



September 17, 2024

Ms. Van Tran  
Deputy Associate Administrator for the Office of Business Development  
U.S. Small Business Administration  
409 Third Street, SW  
Washington, DC 20416

RE: Comments to Tribal Consultation for HUBZone Program Updates and Clarifications  
and Potential Reforms Under Executive Order 14112.

Dear Ms. Tran:

Please accept these comments on behalf of the American Council of Engineering Companies (ACEC) – the business association of the nation’s engineering industry. Founded in 1906, ACEC is a national federation of 52 state and regional organizations representing more than 5,600 engineering firms and 600,000+ engineers, surveyors, architects, and other specialists nationwide. ACEC member firms drive the design of America’s infrastructure and built environment.

#### Executive Summary

ACEC believes the proposed elimination of mentor-protégé joint ventures from multiple award contracts or limiting them to five years, will have a profoundly negative impact on the entire small business community. The proposed rulemaking combines very disparate issues – implementing EO 14112 and support to Tribal Nations, hosting listening sessions, HUBZone and 8(a) BD changes, and mentor protégé changes. Mentor-protégé joint venture issues should be addressed separately and not combined.

#### Perceptions vs. Data

There is concern that the SBA is considering changes to mentor-protégé joint ventures (JVs) due to "perceptions." No data explaining the problem or to support potential solutions is shared in the notice. Many questions need to be addressed before changing a relatively successful program. These include:

1. What does the actual data on multiple award task order contracts (MATOCs) and task order awards indicate? Is this perception more prevalent in some markets than others (such as the IT services market)?
2. What is the percentage of awards given to mentor-protégé small business joint ventures versus non-mentor-protégé firms?

3. What is the breakdown in the dollar value of these awards?
4. What is the average time between establishing a Mentor-Protégé JV and the time of the first award?
5. What small businesses that have competed and lost on MATOC contracts but later won as a Mentor Protégé?
6. What feasible alternatives exist for small businesses to gain recent relevant experience, where “recent” is the past five years and “relevant” is the project type within the Area of Responsibility in which 50% of the contract is performed?
7. What small firms have won contracts as primes on set-asides and then after multiple years under contract did not get an opportunity to propose on any tasks and therefore lack past performance ratings as a prime, which is needed to be shortlisted for future work?

Changes should only be made if data supports the conclusions, and only then if analysis shows that changes will incentivize a more equitable marketplace for individual small businesses. If the long-term goals of the Mentor-Protégé Program (MPP) are that small businesses become more capable at winning and executing ever larger and more complicated projects and are able to do this without their mentor upon graduation from the program, then any changes should reinforce those goals.

#### Industry Reaction

SBA's MPP has benefited many small businesses entering the federal market by securing contracts that they otherwise would not be able to pursue, win, and successfully execute. Prior to SBA's MPP, larger, more complex task orders contracts were not set aside for small businesses, and small businesses were limited to contracts that they could substantially complete with their own resources and the help of a few sub-consultants.

For Architect/Engineer (A/E) services, we have seen federal agencies heavily increasing the use of multiple-award Indefinite Delivery/Indefinite Quantity (IDIQ) contracts or MATOCs, with small business emphasis. These contracts have grown in size, scope, geographical coverage, and duration. Most MATOC solicitations for small businesses are now so exhaustive and onerous that a small business can't meet the requirements without one or more large businesses on their team. The small business solicitation requirements are often identical to the requirements of an unrestricted solicitation from the same agency for the same work. Without MPP, as a result of current contracting practices and subcontracting policies, it is impossible for a small business to gain this experience to be competitive on these multiple award-type contracts. SBA and agencies issuing small business (SB) set-aside MATOC contracts need to have this as an objective. SB firms winning multi-year contracts as primes on set-asides and not getting a single opportunity to propose on tasks is counterproductive and damaging to the SB. For federal contracts, lacking past performance ratings as a prime often precludes shortlisting.

More broadly, with MPP, the ability to form a JV, and actually perform meaningful work is an essential growth lever for companies to successfully attempt to transition from a small business to other than small business. Recent federal government procurement actions inhibit actual growth. Upon graduation from a small business program, what reason is there for the

government to award them another contract? Not every small business wants to be sold to a bigger company and even fewer want to remain a small business indefinitely.

Changes that would restrict mentor-protégés from MATOCs and any other changes that would limit the use of this SBA tool would have a devastating effect on many small businesses trying to gain experience in federal markets.

#### Potential Alternatives

Rather than implement a limitation or prohibition on mentor-protégé joint venture award of a MATOC contract, the government should place emphasis on large businesses meeting their small business utilization goals and encourage more small businesses to find a mentor and enter the program. Changes made a few years ago, allowing a protégé to substitute another firm to be its mentor and not counting a mentor-protégé relationship terminated within 18 months against the two mentor-protégé relationship limit have been positive, as has the elimination of the "three in two" rule requiring that a joint venture be limited to three contracts over a two year period.

We urge the SBA to consider a more balanced approach that addresses the concerns of equitable competition without dismantling the support structures that small businesses rely on. Rather than eliminating the affiliation exception, we propose enhancing the oversight and performance monitoring of mentor-protégé joint ventures to ensure they are functioning as intended.

Additionally, adjusting past performance and experience requirements, and contract scope, size, geographical coverage, and duration in a manner that still promotes excellence, but is attainable for individual small businesses could create a more inclusive and competitive environment.

#### Conclusion

The proposed regulatory changes threaten to undermine the progress made in fostering a competitive small business environment in federal contracting. We strongly advocate for maintaining the affiliation exception and focusing on measures that genuinely support the growth and competitiveness of small businesses.

Thank you for your consideration of our industry's concerns and recommendations. We are committed to working with the SBA to find solutions that uphold the integrity of the Mentor-Protégé Program and ensure a vibrant and equitable marketplace for all small businesses.

Respectfully,



**Bradley J. Saull** (he/him)

Vice President, Federal & International Programs  
The American Council of Engineering Companies (ACEC)  
Direct: (202) 682-4342