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Small Business Policy, Legislative and Regulatory and the Defense Pricing and Contracting Updates



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Legislative Action



James M. Inhofe NDAA for FY23

[Pub. Law 117-263](#), enacted 12/23/22

- Codifies SBA scorecard and add set-aside data
- Requires Congressional reports on consolidated contracts
 - Agencies must provide information to SBA
- Makes permanent DoD Mentor-Protégé Program
 - Pilot for protégés to receive reimbursement for technology development
- Creates statutory DHS mentor-protégé program
- Authorizes DoD contract modifications to address economic inflation (sect. 822)



SBIR and STTR Extension Act of 2022

[Pub. Law 117-183](#), signed by the President on 9/30/22

- Extends the SBIR and STTR programs into FY 2025
- Businesses must disclose foreign ties
- Requires each agency to establish a Due Diligence Program on foreign influence
- Requires the Secretary of Defense to establish an Innovation Open Topics Program
- Increases Minimum Performance Standards



Introduced in the House

- [H.R. 986](#) - require the DoD and SBA to coordinate government contracting assistance offered by SBDCs and APEX Accelerators
- [H.R. 1583](#) (Carson) - Provide for contracting preferences and other benefits for emerging business enterprises
- [H.R. 1744](#) (Castro) – Require SBA to disaggregate data on Federal contracts awarded to SDBs
- [H.R. 2726](#) (Stauber) - Provide 50% interim partial payment to small business for construction-related requests for equitable adjustments
- [H.R. 2744](#) (Bean) – Freedom from Government Competition Act



Introduced in the Senate

- [S. 1407](#) (Sullivan)- eliminate the requirement for award of 8(a) construction contracts within the area of performance
- [S. 1469](#) (Ernst) - require certification of a SDVOSB in order to be counted toward goals for contract awards
- [S. 1470](#) (Ernst) – require certification of a women-owned SB in order to be counted toward goals for contract awards



Executive Action



OMB Memo on Increasing SDB Dollars

M-23-01, Increasing the Share of Contracting Dollars Awarded to Small Disadvantaged Businesses (Oct. 4, 2022)

- Raises the governmentwide goal for Small Disadvantaged Business spending to 12% for FY23
 - SBA negotiates goals with 24 CFO Act agencies
- Build diversity and resilience of the Federal supplier base
- Lower barriers to entry and create opportunities for SDBs, WOSBs, SDVOSBs, and HUBZone businesses



OMB Memo on New and Recent Entrants

[M-23-11](#), **Creating a More Diverse and Resilient Federal Marketplace through Increased Participation of New and Recent Entrants (Feb. 17, 2023).**

- Focus on new and recent contractors to provide fresh innovative thinking
- Common definitions of "new entrant" and "recent entrant"
- [Supplier Base Dashboard](#) to track an agency's mix of new entrants, recent entrants, and established vendors
- "Priority supply chains"--market segments where agencies have experienced challenges finding contractors
- [Government-Wide Procurement Equity Tool](#) to support outreach for greater geographic and demographic diversity in procurement competitions.



Recent SBA Regulatory Action



SBA Final Rule: Ownership/Control and Contract Assistance for 8(a)

88 FR 26164 (April 27, 2023 corrected May 5, 2023)

- Size and socioeconomic status determinations from SBA
 - Business shall update its status in SAM.gov no later than 2 days after final determination
 - SBA shall update if the business does not do so
 - Business must notify agencies with which it has a pending offer
- NMR waiver requests only required to reach 50% by SB manufacturers + waived items
- Prohibits competitions that require multiple certifications
- 8(a)/WOSB/HZ/SDVOSB cannot be JV partner for more than 1 JV per contract



SBA Final Rule: Ownership/Control and Contract Assistance for 8(a) 88 FR 26164 (**April 27, 2023** corrected May 5, 2023)

- 8(a) on unrestricted multiple-award contracts or FSS
 - Must be offered and accepted by SBA, SBA will verify firm
 - Can use FSS ordering procedures
- SDB reviews and protests
- Include BPAs in list of vehicles subject to consolidation and bundling
- Overhead costs in Individual subcontracting calculations for prime contracts exceeding \$7.5 million
- LOS – CO cannot give satisfactory/positive past performance to a business that fails to comply with LOS, unless determination approved



SBA Final Rule: Ownership/Control and Contract Assistance for 8(a)

88 FR 26164 (April 27, 2023 corrected May 5, 2023)

- For Business Activity Targets – SBA will consider extenuating circumstances, offers on non-8(a) procurements
- Only need to document IRA exception for economic disadvantage if requested by SBA
- Threshold application issues: for-profit, citizen, one-time eligibility, some revenues for individually-owned applicants
- Bona fide place of business (moratorium through FY23) – can use existing contract locations
- Offer and acceptance not required under SAT, but still need eligibility
- Only active 8(a) firms can receive sole-source orders



SBA Interim Final Rule: Inflation Adjustment for Size Standards, ED thresholds

[87 FR 69118](#) (Nov. 17, 2022)

- Adds 13% increase to revenue-based size standards
- Adjusts economic disadvantage thresholds and other thresholds
 - Net worth from \$750,000 to \$850,000
 - AGI from \$350,000 to \$400,000
 - Total assets from \$6 mil to \$6.5 mil
 - Dollar limit for combined 8(a) contracts from \$100 mil to \$168,500,000



SBA Final Rule: Adoption of 2022 NAICS for Size Standards

[87 FR 59240](#) (Sept. 29, 2022)

- Reorganized SBA's size standard table for OMB's new NAICS revision.
- New NAICS codes were effective in January.
- The NAICS 2022 revision creates 111 new industries.
- Effective October 1, 2022.
- SBA also updated the WOSB Program NAICS codes in [87 FR 69060](#).



SBA Final Rule: Manufacturing and Employee-Based Size Standards

[88 FR 9970](#) (Feb. 15, 2023; eff. March 17)

- Increases 144 employee-based size standards
- Retains 500-employee NMR size standard
- Notable increases
 - 325412, Pharmaceutical Preparation Manufacturing, from 1,250 to 1,300 employees
 - 331491, Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding, from 750 to 900 employees
 - 336611, Ship Building and Repairing, from 1,250 to 1,300 employees
 - 339999, All Other Miscellaneous Manufacturing, from 500 to 550 employees
 - 562910 (Exception), Environmental Remediation Services, from 750 to 1,000 employees



Final Rule: Veteran-Owned, Service-Disabled Veteran-Owned Certification

[87 FR 73400](#) (Nov. 29, 2022)

- Governmentwide certification program for SDVOSBs
- Effective Jan. 1, 2023, self-certified SDVOSBs have one year to apply to SBA for certification
 - Existing VA-certified VOSB and SDVOSB stay certified
 - VA certifications are extended by 1 year
- Certification is required for set-aside or sole source SDVO or VOSB contracts
 - To get certified, must be small for a NAICS code on SAM profile
 - Unconditionally owned by veteran—but reasonable right of first refusal OK
 - Control—no outside obligations that prevent veteran from devoting time/attention
- No changes on self-certification for subcontracting or prime credit—potential separate rulemaking upcoming



SBA Final Rule: Past Performance Ratings for JV members and Subcontractors

[87 FR 43731](#) (July 22, 2022)

- Small business can use past performance from a joint venture, provided it worked on the joint venture's contracts
- Small business can use past performance from a first-tier subcontract to go after a prime contract
 - Subcontracting plans will direct primes to provide a rating to the small business within 15 days
 - The small business must make the request to the prime contractors no later than 30 days after the end of the period of performance of the contract with the government.



SBA Final Rule: HUBZone Appeal Process

[88 FR 21086](#) (April 10, 2023)

- Authorizes SBA OHA to hear appeals from HUBZone protest decisions
 - Previously handled within SBA's GCBD
- Creates rules of practice for OHA to hear HUBZone appeals



SBA Proposed Rule: Credit for Lower Tier Subcontracting

[87 FR 77529](#) (Dec. 19, 2022)

- Permits prime contractor to apply credit for subcontracts to small businesses at lower tiers toward its subcontracting goals
 - Only for individual plans, not commercial/comprehensive/GWAC/multi-agency contracts
 - Election recorded in the subcontracting plan
- Prime would incorporate lower-tier performance into subcontracting goals



Upcoming SBA proposed rules

1. HUBZone Program Updates and Clarifications
2. Affiliation in Small Business Procurement Programs; Women-Owned Small Business Program
3. Small Business Contracting: Increasing Small Business Participation on Multiple Award Contract



Recent FAR Regulatory Action



FAR Final Rule: Small Business Amendments

[88 FR 9734](#) (Feb. 14, 2023)

- Limit options past the 5th year on a long-term 8(a) contract to 8(a) firms that continue to qualify as 8(a) participants
- Clarify that the size standard for IT value-added resellers is 150 employees
- Apply the ostensible subcontractor rule to SBA's socioeconomic programs
- Determine size as of initial offer if the solicitation does not require a price evaluation



FAR Final Rule: Accelerated Payments

[88 FR 9730](#) (Feb. 14, 2023)

- Expands accelerated payments to small businesses
- 15-day goal of paying small-business prime contractors after invoice
- Accelerates payments to other prime contractors that agree to pay their small-business subcontractors within 15 days of the payment without further consideration from the small business



FAR Final Rule: WOSB Certification

[87 FR 58237](#) (Sept. 23, 2022)

- Require EDWOSB and WOSB concerns to apply for certification through SBA or an SBA-approved third-party certifier and to be certified in order to be eligible for WOSB or EDWOSB set-aside or sole-source contracts under the Program.
- Requires agencies to check SAM or SBA's DSBS for WOSB/EDWOSB set-asides and sole-source awards
 - SAM designation not yet effective
- Firms may submit offers on WOSB/EDWOSB set-asides if certification is pending



FAR Final Rule: Policy on Joint Ventures

[87 FR 58219](#) (Sept. 23, 2022)

- Permits joint ventures between mentor and protégé to qualify as small or for a socioeconomic program
- Agencies must consider the past performance of each party to a joint venture if the joint venture is not able to demonstrate its own
- SBA does not perform joint venture approval for competitive 8(a) awards (but still determines 8(a) participant eligibility)



FAR Final Rule: Update of HUBZone Program

[87 FR 58232](#) (Sept. 23, 2022)

- HUBZone firms are certified annually for the entire year, instead of being required to represent for each offer
- Removes requirement for firm to be HUBZone qualified at both offer and award for HUBZone set-asides—instead just offer
- Authorizes HUBZone set-aside and sole source awards under SAT
- HUBZone offerors must attempt to maintain HUBZone residency percentage if performing a HUBZone contract



FAR Final Rule: Construction Contract Administration

[87 FR 58227](#) (Sept. 23, 2022)

- For construction contracts for small businesses, agency must publish information about definitization of equitable adjustments
 - Policies or procedures that apply to definitization of equitable adjustments for change orders under construction contracts
 - 3-year data on time required to definitize equitable adjustments
 - Use table showing number of change orders definitized within 30 days, 60 days, 90 days, 180 days, 365 days, or more
 - If have less than 3 years, provide for available FYs
- Agency must collect data on time required to definitize change orders for construction contracts



FAR Proposed Rule: SBIR and STTR Programs

[88 FR 20822](#) (April 7, 2023)

- Extension of the SBIR/STTR data rights protection period from a minimum of 4 years to 20 years
- Sole-source actions under Phase III of the SBIR/STTR programs without further justification
- Instances when Phase II sole-source actions may be awarded without justification
- Comments due June 6



FAR Proposed Rule: 8(a) Program

[87 FR 76598](#) (Dec. 15, 2022)

- Clarifies that the CoC program is not applicable to 8(a) sole-source awards;
- Requires agency to notify SBA when
 1. Agency determines that a procurement, though previously procured under 8(a), is a new requirement not subject to SBA release requirements;
 2. Agency will procure a follow-on 8(a) requirement through a limited-competition contract vehicle



FAR Final Rule: Exemption from Inflation Adjustments

[88 FR 25476](#) (April 26, 2023)

- Exempts two thresholds from automatic inflation increases:
 - The dollar level at which payment and performance bonds are required on a construction contract (currently \$150,000); and
 - The dollar level at which payment protections are required as an alternative to payment bonds (currently \$35,000).



FAR Proposed Rule: Disclosure of Greenhouse Gas Emissions

[87 FR 68312](#) (Nov. 14, 2022)

- Implements EO for major Federal suppliers to publicly disclose greenhouse gases and climate-related financial risk
- Significant – received between \$7.5 and \$50 mil in contracts in prior year
 - Complete GHG inventory (Scope 1 and 2) and report in SAM.gov
 - ANCs, Indian tribes, NHOs exempted
- Major contractors – received more than \$50 mil in contracts in prior year
 - Requirements of significant contractors **plus**
 - Annual climate disclosure
 - Develop science-based targets
 - Small businesses exempted (but not from significant requirements)



Upcoming FAR proposed rules

1. Proposed 2023-009, Credit for Lower-Tier Subcontracting
2. Proposed 2023-001, Subcontracting to Puerto Rican and Covered Territory Small Businesses
3. Proposed 2022-009, Certification of Service-Disabled Veteran-Owned Small Businesses
4. Proposed 2021-020, Limitations on Subcontracting Revisions
5. Proposed 2021-011, Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractor
6. Proposed 2021-009, Protests of Orders Set Aside for Small Business
7. Proposed 2020-016, Representation of Size and Socioeconomic Status



Upcoming FAR final rules

1. 2023-004, Small Disadvantaged Business Threshold



Recent / Open DFARS rules

1. Final 2020-DO09 – Reauthorization and Improvement of the DoD Pilot Mentor Protégé Program (published Aug 25, 2022)
2. Final 2020-DO22 - Transfers responsibility for implementation of the Procurement Technical Assistance Cooperative (PTAC) Program (published June 9, 2023)
3. Open 2019-DO43 - Small Business Innovation Research Program Data Rights
4. Open 2023-DO11 – Codification of the DoD Mentor-Protege Program and makes other program amendments.



DPC -- Small Business Topics Of Interest

- Category Management
 - Oct 2022 – DPC ID'ed as DoD's Category Management Accountable Official
 - Jan 2023 – OSBP/DPC Memo, "Achieving Small Business Goals through Category Management Practices"
- Joint Venture Facility Clearances
- AbilityOne
- Inflation



Thank you!
Questions?



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