursement through September 30, 1996, and could receive credit for unreimbursed costs through September 30, 1999. Ibid. at §831(j)(2)-(3). See also U.S. General Accounting Office, *Defense Contracting: Interim Report on Mentor-Protégé Program for Small Disadvantaged Firms*, GAO/NSIAD-92-135, March 30, 1992, pp. 1-3, at http://www.gao.gov/assets/220/215849.pdf.

[90] See, e.g., P.L. 112-81, the National Defense Authorization Act for FY2012, §867, 125 Stat. 1526; and P.L. 114-92, the National Defense Authorization Act for FY2016, §861.

[91] Advance payments are payments made to a contractor before any costs have been incurred on a contract, while progress payments are payments made during the performance of work, but before completion of the contract, on the basis of either a percentage of completion of the work or the incurrence of costs. Advance payments are generally only authorized when (1) the contractor gives adequate security; (2) the payments do not exceed the contract price; and (3) the agency head or a designee determines that advance payment is in the public interest or facilitates the national defense. See, e.g., 48 C.F.R. §32.402(b)-(c). Progress payments made on the basis of percentage of completion under construction or certain other contracts are considered invoice payments and are permissible. *See* 48 C.F.R. §32.500(b). Progress payments made on the basis of performance milestones are considered financing payments and are likewise permissible. Other progress payments based on costs are generally considered "unusual progress payments" and may be used only when authorized in "exceptional cases." See 48 C.F.R. §§32.501, 32.501-2.

[92] 48 C.F.R. §52.244-5(a)-(b). Some contracts provide that the contractor "shall select subcontractors (including suppliers) on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of the contract." See generally 48 C.F.R. §44.204(c).

exceed 10% of the total ownership interest): (3) lend money; and (4) provide assistance in general business management, engineering and technical matters, etc.[93]

Regulations Governing the DOD Mentor-Protégé Program

Mentor firms are prime contractors with at least one active subcontracting plan negotiated as required under Section 8(d) of the Small Business Act, or under the DOD Comprehensive Subcontracting Test Program.[94] Initially, only small businesses owned and controlled by socially and economically disadvantaged individuals could qualify as protégés.[95] However, the listing of eligible protégés was later expanded[96] to include (1) businesses owned and controlled by Indian tribes or Alaska Native Corporations; (2) businesses owned and controlled by Native Hawaiian Organizations; (3) qualified organizations employing "severely disabled individuals"; (4) women-owned small businesses; (5) service-disabled veteran-owned small businesses; and (6) Historically Underutilized Business Zone (HUBZone) small businesses.[97] Mentors generally may rely in good faith on their protégés' written representations that they are eligible.[98]

Under DOD regulations, mentors' participation in the program must be approved by DOD.[99] While protégés are selected by the mentor,[100] the SBA may, at any time, determine that a protégé is ineligible.[101] Each mentor is allowed to have multiple protégés, but each protégé may have only one mentor at any time.[102]

As of January 1, 2018, there were 63 active mentor-protégé agreements involving 39 mentors and 63 protégés.[103] One mentor had seven protégés, 1 mentor had 6 protégés, 1 mentor had 5 protégés, 2 mentors had 3 protégés, 5 mentors had 2 protégés, and 29 mentors had one protégé.[104]

Mentors and protégés are required, by regulation, to enter into an agreement establishing a developmental assistance program for the protégé.[105] The agreement is to include (1) the type(s) of assistance the mentor will provide and how the protégé will benefit; (2) factors for assessing the protégé's progress; (3) an estimate of the dollar value and types of subcontracts to be awarded

[93] 48 C.F.R. Ch. 2, Appendix I, I-106(d)(1)-(7).

[94] 48 C.F.R. §219.7102(a). Mentors generally may not be small businesses. See 48 C.F.R. Ch. 2, Appendix I, I-102(a)(1).

[95] See P.L. 101-510, §831(m)(2), 104 Stat. 1611.

[96] See, e.g., An Act to Authorize Appropriations for Fiscal Year 2001 for Military Activities of the Department of Defense, for Military Construction, and for Defense Activities of the Department of Energy, to Prescribe Personnel Strengths for Such Fiscal Year for the Armed Forces, and for Other Purposes, P.L. 106-398, §807, 114 Stat. 1654A-208 (October 30, 2000).

[97] 48 C.F.R. §219.7102(b)(1)(i)-(vii). A severely disabled individual is an individual who is blind (as defined in 41 U.S.C. §8501) or a severely diasbled individaul (as defined in such section).

[98] 48 C.F.R. Ch. 2, Appendix I, I-102(c).

[99] New mentor applications may be submitted to the Office of Small Business Programs (OSBP) of the cognizant military service or defense agency (if concurrently submitting a reimbursable agreement) or to the DOD OSBP office (prior to the submission of an agreement).

[100] 48 C.F.R. §219.7102(b)(3). Selection of protégé firms by mentor firms may not be protested other than as to the size or disadvantaged status of the protégé. See 48 C.F.R. Ch. 2, Appendix I, I-104(b)-(c).

[101] 48 C.F.R. Ch. 2, Appendix I, I-102(d). When the protégé is determined to be ineligible, any assistance provided to the protégé after the date of that determination may not be considered assistance furnished under the program.

[102] 48 C.F.R. Ch. 2, Appendix I, I-104(e).

[103] DOD, "Active MPP [Mentor-Protégé Program] Agreements," at http://business.defense.gov/Programs/Mentor-Protege-Program/Protege-Eligibility-Requirements/.

[104] Ibid.

[105] 48 C.F.R. Ch. 2, Appendix I, I-106.

to the protégé; (4) a program participation term of up to three years; (5) procedures whereby the mentor or protégé may withdraw from the program on 30 days' advance notice; and (6) procedures for the mentor firm to terminate the mentor-protégé agreement for cause.[106] DOD generally requires that this agreement be approved before the mentor incurs any costs.[107] The mentor firm is responsible for making semiannual reports on progress during the term of the agreement, while the protégé is required to provide data on its progress at the end of each fiscal year during the term of the agreement, and for each of the two fiscal years following the agreement's expiration.[108] In addition, the Defense Contract Management Agency (DCMA) is to conduct annual performance reviews of all mentor-protégé agreements, and determinations made in these reviews "should" be a major factor in determining the amount, if any, of reimbursement the mentor firm is eligible to receive in the remaining years of the program participation term under the agreement.[109]

Participant Benefits

Among the benefits that the DOD program provides for mentors are (1) reimbursement of specified assistance costs and (2) credit for unreimbursed costs toward applicable subcontracting goals.[110] DOD and the mentor firm may agree that DOD will reimburse the mentor for certain advance payments or progress payments made to assist protégé firms in performing a subcontract or supplying goods or services under a contract.[111] Alternatively, DOD may credit toward the mentor's subcontracting plan an amount equivalent to the amount of unreimbursed assistance that the mentor provides to its protégé(s).[112] For example, if a contractor provides $10,000 in developmental assistance to its protégé, this $10,000 could count as if it were a $10,000 subcontract awarded to a small business.

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[106] 48 C.F.R. Ch. 2, Appendix I, I-107.

[107] 48 C.F.R. Ch. 2, Appendix I, I-108(c).

[108] 48 C.F.R. Ch. 2, Appendix I, I-112.2(a) & (e).

[109] 48 C.F.R. §219.7106; 48 C.F.R. Ch. 2, Appendix I, I-113. The DCMA is an independent organization within DOD that performs contract administration functions for DOD and other agencies.

[110] 48 C.F.R. §219.7102(d)(1)-(2); 48 C.F.R. §19.702(d). When a mentor receives credit toward its subcontracting goals because of developmental assistance provided to its protégé, it is ineligible for monetary incentives for subcontracting with small disadvantaged businesses. 48 C.F.R. §219.1203. Otherwise, under Subpart 19.12 of the Federal Acquisition Regulation, agencies have authority to incorporate in their prime contracts "monetary incentives" for subcontracting with small businesses owned and controlled by socially and economically disadvantaged individuals. Such incentives reward prime contractors by paying them up to 10% of the amount by which their performance in subcontracting with such businesses exceeds their targets for subcontracting with them. *See* 48 C.F.R. §§19.1201-19.1202-4. On September 9, 2011, the Obama Administration proposed relocating the regulations governing monetary incentives to Subpart 19.17 of the Federal Acquisition Regulation. See DOD, GSA, and National Aeronautics and Space Administration, "Federal Acquisition Regulation: Constitutionality of Federal Contracting Programs for Minority-Owned and Other Small Businesses," 76 *Federal Register* 55849, September 9, 2011. However, no such change has been made to date.

[111] 48 C.F.R. §219.7103-2(b) & (f); 48 C.F.R. §252.232-7005. The amount of such payments generally may not exceed $1 million per year. But see 48 C.F.R. Ch. 2, Appendix I, I-108(a)(6) (permitting developmental costs in excess of $1 million when a specific justification for such costs has been presented). When the mentor will be reimbursed for developmental assistance provided to the protégé, the mentor must establish the accounting treatment of developmental assistance costs before incurring such costs. 48 C.F.R. §219.7104(b). Additionally, under DOD regulations, the subcontract between the mentor and protégé must include provisions substantially the same as the provisions in the Federal Acquisition Regulation (FAR) regarding advance payments; the contractor must have administered the advance payments in accordance with FAR Subpart 32.4; and the contractor must agree that any financial loss resulting from the protégé's failure or inability to repay any unliquidated advance payments is the sole financial responsibility of the contractor. 48 C.F.R. §252.232-7005.

[112] 48 C.F.R. Ch. 2, Appendix I, I-110. Subcontracts awarded to certain current or former protégés also count toward these goals. See 48 C.F.R. §252.219-7003(c).

Recent Developments

P.L. 114-92, the National Defense Authorization Act for FY2016, extended the DOD Mentor-Protégé Program through FY2018 for the formation of new agreements and through FY2021 for the reimbursement of incurred costs under existing agreements.[113] The act also changed eligibility requirements so that protégés

- can participate in the program only during the five-year period beginning on the date they enter into their first DOD mentor-protégé agreement;
- must be less than half the SBA size standard assigned to its corresponding NAICS code; and
- must either be a nontraditional defense contractor or currently provide goods or services in the private sector that are critical to enhancing the capabilities of the defense supplier base and fulfilling key DOD needs.

These changes were designed to better align DOD's Mentor-Protégé Program's eligibility requirements with those of the SBA's 8(a) Mentor-Protégé Program (as they were at that time) and to further ensure that DOD's program focused on providing assistance to mentors and protégés that were meeting key DOD needs.

The act also

- specified that the mentor must not be affiliated with the protégé firm prior to the approval of the mentor-protégé agreement;[114]
- disallowed reimbursement for business-development activities and explicitly stated that DOD "may not reimburse any fee assessed by the mentor firm for services provided to the protégé firm pursuant to subsection (f)(6) [assistance from small business development centers, entities providing procurement technical assistance or a historically black college or university or a minority institution of higher education] or for business development expenses incurred by the mentor firm under a contract awarded to the mentor firm while participating in a joint venture with the protégé firm"; and
- added reporting requirements for mentor firms and review requirements for DOD's Office of Small Business Programs.

These changes were designed to ensure that DOD "was not paying mentors to help protégés bid on contracts the protégé would have bid on in any case ... and to stop reimbursing mentors for sending their protégés to obtain assistance from other federal funded resources."[115]

Previously, in 2007, GAO conducted an analysis of this program. As part of its analysis, GAO administered a web-based survey of former DOD protégé firms and received responses from 48 of the 76 protégé firms that completed or left the program during FY2004 and FY2005. GAO concluded that most former protégé firms valued their experience in the DOD program, with 93% of respondents reporting that their participation enhanced, at least to some degree, their firm's

[113] See National Defense Authorization Act for FY2016, P.L. 114-92, §861.

[114] P.L. 114-328, the National Defense Authorization Act for Fiscal Year 2017, requires the SBA to determine whether a prospective protégé firm is affiliated with its proposed mentor prior to approval of a DOD mentor-protégé agreement.

[115] U.S. Congress, House Committee on Small Business, Subcommittee on Contracting and Workforce, *Maximizing Mentoring: How are the SBA and DOD Mentor-Protégé Programs Serving Small Businesses?*, Hearing Memorandum, prepared by House Committee on Small Business Staff, 114th Cong., 1st sess., October 26, 2015, p. 9, at http://smbiz.house.gov/uploadedfiles/10-27-2015_hearing_memo.pdf.

overall capabilities; 87% of respondents reporting that support from their mentors helped their business development; and about 84% of respondents reporting that mentor support helped their engineering or technical expertise.[116] In addition, 71% of protégés responding to the survey reported that they "were at least generally satisfied with their experience with the program, with their reasons ranging from enhanced capabilities and heightened exposure in the marketplace, to quantifiable business growth."[117] However, about 15% of protégés reported dissatisfaction with their participation in the program, and about 21% reported that they did not receive the level of mentoring that they had anticipated.[118]

DOD has provided $401.4 million to mentor firms since the program's inception through FY2017. The DOD provided $28.3 million to mentor firms in FY2016, $23.2 million in FY2017, and anticipates providing $33.5 million in FY2018 and $29.8 million in FY2019.[119]

Other Agency-Specific Mentor-Protégé Programs

Other agencies, like DHS, have established independent mentor-protégé programs to encourage their large prime contractors to work with small business subcontractors when performing agency contracts. Because these programs are not based in statute, unlike the SBA and DOD programs discussed above, they generally rely upon existing authorities (e.g., authorizing use of evaluation factors) or publicity to incentivize mentor participation. Such programs generally supplement the 8(a) Mentor-Protégé Program, in that firms in the 8(a) program may also participate in agency-specific programs.[120] However, small businesses that are not 8(a) firms and other entities may also be eligible to participate.[121]

DHS's Mentor-Protégé Program is discussed here as a representative example of such programs. Several other agencies have similar programs, which are described in **Table 1**. Note that while this report describes these programs as they presently exist, certain changes may be made to these programs in light of the requirements of the National Defense Authorization Act for FY2013 (P.L. 112-239). This legislation generally requires that agency-specific mentor-protégé programs be approved by the SBA pursuant to regulations that would require such programs to address, among other things, (1) eligibility for program participants, (2) the types of developmental assistance

[116] GAO, *Contract Management: Protégés Value DOD's Mentor-Protégé Program, but Annual Reporting to Congress Needs Improvement*, GAO-07-151, January 31, 2007, p. 6, at http://www.gao.gov/new.items/d07151.pdf.

[117] Ibid., p. 7.

[118] Ibid.

[119] DOD, Office of the Secretary of Defense, "Fiscal Year (FY) 2018 Budget Submission: Defense Wide Justification Book Volume 1 of 2," February 2017, Exhibit P-40, Budget Line Item Justification: PB 2017 Office of the Secretary of Defense, at http://comptroller.defense.gov/Portals/45/Documents/defbudget/FY2018/budget_justification/pdfs/02_Procurement/OSD_0300D_FY18_PB_FINAL.pdf; and DOD, Office of the Secretary of Defense, "Fiscal Year (FY) 2019 Budget Submission: Defense Wide Justification Book Volume 1 of 2," February 2018, Exhibit P-40, Budget Line Item Justification: PB 2019 Office of the Secretary of Defense, at http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2019/budget_justification/pdfs/02_Procurement/U_PROCUREMENT_MasterJustificationBook_Defense-Wide_PB_2019.pdf.

[120] See, e.g., 48 C.F.R. §519.7007(c) ("A protégé firm [in GSA's Mentor-Protégé Program] must not have another formal, active mentor-protégé relationship under GSA's Mentor-Protégé Program but may have an active mentor-protégé relationship under another agency's program.").

[121] See, e.g., 48 C.F.R. §619.202-70 (small disadvantaged businesses; women-owned small businesses; Historically Underutilized Business Zone small businesses; veteran-owned small businesses; and service-disabled veteran-owned small businesses eligible for the Department of State Mentor-Protégé Program); 48 C.F.R. §919.7007 (8(a) firms and other small disadvantaged businesses; historically black colleges and universities and other minority institutions of higher education; women-owned small businesses; and service-disabled veteran-owned small businesses eligible for the Department of Energy Mentor-Protégé Program).

provided to protégés, (3) the length of mentor-protégé relationships, (4) the benefits that may accrue to the mentor as a result of program participation, and (5) the reporting requirements during and following program participation.

DHS Mentor-Protégé Program

DHS established its mentor-protégé program in 2003 to "motivate and encourage large business prime contractor firms to provide mutually beneficial developmental assistance" to small businesses.[122] Mentor firms may provide various types of assistance to their protégés, including temporary assignment of personnel to the protégé firm for the purpose of training, rent-free use of facilities or equipment, overall business management/planning, financial and organizational management, business development, technical assistance, property, loans, and other types of assistance.[123]

As of September 7, 2017, DHS had 54 active mentor-protégé agreements involving 45 mentors and 52 protégés.[124] Two mentors had 3 protégés, 5 mentors had 2 protégés, and 38 mentors had 1 protégé.[125] The DHS program does not receive a separate funding appropriation.

Regulations Governing the DHS Mentor-Protégé Program

Mentors are "large prime contractors capable of providing developmental assistance."[126] Protégé firms can be small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, "small disadvantaged businesses,"[127] and women-owned small businesses.[128] Although mentors and protégés apparently do not need to be approved by DHS, they are required, by regulation, to have their mentor-protégé agreement approved by the DHS Office of Small and Disadvantaged Business Utilization (OSDBU).[129] This mentor-protégé agreement is evaluated on the extent to which the mentor plans to provide developmental assistance. If accepted into the program, the mentor-protégé relationship generally lasts for 36 months. The mentor and protégé are required to submit a jointly written mid-term progress report at 18 months, and, at the end of the 36 months, the mentor and protégé are required to submit a final report and complete a "lessons learned" evaluation separately. Protégés are also required to submit a post-award report annually for two years.[130]

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[122] DHS, "Mentor-Protégé Program," at https://www.dhs.gov/mentor-prot%C3%A9g%C3%A9-program; DHS, "Department of Homeland Security Acquisition Regulation," 68 *Federal Register* 67868-67870, December 4, 2003.

[123] DHS, "Mentor-Protégé Program," at http://www.dhs.gov/xopnbiz/smallbusiness/editorial_0716.shtm.

[124] DHS, "Mentor-Protégé Companies," at https://www.dhs.gov/mentor-protege-companies.

[125] Ibid. One protégé had three mentors and 51 protégés had one mentor.

[126] 48 C.F.R. §3052.219-71(b)(1).

[127] "Small disadvantaged businesses" (SDBs) are those owned and controlled by socially and economically disadvantaged individuals. All 8(a) firms are SDBs. However, firms that are not participating in the 8(a) program may, depending upon the program, also be certified or self-certify as SDBs.

[128] 48 C.F.R. §3052.219-71(b)(2).

[129] 48 C.F.R. §3052.219-71(b)(3).

[130] DHS, "Mentor-Protégé Program Details," at http://www.dhs.gov/xlibrary/assets/opnbiz/osdbu-mentor-protege-details.pdf.

Participant Benefits

Participation as a mentor in the DHS Mentor-Protégé Program may serve as a source selection factor or subfactor in certain negotiated procurements,[131] potentially giving mentor firms an advantage over nonmentors and, thereby, encouraging firms to become mentors. In addition, mentors may credit costs incurred in providing assistance to their protégés toward their goals for subcontracting with small businesses.[132] Mentors are also eligible for an annual award presented by DHS to the firm providing the most effective developmental support to a protégé.[133]

Table 1. Other Agencies with Agency-Specific Mentor-Protégé Programs

Agency	Eligible Protégés	Incentives for Mentors
Department of Energy 48 C.F.R. Subpart 919.70 (active, SBA approved)	8(a) firms and other small disadvantaged businesses; historically black colleges and universities and other minority institutions of higher learning; women-owned small businesses; service-disabled veteran-owned small businesses	Eligibility for award fees based on their performance as mentors Subcontracts awarded to protégés count toward subcontracting goals
Department of Health and Human Services 48 C.F.R. §352.219-70 (not active)	Small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; small disadvantaged businesses; Historically Underutilized Business Zone (HUBZone) small businesses; woman-owned small businesses	Certain assistance provided to protégés credited toward subcontracting plans
Department of State 48 C.F.R. §619.202-70 (retiring the program)	Small businesses; small disadvantaged businesses; women-owned small businesses; HUBZone small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses	Mentor-protégé agreement may be considered in evaluating adequacy of proposed subcontracting plan and in responsibility determinations Agency mentoring award (nonmonetary)
Department of the Treasury 48 C.F.R. Subpart 1019.202-70 (not active)	Small businesses; women-owned small businesses; 8(a) firms and other small disadvantaged businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; HUBZone small businesses	Bonus (not to exceed 5% of the relative importance assigned to technical/ management factors) credited to mentor in negotiated procurements Mentor-protégé agreement may be considered in evaluating adequacy of proposed subcontracting plan and in responsibility determinations Agency mentoring award (nonmonetary)

[131] 48 C.F.R. §3052.219-72.

[132] 48 C.F.R. §3052.219-71(d). ("For example, a mentor/large business prime contractor would report a $10,000 subcontract to the protégé/small business subcontractor and $5,000 of developmental assistance to the protégé/small business subcontractor as $15,000.")

[133] DHS, "Mentor-Protégé Program Details," at http://www.dhs.gov/xlibrary/assets/opnbiz/OSDBU_MentorProtegeDetails.pdf.

Agency	Eligible Protégés	Incentives for Mentors
Department of Veterans Affairs 48 C.F.R. Subpart 819.71 (not active)	Veteran-owned small businesses; service-disabled veteran-owned small businesses	Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement Evaluation credits during source selection Factor in evaluating past performance and determining contractor responsibility Agency mentoring award (nonmonetary) Invitation to mentor-protégé annual conference
Environmental Protection Agency 48 C.F.R. §§1552.219-70 to 1552.219-71 (retiring the program)	Small disadvantaged businesses (women deemed to be socially disadvantaged pursuant to P.L. 102-389); historically black colleges and universities	Subcontracts of $1 million or less awarded to protégés are exempt from the competition requirements in 48 C.F.R. §44.202-2(a)(5), 52.244-2(b)(2)(iii), and 52.244-5 Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement
Federal Aviation Administration FAA Mentor-Protégé Program *available at* http://www.sbo.faa.gov/MentorProtege.cfm (active, SBA approval not required)	Small businesses; small socially and economically disadvantaged businesses; small disadvantaged businesses; service-disabled veteran-owned small businesses; historically black colleges and universities; minority institutions; women-owned small businesses	Evaluation credits during source selection Subcontracts awarded to protégés count toward subcontracting goals Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement Procurements set aside for firms that are "participants in the FAA Mentor-Protégé Program"[a]
General Services Administration 48 C.F.R. Subpart 519.70 (retiring the program)	Small businesses; small disadvantaged businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; HUBZone small businesses; woman-owned small businesses	Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement Evaluation credits during source selection Factor in evaluating past performance and determining contractor responsibility Agency mentoring award (nonmonetary) Invitation to mentor-protégé annual conference
National Aeronautics and Space Administration 48 C.F.R. Subpart 1819.72 (active, SBA approved)	Small disadvantaged businesses; women-owned small businesses; HUBZone small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; historically black colleges and universities; minority institutions; nonprofit agencies employing persons who are "blind or severely disabled"	May count costs of development assistance provided to protégés toward subcontracting plan Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement Eligible to earn separate award fees associated with the provision of developmental assistance to NASA SBIR Phase II protégés

Agency	Eligible Protégés	Incentives for Mentors
U.S. Agency for International Development 48 C.F.R. Subpart 719.273 (retiring the program)	Small businesses; small disadvantaged small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; HUBZone small businesses; woman-owned small businesses	Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement Evaluation credits during source selection Factor in evaluating past performance and determining contractor responsibility Agency mentoring award (nonmonetary) Invitation to mentor-protégé annual conference

Source: Congressional Research Service, based on various sources cited in Table 1.

a. It is unclear whether "participant" here refers to mentors, protégés, or joint ventures involving mentors and protégés. Because agencies generally may not restrict competition absent express statutory authorization, such set-asides may be limited to small business protégés, as opposed to mentor firms.

DOT Funding Recipients' Mentor-Protégé Programs

Department of Transportation (DOT) regulations authorize recipients of certain federal transportation funding to establish mentor-protégé programs "in which another [disadvantaged business enterprise (DBE)] or non-DBE firm is the principal source of business development assistance to a DBE firm."[134] These programs are designed "to further the development of DBEs, including but not limited to assisting them to move into nontraditional areas of work or compete in the marketplace outside the DBE program, via the provision of training and assistance."[135] For example, mentors in the Ohio Department of Transportation Mentor/Protégé Program may assist protégés by (1) setting targets for improvement; (2) setting time tables for meeting those targets; (3) assisting with the protégé's business strategies; (4) assisting in evaluating outcomes; (5) assisting in developing protégés' business plans; (6) regularly reviewing protégés' business and action plans; and (7) monitoring protégés' key business indicators, including their cash flow, work in progress, and recent bids.[136] Those in the Illinois Department of Transportation Mentor-Protégé Program similarly may provide training and development, technical and management assistance, personnel, financial assistance, and equipment to their protégés.[137]

According to DOT, data concerning the number and performance of DBE mentor-protégé agreements are retained at the state level and are not reported to the DOT.[138] The DOT program does not receive a separate funding appropriation.

DOT is seeking SBA-approval for its mentor-protégé programs.

[134] 49 C.F.R. §26.35(b).

[135] U.S. Department of Transportation, "DBE Final Rule, Appendix D to Part 26 - Mentor-Protégé Program Guidelines," at http://www.osdbu.dot.gov/DBEProgram/final/final60.cfm. Recipients of DOT funding are particularly encouraged to use mentor-protégé programs to assist DBEs in performing work outside of specific fields in which DBEs are "overconcentrated." 49 C.F.R. §26.33(b).

[136] Ohio Department of Transportation Mentor/Protégé Program, p. 5, at https://www.fhwa.dot.gov/resourcecenter/teams/civilrights/odot_mentor.pdf.

[137] Illinois Department of Transportation, Mentor-Protégé Program Sample Development Plan, at http://www.dot.state.il.us/obwd/Mentor%20Protege%20Sample%20Development%20Plan.pdf.

[138] DOT, Office of Small and Disadvantaged Business Utilization, telephone consultation, March 1, 2011.

Regulations Governing DOT Mentor-Protégé Programs

DBEs may participate in DOT mentor-protégé programs as either mentors or protégés. However, under DOT regulations, all DBEs involved in a mentor-protégé agreement must be independent business entities that meet the requirements for certification as a DBE. These regulations also require that firms be certified before participating as a protégé in a mentor-protégé arrangement.[139]

The relationship between mentor and protégé is based on a written development plan, approved by the recipient of the DOT funding, "which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé."[140] The formal mentor-protégé agreement may establish a fee schedule to cover the direct and indirect cost of services provided by the mentor to the protégé. Services provided by the mentor may be reimbursable if these services and any associated costs are "directly attributable and properly allowable."[141]

"Disadvantaged business enterprises," for purposes of DOT funding programs

Individuals who belong to one of the following racial or ethnic groups, or who can prove that they are personally socially disadvantaged, and who have a personal net worth of $1.32 million may qualify as "disadvantaged business enterprises" upon certification by a state funding recipient:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa; (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race; (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, [T]uvalu, Nauru, Federated States of Micronesia, or Hong Kong; (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; (vi) Women; (vii) [a]ny additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Source: 49 C.F.R. §26.5; 49 C.F.R. §26.67.

Participant Benefits

Mentor firms may generally count the amount of assistance they provide to their protégés toward their goals for contracting or subcontracting with DBEs. However, under DOT regulations, a non-DBE mentor firm cannot receive credit for meeting more than half of its goal on any contract by using its own protégé.[142] These regulations also prohibit a non-DBE mentor firm from receiving DBE credit for using its own protégé on more than every other contract performed by the protégé.[143] For example, if Mentor Firm X uses Protégé Firm Y to perform a subcontract, Mentor Firm X cannot get DBE credit for using Protégé Firm Y on another subcontract until Protégé Firm Y first works on an intervening prime contract or subcontract with a different prime contractor.[144] There are no comparable restrictions for other mentor-protégé programs.

[139] 49 C.F.R. Part 26, App'x D, at C.

[140] 49 C.F.R. Part 26, App'x D, at (B)(1).

[141] 49 C.F.R. Part 26, App'x D, at (B)(2).

[142] 49 C.F.R. §26.35(b)(2)(i).

[143] 49 C.F.R. §26.35(b)(2)(ii).

[144] DOT, "DBE Final Rule, Section 26.35 - What Role do Business Development and Mentor-Protégé Programs Have in the DBE Program?" at http://www.osdbu.dot.gov/DBEProgram/final/final19.cfm.

Concluding Observations

Congressional interest in small business mentor-protégé programs has increased in recent years for a variety of reasons, including reports that these programs are being used by large businesses to perform federal contracts, in violation of small business procurement laws and regulations and contrary to the intent of the mentor-protégé programs.[145] The SBA's suspension (and later reinstatement) of a mentor in the 8(a) Mentor-Protégé Program for fraud,[146] as well as reports of fraud in several of the SBA's contracting programs, has also contributed to congressional interest.[147] In addition, GAO found in 2011 that the SBA "has not been able to properly oversee [the 8(a) mentor-protégé] program,"[148] and the SBA issued new regulations for the 8(a) program generally, and for the 8(a) Mentor-Protégé Program in particular, to better ensure that its benefits "flow to the intended recipients" and "help prevent waste, fraud and abuse."[149] GAO has also recommended that federal agencies collect and maintain protégé post-completion information "to help ensure that small businesses are benefiting from participation in the programs as intended."[150] Given these developments, and SBA's recent addition of a mentor-protégé program for non-8(a) small businesses, it seems likely that mentor-protégé programs will remain subject to congressional oversight or proposed legislation during the 115th Congress.

Effective August 24, 2016, federal agencies sponsoring an agency-specific mentor-protégé program must report annually to the SBA specific information, such as the number and type of small business participants, the assistance provided, and the protégés' progress in competing for federal contracts.[151] This information could prove useful to Congress as it conducts oversight of these programs.

In addition, Congress could specify additional information that the SBA, and other federal agencies, must maintain and report annually to Congress concerning their mentor-protégé programs. For example, DOD has historically been required to report the following information regarding its mentor-protégé program: (1) the number of mentor-protégé agreements entered into during the fiscal year; (2) the number of mentor-protégé agreements in effect during the fiscal year; (3) the total amount reimbursed to mentor firms during the fiscal year; (4) each mentor-protégé agreement, if any, approved during the fiscal year that provided a program participation term in excess of three years, together with the justification for the approval; (5) each reimbursement of a mentor firm in excess of the program's limits made during the fiscal year, together with the justification for the approval; and (6) trends in the progress made in employment, revenues, and participation in agency contracts by protégé firms participating in the program during the fiscal year and protégé firms that completed or otherwise terminated participation in the program during the preceding two fiscal years.[152]

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[145] For additional information and analysis concerning the 8(a) Program, see CRS Report R44844, *SBA's "8(a) Program": Overview, History, and Current Issues*, by Robert Jay Dilger.

[146] Ibid.

[147] Ibid.

[148] Ibid., p. 24.

[149] SBA, "Final Regulations Will Strengthen 8(a) Business Development Program for Small Businesses," February 11, 2011, at http://www.sba.gov/content/final-regulations-will-strengthen-8a-business-development-program-small-businesses.

[150] GAO, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, GAO-11-548R, June 15, 2011, p. 9, at http://www.gao.gov/new.items/d11548r.pdf.

[151] SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48590, July 25, 2016.

[152] See, e.g., National Defense Authorization Act for Fiscal Year 2000, P.L. 106-65, §811, 113 Stat. 706-10 (October 5, (continued...)

Appendix. Comparison of Selected Agencies' Mentor-Protégé Programs

Table A-1. Tabular Comparison of Selected Agencies' Mentor-Protégé Programs

	SBA 8(a)	DOD	DHS	DOT
Primary focus	Contracts	Subcontracts; suppliers	Subcontracts	Federally funded contracts
Eligible mentors	Large firms; small firms; 8(a) graduates; other 8(a) firms in the transitional stage	Prime contractors with at least one active subcontracting plan (small businesses generally ineligible)	Large prime contractors	Another disadvantaged business enterprise (DBE) or a non-DBE firm
Eligible protégés	Small disadvantaged businesses participating in the 8(a) Program	Small disadvantaged businesses; businesses owned and controlled by Indian tribes, Alaska Native Corporations or Native Hawaiian Organizations; qualified organizations employing the "severely disabled"; women-owned and service-disabled veteran-owned small businesses; HUBZone small businesses	Small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; HUBZone small businesses, small disadvantaged businesses; women-owned small businesses	Small disadvantaged businesses; women-owned small businesses
Notable types of assistance	Assistance in performing prime contracts with the government in the form of joint ventures Financial assistance in the form of equity investments or loans Subcontracts Technical or management assistance	Advance and progress payments Award of subcontracts on a noncompetitive basis Investments in protégé firm in exchange for ownership interests Loans Assistance in general business management, engineering and technical matters, etc.	Rent-free use of facilities or equipment; property Temporary assignment of personnel to protégé for training Financial and organizational management Overall business management, planning, and development Technical assistance	Varies by program, but can include: training and development; technical and management assistance; personnel; financial assistance; and equipment
Incentives for mentor firms	Assistance counts toward subcontracting goals Can form joint venture with protégé that may be eligible for 8(a) and other small business contracts May acquire ownership of up to	Reimbursement of certain developmental assistance costs Unreimbursed development costs credited toward subcontracting goals Can award subcontracts on a noncompetitive basis to the protégé	Participation in mentor-protégé program can serve as an evaluation factor in negotiated procurements Costs incurred in providing assistance to protégé count toward	Can generally count the amount of assistance provided to protégés toward goals for contracting or subcontracting with DBEs Certain assistance costs may be reimbursed

(...continued)

1999).

SBA 8(a)	DOD	DHS	DOT
40% in protégé firm		subcontracting goals	
Can receive incentives in contract evaluations		Agency award for best mentor	

Source: Congressional Research Service, based on various sources cited in this report.

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