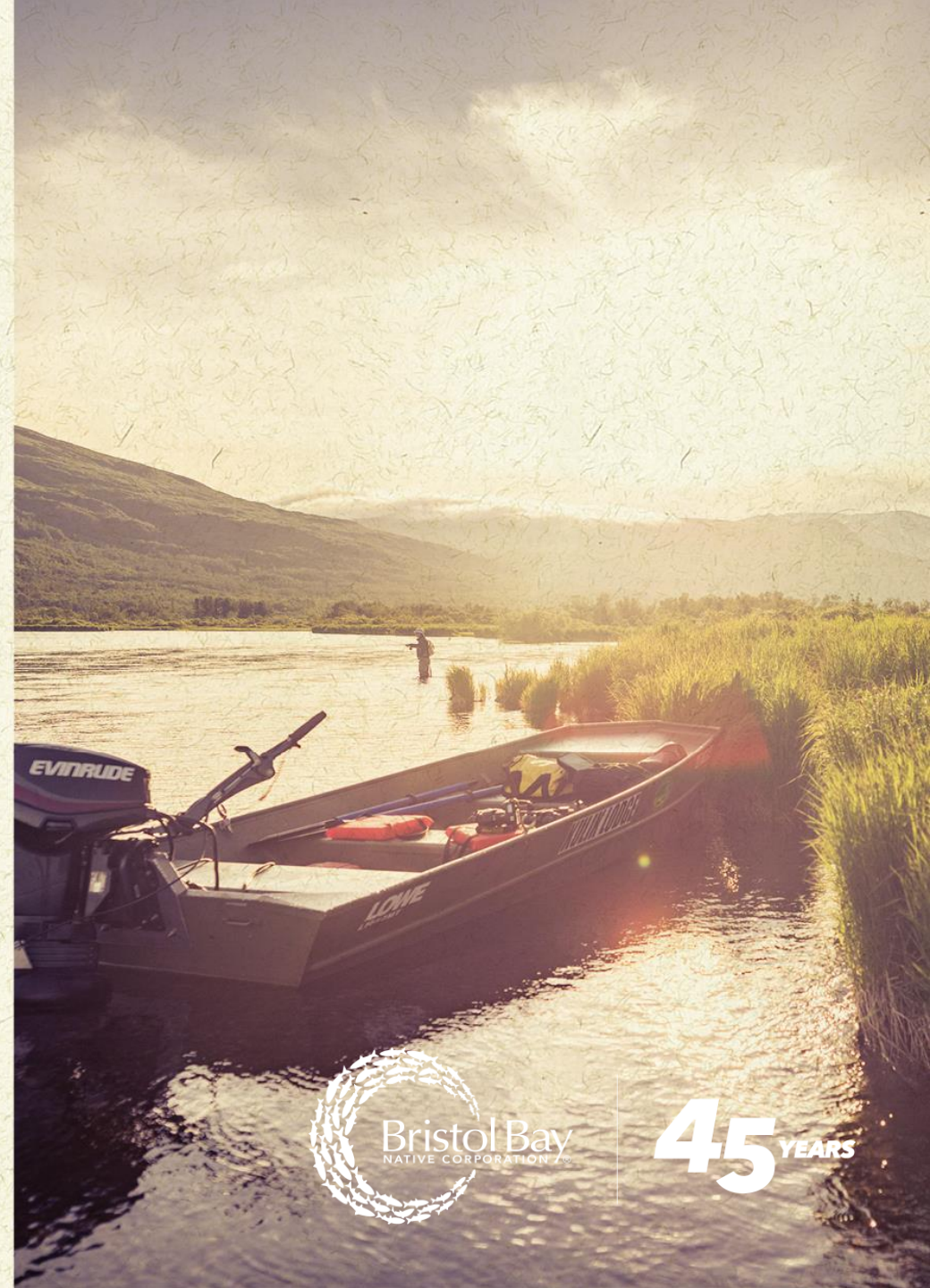


Operating with Integrity
**CULTURE OF
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Birch Horton Bittner & Cherot
a professional corporation

MENTOR PROTÉGÉ PROGRAMS AND JOINT VENTURES

Presented by Jon M. Devore
And Romina Bentz



45 YEARS

New All Small Mentor-Protégé Program

- MPP is not just for 8(a) firms anymore
- Combined All Small Mentor Protégé Program (ASMPP)
- 8(a) MPP Continues & Gets Simplified.

Mentor-Protégé Program Benefits:

- **Joint Ventures!** A Mentor and protégé may form joint ventures (JVs) as small businesses where the protégé is small under the procurement. 8(a) protégés pursue 8(a) contracts, WOSB, etc. **
- **Affiliation Exception.** SBA will not find affiliation or undue control based on the Mentor-Protégé arrangement; however, a MPA is not carte blanche protection from affiliation either.
- **Caution:** To ensure affiliation exception for M-P JVs, parties must have a Joint Venture Agreement that complies with regulations for ALL small business contracts. 8(a) JVs comply with 124.513(c); All Small JVs with 125.8(b)(2), (c), and (d).

Protégé Qualification Requirements

- **Be Small.** To qualify as Protégé, a concern must be small for its primary NAICS (or state it is seeking BD assistance with a secondary NAICS and qualify as small under that secondary code).
- Under the **ASMPP**, a small business may self-certify that it is small under its primary NAICS (or secondary NAICS identified for MPP purposes). SBA may examine SDVO SB or WOSB status of a protégé applicant claiming such status in any Federal procurement database at time of application. **
- **Additional protégé qualifications for 8(a) Firms**
 - **Tie MPA to Business Plan.** A concern must demonstrate how BD assistance under the M-P relationship will advance business plan goals/objectives.
 - **Good standing.** To qualify, a concern must be in good standing with the 8(a) Program.

Restrictions on Protégés

- **2 Mentor Limit in Company's Lifetime.** A company can only be a protégé twice in its lifetime, so it will only have two mentors through SBA's MPPs ever.
- Generally, Protégés have one Mentor at a time. Max 2.
- **Practice Tip:** Spread Out Your Protégé Benefits.
 - Generally, we do not recommend having two mentors at once. Spread out your company's ability to benefit from these programs.

Mentor Qualification Requirements

- **To qualify as a Mentor, firms must:**
 - Be capable of carrying out responsibilities under MPA (including having favorable financial health);
 - Have good character;
 - Not be suspended or debarred; and
 - Be able to impart value to the protégé through practical experience with the 8(a) Program or general knowledge of business operations and government contracting.
- **Annual Recertification.** Mentors must annually certify that it continues to possess good character and good financial health.

Restrictions on Mentors

- **Mentors can have 1-3 proteges.**
 - SBA prefers one protégé at a time for each mentor. However, a mentor can have more than one protégé **if** the second does not compete with the first.
 - Max 3 Proteges per Mentor at one time. Under no circumstances will a mentor be permitted to have more than three protégés at one time.
- **No Lifetime Limit for Mentor Participation.** Unlike proteges, there is no lifetime on the number of times a company may serve as a mentor under SBA's two MPPs.
- **Practice Tip.** For graduating 8(a) firms and/or firms that having grown to be “other than small,” consider being a mentor to an 8(a) or small business firm. This keeps the company in the game of small business contracts, where the mentor can impart its first-hand experience as a protégé, 8(a), and/or small business to its protégé.

Mentor-Protégé Agreement (MPA)

- **Written MPA:** SBA requires a written Mentor Protege Agreement (MPA), with effectively same requirements. See regulations for All Small: 125.9(e); 8(a): 124.520(e). **
- **Max 6 Year Term (3 term + 3 year option).** The MPA may be as long as **three years**, with an **option to extend an additional 3 years** (with SBA approval).
- **SBA will review MPA annually.** For 8(a) firms, proteges will report on the MPA in their business plan update. For All Small, proteges must report on MPA within 30 days of anniversary of MPA approval date.
- **Auto-renewal of MPA.** MPA auto renew unless SBA (or parties) terminate the relationship.

Reporting

- **Proteges must submit annually a report to SBA:** all technical and management assistance, loans/equity investments provided by Mentor to Protégé;
- **Annual SBA Review.** Proteges will report annually, and SBA will review annually to evaluate if MPA may continue.
- **Post M-P Relationship Reporting.** SBA requires protégé to report whether it believed M-P relationship was beneficial and describe lasting benefits (if any) to protégé.
- **CAUTION:** Where protégé does not report these results upon completion of first M-P relationship, SBA will NOT APPROVE a SECOND M-P relationship under All Small or 8(a) MPP.

Enforcement & Loss of Eligibility

- Protégé becomes ineligible when...
 - **8(a) MPP** – 8(a) protégé becomes ineligible when it leaves or graduates from the 8(a) Program. Can transfer existing mentor-protégé relationship over to the All Small MPP if the protégé is still eligible “small” business upon 8(a) graduation.
 - **All Small MPP** – small businesses become ineligible for All Small MPP when the protégé is no longer small under its primary NAICS code.
- SBA has enforcement powers where mentors abuse program or MPA is not productive for the protégé. SBA may:
 - Terminate MPA,
 - Bar the Mentor from serving as a mentor for 2 years;
 - Issue stop work orders on outstanding JV contracts; and/or
 - Consider mentor’s failure to comply with MPA as a basis for debarment.

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BBNC'S MPA/JV APPROVAL PROCESS

- Logic Manager – ERM Program
- JV/MPA POC
- MP/JV Due Diligence Checklist
- Self Certification of MP/JV Partner
- MP/JV v Non MP JV



45 YEARS

Workflow

Approval of Relationship - Company A

Approval Status: **Approved**

Comments:

I have reviewed the strategic fit and approve this JV

History:

Spelling Cancel Save

- Workflow Steps:
1. COO Approval
 2. CCO Approval
 3. Risk Management
 4. Tax
 5. Legal

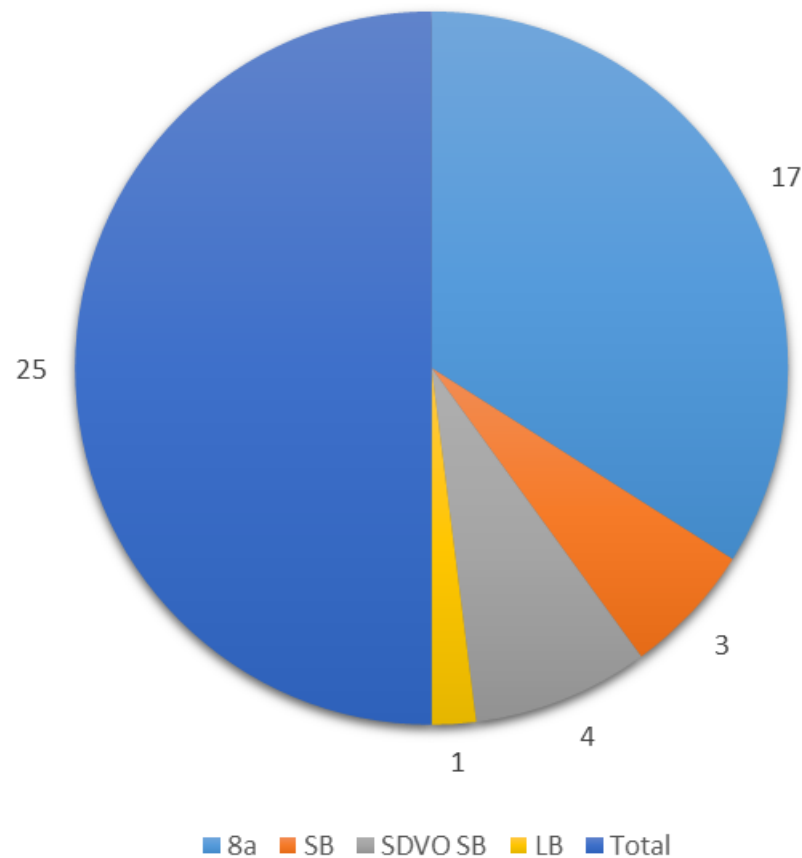
CERTIFY.SBA.GOV

- ASMPP Electronic Submission Process
- Use MPA template provided by BBNC Legal
- Devil is in the details
- ASMPP - Timeline
- ASMPP – Work in progress



JOINT VENTURES

- BBNC Subsidiary JVs



JOINT VENTURES

- IGC MP/JVs
- Use JVA, JVOA and Addendum templates provided by BBNC Legal – 8(a), Small, SDVO
- rbentz@bbnc.net
- (907) 265-7854



Types of Joint Ventures

- **Traditional Small Businesses JV:** A joint venture is when two or more small business concerns submit an offer as a small business for a federal procurement. The procurement may be bundled or non-bundled.
- **Traditional 8(a) Procurement JV:** An 8(a) concern partners with one or more other small business concerns as a joint venture on an 8(a) procurement. *See 13 C.F.R. § 124.513(b).*
- **Mentor-Protégé JV:** Two firms are in an SBA-approved Mentor-Protégé agreement. This can be under the All Small MPP or 8(a) MPP.

Joint Ventures - Overview

- **Joint Venture** = limited-purposed business ventures for joint profit. JVs are temporary.
- **SBA Limit on JVs is a max of 3 contracts in 2 years.** JVs are limited to no more than three specific contracts over a two-year period.
- **Practice Tip:** A JV may seek more than 3 awards, but once the third contract is awarded, the JV must stop submitting proposals. Thus, once a JV receives its second award, we recommend attempting to submit as many proposals as possible before the third award actually comes through.

JV Overview – con't

- Managing Venturer (MV) must be the Small Business/8(a).
- Small Business/8(a) must own at least 51% of the JV.
- Each JV partner must receive profits commensurate with the work it performed.
- Small Business/8(a) must perform at least 40% of the work performed by the JV.
- **SBA Approval – 8(a) v. All Small**
 - **8(a) M-P JV:** As with all 8(a) JVAs, SBA must approve the JVA before the award can be accepted by the JV.
 - **All Small M-P JV:** SBA approval of the JVA is not required. However, like 8(a) firms, the JV partners must submit certifications of compliance prior to performance of a JV M-P contract.

8(a) Joint Ventures

- A joint venture of at least one 8(a) participant and one or more other business concerns may submit an offer for a competitive 8(a) procurement without regard to affiliation, if it meets the following requirements:
- **Small:** each concern is small under the size standard corresponding to the NAICS code assigned to the contract.
- **8(a) Size:** A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement, or be awarded a sole source 8(a) procurement, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement.
- **BENEFIT:** Agencies get teams of small businesses with complementary capabilities instead of one small business. This allows agencies to push more work with greater value and greater demands, to small businesses, which in turn makes it easier for agencies to achieve its general and specific small business contracting goals for each year. In addition, agencies benefit specifically on that contract from getting the increased stability, greater expertise, more extensive past performance, and greater capacity of having two or more small businesses working as a team to meet the government's contract requirements.

Size of Joint Venture

- **Size of Small Business JVs:** A joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement, subcontract or sale so long as **each concern is small** under the size standard corresponding to the NAICS code assigned to the contract. 13 CFR 121.103(h)(3)(i).
 - JVA Content – two or more small businesses forming a JV do not need a specific form or conditions in a JVA to qualify as a small business.
- **Size Mentor-Protege JVs:** Two firms approved by SBA to be a mentor and protégé under 13 CFR 125.9 (All Small MPP) of this chapter may joint venture as a small business for any Federal government prime contract or subcontract, provided the **protégé qualifies as small** for the size standard corresponding to the NAICS code assigned to the procurement, and the joint venture meets the requirements of 13 CFR 125.18(b)(2) and (3), § 126.616(c) and (d), or § 127.506(c) and (d), as appropriate.
 - JVA Content – M-P JVA must meet the requirements of **13 CFR 125.8(b)(2) for All Small protégés** or **124.513 for 8(a) protégés**.
 - **Caution:** To ensure **affiliation exception for M-P JVs**, parties must have a Joint Venture Agreement that complies with regulations for all types of small business contracts. 8(a) JVs comply with 124.513(c); All Small JVs with 125.8(b)(2), (c), and (d).

Mentor-Protégé Joint Ventures

8(a) & All Small M-P JVs

- A protégé may enter into a JV with its SBA-approved mentor, and JV will qualify as a small business for any federal government contract or subcontract for which the protégé firm is qualified to perform, provided the **protégé qualifies as small** for the size standard corresponding to the NAICS code assigned to the procurement.
- **Government Benefit:** Agencies gain significant benefit from contracting with M-P JVs.
 - The government can utilize the expertise and experience of the mentor while receiving small business credit.
 - This may result in more efficient, cost-effective, and reliable delivery of services/products to the government, since the small business can leverage the experience and resources of its large business mentor.

Traps for Mentors

- **These SBA programs are for Protégés.**
 - While there are benefits for mentors, don't forget the SBA MPPs are about developing the business of the protégé.
 - Identify the business goals that prompted mentor participation. Make sure those goals and associated tasks are incorporated into the MPA.
- **Budget for mentoring costs and services.** Mentors will get access to small business contracts, but there are unique costs of doing business.
- Track the services provided to mentor – costs and hours spent. The protégé will also track (and report) these, but you should maintain your own records.
- **Choose your protégé wisely.**
 - These business relationships can last a long time. Generally, mentors have only one protégé at a time. Choose a good fit for your business objectives and business cultures to ensure a healthy “marriage” of the mentor and protégé.
- **Don't abuse the system.** The penalties for violating the terms of the MPP are severe, including disbarment.

Traps for Protégés

- **Choose your mentor wisely.**
 - You only get two mentors...EVER.
 - This M-P relationship can last for up to six years.
 - Make sure the mentor is going to be a good mentor (not abuse the system), have something to teach your company (that you want to learn), and be a good company culture match for your protégé company.
- **Don't Let Yourself Be Bullied.**
 - Ensure you have solid contracts in place from the beginning.
 - Teaming Agreements, Mentor Protégé Agreement, Joint Venture Agreements
 - Be specific and measurable (when possible) on mentor responsibilities, deadlines, cost-sharing, etc.
 - You are the managing venturer, so act like it.
 - Keep SBA informed of any issues as they arise.

Traps for Protégés (con't)

- **Don't lose your affiliation exception; make sure your JVA is compliant.**
 - SBA will not find affiliation or undue control based on the Mentor-Protégé arrangement; however, a M-P Agreement is not carte blanche protection from affiliation either.
 - **Caution:** To ensure affiliation exception for M-P JVs, parties must have a Joint Venture Agreement with compliant content. Non-compliance can lead to a negative size determination finding if challenged in a size protest.
- **Beware: It's Hard to Punish a Bad Mentor.**
 - Regulations related to character are difficult to enforce.
 - SBA does not yet have a process to suspend Mentors from the SBA program, although they have the authority to do so. Thus, SBA is less likely to take enforcement actions without solid proof of serious wrongdoing.
 - Suspension and debarment is an option, but it is a high bar and SBA is reluctant to use that sword without concrete evidence of illegal activity and malicious abuse/fraud of program.
 - Beware, there may be some "bad actors" in the system that have not gotten punished yet.

MPP Numbers and Trends

- **All Small MPP**
 - The All Small Mentor-Protégé Program began accepting applications on October 1, 2016.
 - To date, they have approved **331** All Small MPP mentor-protégé relationships.
- **8(a) MPP**
 - **501** active and approved 8(a) Mentor-Protégé Agreement relationships.
 - **180** 8(a) MP JVs as of October 30, 2017.



Questions?

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