On October 29, 2009 the Small Business Administration (SBA) issued a proposed rule to significantly revise the Federal Acquisition Regulation (FAR), affecting 8(a) and Small Disadvantaged Business (SDB) programs, as well as changing Small Business size standards. The proposed rule, if finalized as written, will have significant impacts to a number of small and small disadvantaged businesses.

The proposed revisions are numerous and complex; the Federal Register publication, found **here**, takes up 29 pages of densely packed information. There are six proposed changes to SBA's size regulations, two dealing with mentor/protégé situations, one amending the requirements for joint ventures, one clarifying how a procurement should be classified, one further explaining the nonmanufacturer rule, and one relating to who may request a formal size determination. The remaining proposed changes are to the regulations governing SBA's 8(a) BD and SDB programs. Following are some highlights of the proposed rule:

- Clarifies that protégé firms may only be considered to be not affiliated with their mentors (based on assistance received from the mentor firms) when they are made via an SBA approved 8(a) BD mentor/protégé agreement, or similar mentor/protégé program under another Federal agency that contains the exception in their authorizing statute (e.g., the Defense Department). Clarifies that only the SBA may exempt firms from the affiliation rules.

- Clarifies that firms in a joint venture may be found to be generally affiliated if they pursue and/or receive contract awards in excess of the specific rule limitations.
- Clarifies that while a joint venture may or may not be a separate legal entity, it must exist through a written document. Clarifies that a joint venture may or may not be populated (*i.e.*, have its own separate employees). Whether a joint venture needs to be populated or have separate employees depends upon the legal structure of the joint venture. If a joint venture is a separate legal entity, then it must have its own employees. If a joint venture merely exists through a written agreement between two or more individual business entities, then it need not have its own separate employees and employees of each of the individual business entities may perform work for the joint venture.

- Clarifies that any joint venture seeking to use the 8(a) mentor/protégé status as a basis for an exception to the affiliation requirements must follow the requirements of the 8(a) program—i.e., structure the joint venture agreement in accordance with 13 C.F.R. § 124.513 and submit the joint venture agreement for prior SBA approval.
- Clarifies the “nonmanufacturer rule” to require that a firm that is not itself the manufacturer of the end item being procured must provide the product of a small business manufacturer only where a procuring agency has classified a procurement as a manufacturing procurement by assigning it a North American Industry Classification System (NAICS) code under Sectors 31 to 33—and clarifies that procurements not classified as manufacturing procurements are not subject to the nonmanufacturer rule.
- Amends the current rule to specify that an 8(a) firm does not graduate from the program merely by completing its nine-year term, but instead will be considered to graduate only upon completion of the entity’s business plan goals, thus demonstrating its ability to compete in the marketplace without 8(a) assistance.
- Amends the current rule defining economic disadvantage to (among other things) exempt income from an S Corporation from the calculation of both income and net worth to the extent such income is reinvested in the firm or used to pay taxes arising from the normal course of operations of an S corporation. Therefore, while the income of an S corporation flows through and is taxed to individual shareholders in accordance with their interest in the S corporation for Federal tax purposes, SBA will take such income into account for economic disadvantage purposes only if it is actually distributed to the particular shareholder. This change would result in equal treatment of corporate income for C and S corporations.
- Revises the current rule to state that non-8(a) joint venture partners to 8(a) sole source contracts cannot also be subcontractors under the joint venture prime contract. If a non-8(a) joint venture partner seeks to perform more work under the contract, then the amount of work done by the 8(a) partner to the joint venture must also increase.
- Amends the current rule to establish an absolute limit of three protégés per mentor.

The proposed revisions are discussed at GovExec.com in **this article** . The article takes a generally positive tone, approving of the proposed changes as closing regulatory loopholes that allow “multibillion-dollar corporations to partner with Alaska native corporations -- which are considered permanent small disadvantaged businesses -- on contracts in which the larger firm does virtually all of the work.”