



U.S. Small Business
Administration

Legislative & Regulatory Update

For Small Business Government Contracting
Programs

May 1, 2020

Legislative Action

Coronavirus Aid, Relief, and Economic Security (CARES) Act

[Public Law No. 116-136](#)

- Establishes a \$349 billion Paycheck Protection Program (sect. 1102)
 - Forms and guidance available at www.sba.gov/ppp
 - Includes [Frequently Asked Questions for Lenders and Borrowers](#)
- Authorizes reimbursement of paid leave for government contractors (sect. 3610)
 - DOD implemented through [Class Deviation 2020-O0013 - CARES Act Section 3610 Implementation \(FAQs\)](#)
 - OMB issued general guidance in memorandum [M-20-22, Preserving the Resilience of the Federal Contracting Base in the Fight Against the Coronavirus Disease 2019 \(COVID-19\)](#)

Paycheck Protection Program and Health Care Enhancement Act

[Public Law No. 116-139](#)

- Raises PPP authority to \$649 billion
 - Also adds \$10 billion for EIDL grants
 - No changes to eligibility rules for PPP

National Defense Authorization Act for Fiscal Year

2020 [Public Law No. 116-92 \(conference report\)](#)

- Raises the threshold for justification and approval for 8(a) Program sole-source awards to \$100 million for DOD contracts (Sec. 823)
 - implemented in [Class Deviation 2020-O0009 - Justification and Approval Threshold for 8\(a\) Contracts](#)
- Clarifies that large prime contractors may receive subcontracting credit on individual subcontracting plans for small businesses at lower tiers (Sec. 870)
- Requires SBA to report Federal spending made through designated “best in class” vehicles, and to report on the dollars awarded through these vehicles to small businesses (Sec. 871)
- Extends DOD Mentor-Protégé program to 2026 (Sec. 872)
- Accelerates, to the fullest extent permitted by law, the payment date for prime contractors that are small business concerns or that subcontract with small business concerns, with a goal of 15 days (Sec. 873)

NDAA FY20 – general provisions (cont.)

[Public Law No. 116-92](#) ([conference report](#))

- Extends double small business credit for Puerto Rico businesses to small business programs, subcontracts at any tier, and to small businesses with principal offices in the U.S.V.I., American Samoa, Guam, and the Northern Mariana Islands (Sec. 875)
- Permits the surviving spouse of a veteran with a service-connected disability rated at less than 100 percent who does not die as a result of a service-connected disability to maintain ownership status of the SDVOSB for 3 years (Sec. 876)
- Prohibits DOD from requiring facility access clearance for a joint venture composed entirely of entities that are currently cleared for access. (Sec. 1629)

NDAA FY20 – SBIR/STTR provisions

[Public Law No. 116-92](#) ([conference report](#))

- USSOCOM may use 5% of SBIR/STTR funds for 2-year pilot program involving partnership intermediary (Sec. 851)
- Increases the maximum per award threshold for projects participating in the Defense Research and Development Rapid Innovation Program from \$3.0 million per award to \$6.0 million per award (Sec. 878)
- Directs DOD to align SBIR/STTR research topics with the National Defense Science and Technology Strategy (Sec. 879)
- Requires PCRs to assist with Phase III and OSDBUs to consult with appropriate personnel to assist small businesses with researching solicitations to market the SBIR research developed by the business (Sec. 880)

NDAA FY20 – SBIR/STTR provisions (cont.)

[Public Law No: 116-92](#) ([conference report](#))

- Permits DOD to use a vendor to provide cybersecurity technical assistance to SBIR/STTR small businesses. (Sec. 881)
- Requires DOD to submit a report on funds or assistance to small businesses as prime contractors for research, development, test, and evaluation activities in FY17-FY19 (Sec. 882)
- Establishes a three-year DOD “Domestic Investment Pilot Program” that permits up to 10% of SBIR awards to small business concerns owned exclusively by multiple U.S.-owned venture capital, hedge funds, or private equity firms, or majority owned by such firms if foreign ownership is limited to members of the national technology and industrial base (Sec. 884)

Legislation to Watch – passed by House and Senate

- [H.R.4920 - Department of Veterans Affairs Contracting Preference Consistency Act](#) – would create limited exception to Vet First Program for AbilityOne

Legislation to Watch – passed by House; sent to

Senate [H.R. 1615](#) - House-passed VA-SBA Act

- Would transfer SDVOSB and VOSB certification to SBA, require certification governmentwide
- Transfer date of 2 years after enactment, with 6-month extensions
- SBA would take on VOSB certification on a reimbursable basis for VA
- Current SBA self-certified firms would retain self-certification for 1 year
- [H.R. 190](#) (also [S. 673](#)) - Would exclude options from thresholds for sole-source contracts
- [H.R. 4727 - Department of Homeland Security Mentor-Protege Program Act of 2019](#) - Would authorize DHS MPP

Legislation to Watch – passed by House (cont.)

- [H.R. 5130](#) - Capturing All Small Business Act of 2019 – would extend employee-based average to 24 months, instead of current 12 months
- [H.R. 5146](#) - Unlocking Opportunities for Small Businesses Act of 2019 – Would require federal government contracting officers to consider past performance obtained as a joint venturer or subcontractor when evaluating small businesses seeking to compete on federal prime contracts
- [H.R. 3941](#) – FedRAMP Authorization Act
- [H.R. 561](#) - Protecting Business Opportunities for Veterans Act of 2019 - applies small business subcontracting limitations to VA SD/VOSB set-aside contracts

Legislation to Watch – introduced in House

- [H.R. 5348](#) - Small Business Innovation Voucher Act of 2019 - To establish an SBA Innovation Voucher Grant Program (also [S. 3289](#))
- [H.R. 5669](#) - SECURE Small Business Act - To establish a program to assist small business concerns with purchasing cybersecurity products and services (also [S. 3205](#))
- [H.R. 5685](#) - Securing American Leadership in Science and Technology Act of 2020
- [H.R. 5938](#) - To reauthorize the Department of Defense mentor-protégé program

Legislation to Watch – introduced in Senate

- [S. 2729](#) - Small Business Contracting Accountability Act of 2019
– To require OSDDBUs to report to SBCs on non-compliance with 15(k) provisions
- [S. 2852](#) – To establish accelerated payments applicable to contracts with certain small business concerns
- [S. 2853](#) – To provide interim partial payment to small business contractors that request an equitable adjustment due to a change in the terms of a construction contract
- [S. 1981](#) – To change ownership requirements for WOSB and 8(a) programs for firms with venture-capital investment
- [S. 3038](#) - To require DHS and CAOC to examine innovative techniques for contracting, including small business contracting

Legislation to Watch – introduced in Senate

- [S. 812](#) - To add Limitations on Subcontracting to the VA VOSB program under 38 USC 8127.

Recent SBA and FAR Regulatory Action

Interim Final Rule: Affiliate Rules for Paycheck Protection Program

85 FR 20817

- Applies SBA affiliation rules at [13 CFR 121.301](#) to the PPP
 - SBA also published a [PPP affiliation guide](#)
- Exempts otherwise qualified faith-based organizations from the SBA's affiliation rules where the application of the affiliation rules would substantially burden those organizations' religious exercise
- Creates a new exception at 121.103(b)(10) for faith-based organizations
- Adds an "Addendum A" for a faith-based organization to claim an affiliation exempt for the PPP
- Effective immediately; comments due May 15, 2020

Final Rule: Calculation of Average Annual Receipts

[84 FR 66561](#)

- Implements Small Business Runway Extension Act of 2018
- Calculate annual receipts using average of prior five years, instead of prior three years
- Applies to all industries with receipts-based size standards
- Only applies to certifications on or after January 6, 2020—prior certifications must use 3-year average
- Includes two-year transition period (through Jan. 6, 2022) that allows firms to choose between 3-year average and 5-year average
- Does not apply to SBA business loan or disaster loan programs

Final Rule: NDAA FY16/17 & RISE Act

[84 FR 65647](#)

Procurement Center Representative Reviews

Section Revised: 125.2(b)(1)(i)(A)

The 2017 NDAA revised the Small Business Act to make two changes to the scope of review by PCRs:

- PCRs can review any solicitation, regardless of whether it is set-aside, partially set-aside, or reserved for small business.
 - Current regulation requires PCRs to review all acquisitions that are not set aside for small businesses. New regulation will not require review of every acquisition, but clarify that PCRs have the authority to review acquisitions at their discretion.
- Exceptions to PCR reviewing authority: Unless the contracting agency requests a review, PCRs will not review acquisitions that are awarded by or for DoD in the following categories: pursuant to the Arms Control Export Act; humanitarian or civic assistance in conjunction with military operations; for a contingency operation; awarded pursuant to an agreement with the government of a foreign country in which Armed Forces of the United States are deployed; or where both the place of award and place of performance are outside of the United States and its territories.

Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

Good Faith Compliance with Subcontracting Rules

Sections Revised: 125.3(d)(3)(i) and (ii); 125.3(d)(11)

The 2017 NDAA revised the Small Business Act to provide that it's a material breach of contract if a contractor with a subcontracting plan fails to comply in good faith with the requirement to cooperate in studies or surveys required by the agency or SBA to determine compliance; and required that SBA provide examples of good faith efforts to comply with a small business subcontracting plan.

SBA has revised its regulations on contracting officer responsibilities to implement these changes:

- Added nine examples of activities that would reflect a failure to make a good faith effort to comply with a subcontracting plan (language mirrors examples in the FAR);
- Added a new paragraph that directs contracting officers to evaluate whether a contractor complied in good faith with the requirement to participate in studies/surveys.

Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

Contracting Preferences for Small Businesses in Disaster Areas

Section Added: Part 129

The Recovery Improvements for Small Entities After Disaster Act revised the Small Business Act by authorizing contracting preferences for small businesses located in areas that have been declared major disasters (during the period of the disaster), and providing that agencies that award contracts to small businesses located in disaster areas will receive credit for double the contract amount.

SBA has added a new Part 129 to implement these changes:

- Contracting officers may set aside solicitations for emergency response contracts to allow only small businesses located in the disaster area to compete.
 - Note that these terms are defined in the new regulations.
- Agencies will receive double credit for awarding a contract through the use of a local small business or a set-aside restricted to SBCs, 8(a), WOSB, SDVO, or HUBZone SBCs located in a disaster area. SBA will provide the extra credit through the agency scorecard process.

Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

Set-Aside Orders Off Small Business Set-Aside Multiple Award Contracts and Full and Open Multiple-Award Contracts

Sections Revised: 125.2(e)(6) and 125.2(e)(6)(i)

- Revised to allow contracting officers to set aside orders for 8(a), HUBZone, SDVO, or WOSB firms under full and open MACs and small business set-aside MACs.
- This does not apply to socioeconomic set-aside MACs.
- It also does not apply to already-awarded MACs. Going forward, firms will know what types of set-asides will be available at the time of award and on future orders so they know if it's worthwhile to submit an offer.

Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

Exclusions to Limitations on Subcontracting

Section Revised: 125.6(a)(1)

- Excludes direct costs from the LOS where costs are not the principal purpose of the acquisition.
- Specifically excludes following costs:
 - Airline travel
 - Work performed by a transportation or disposal entity under a contract assigned the environmental remediation NAICS code (562910)
 - Cloud computing services
 - Mass media purchases
- Excludes work performed overseas on awards made pursuant to the Foreign Assistance Act of 1961 or work required to be performed by a local contractor.

Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

Determining Compliance with Limitation on Subcontracting Rules

Section Revised: 125.6(e)

Added new paragraph to limitation on subcontracting compliance regulations to:

- Clarify that contracting officers can, at their discretion, require firms to provide evidence of compliance with the limitations on subcontracting if information demonstrating compliance is not already available.
 - Contracting officers are not required to request evidence of compliance.
- Include examples of documentation that contracting officers may request.
 - List is not intended to be exhaustive.
 - Contracting officers should only ask for documentation they don't already have.

Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

Recertification in SBA Socioeconomic Programs

Sections Revised: 125.18(e)(1), 126.601(h)(1), 127.503(h)(1), 124.521 and 124.1015

- SDVO, HUBZone, and WOSB regulations were revised to emphasize that firms must recertify status on full and open contracts and not only on contracts set aside for the socioeconomic program.
 - If a firm can't recertify its status on an order for a contract that is novated, or where the firm acquires, is acquired by, or merges with another firm, the agency will not be able to count orders issued pursuant to the contract toward its program goals going forward.
- 8(a) regulations were also revised to add a recertification provision. Unlike the other programs, however, if an 8(a) firm performing on an 8(a) contract can't recertify as an 8(a) at the end of the fifth year of the contract, the agency can't award future orders.
 - Note that this is different than the other program regulations, which do not prohibit firms from performing on a contract even if they can't recertify their status.

Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

Subcontracting to a Small Business Under a Socioeconomic Set-Aside

Sections Revised: 124.503(c)(1)(v), 124.507(b)(2), 125.18(f), 125.29(c), 126.601(i), 126.801(a), 127.504(c), and 127.602

- Addresses that there might be ostensible subcontracting on a socioeconomic set-aside with a small business not qualified for the set-aside.
- As part of a status protest, SBA would make determination on program participant's overreliance on a non-similarly situated subcontractor.
- SBA will not find that a prime is unduly reliant where prime can demonstrate that it will meet the LOS.
- Also applies to CVE protests filed at OHA.

Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

Consolidation and Substantial Bundling Justifications

Sections Revised: 125.2(d)(1)(v), (d)(7)

- Must publish GPE notice within 7 days of **consolidation** determination
 - Cannot issue solicitation until 7 days after notice is published
 - Must publish justification for determination with solicitation
- Must publish GPE notice within 7 days of **substantial bundling** determination
 - Cannot issue solicitation until 7 days after notice is published
 - Must publish justification for determination with solicitation with the following:
 1. specific benefits anticipated a determination that benefits justify the bundling,
 2. identification of alternative contracting approaches with lesser bundling,
 3. assessment of impediments to small business prime participation, and
 4. actions to maximize participation of small business concerns as subcontractors

Final Rule: HUBZone Comprehensive Review

[84 FR 65222](#)

- HUBZone maps, currently frozen through 2021, will be updated every five years
- Moves to annual recertification (from three-year), effective for all HUBZone contracts for the one-year period
- Requires HUBZone status in DSBS at time of *offer* (not time of award)
- For non-HUBZone multiple-award contract (other than FSS contract), firm must be certified as a HUBZone at time of offer on a HUBZone set-aside order

Final Rule: HUBZone Comprehensive Review

84 FR 65222 (cont.)

- Requires 35% employee HUBZone residency at time of certification and recertification; “attempt to maintain” during contract performance
- Defines “attempt to maintain” HUBZone status during HUBZone contract performance as having at least 20% HUBZone employees (must be 35% at application and recertification) and recruiting HUBZone employees
- An employee who resides in a HUBZone for at least 6 months before and after time of certification continues to count as HUBZone employee as long as an employee of the firm—even if employee moves or residence no longer qualifies
- Employees temporarily living overseas in connection with performance of a contract will be considered to reside at their U.S. residence

Final Rule: HUBZone Comprehensive Review

84 FR 65222 (cont.)

- Firms that invest in HUBZones by purchasing building or entering into long-term lease are deemed to meet principal office requirement for 10 years—even if office location no longer qualifies as a HUBZone
- Includes affiliate employees in 35% and principal office calculations if no clear line of fracture between firms
- Starting January 1, applications for HUBZone certification will be processed within 60 days of a complete submission

Direct Final Rule: HUBZone Program Provisions for Governor-Designated Covered Areas

84 FR 62447

- Starting 2020, Governors may petition SBA to designate covered areas as HUBZones.
- “Covered area” means—
 - located outside of an urbanized area;
 - population of 50,000 or less; and
 - average unemployment rate is at least 120% of the average unemployment rate for US/state.
- The Governor shall, at least annually, submit data to the Administrator certifying that each Governor-designated covered area continues to meet the definition of a covered area.

Direct Final Rule: HUBZone Program Provisions for Governor-Designated Covered Areas (cont.)

84 FR 62447

- In reviewing a request for designation included in such a petition, SBA may consider—
 - **the potential for job creation and investment** in the covered area;
 - the demonstrated **interest of small business concerns** in the covered area to be designated as a Governor-designated covered area;
 - how State and local government officials have incorporated the covered area into an **economic development strategy**; and
 - if the covered area was a HUBZone before becoming the subject of the petition, the **impact** on the covered area **if the Administrator did not approve** the petition.

Final Rule: Ownership and Control of Service-Disabled Veteran-Owned Small Business Concerns

83 FR 48908

- Common definition of ownership and control for SDVOSBCs across government-wide (including DOD) program and VA program
- VA determines eligibility for VA program
- Rule eases requirement that service-disabled vet make *all* decisions
 - Defines “extraordinary circumstances” in which non-SDV can have shared decision making authority
 - Control can shift when veteran is called to active duty
- If service-disabled veteran rated at 100 percent, surviving spouse can own and control for up to 10 years after veteran's

Final Rule: Adjustment of Monetary-Based Size Standards for Inflation

[84 FR 34261](#)

- Changes went into effect on August 19, 2019.
- Increases monetary-based size standards to account for inflation.
- Increases range from \$0.25 million for the lowest size standard to \$3 million for the highest.
- Correction to dredging NAICS code issued Nov. 20, 2019.

TABLE 1—INFLATION ADJUSTMENT TO MONETARY-BASED SIZE STANDARDS

Current monetary-based size standards (\$ million)	Size standards adjusted for inflation, before rounding (\$ million)	Size standards adjusted for inflation, after rounding (\$ million)
(1)	(2)	(3)
\$ 0.75	\$1.05	\$1.0
5.5	6.0	6.0
7.5	8.1	8.0
11.0	11.9	12.0
15.0	16.3	16.5
18.0	19.5	19.5
19.0	20.6	20.5
20.5	22.2	22.0
25.0	27.1	27.0
27.5	29.8	30.0
29.5	32.0	32.0
32.0	34.7	34.5
32.5	35.2	35.0
36.5	39.6	39.5
37.5	40.6	40.5
38.5	41.7	41.5
550	596	600
Total Industries (including subindustries or "exceptions")

Final FAR Rule: Set-Asides Under Multiple-Award Contracts

[85 FR 11746](#) (Feb. 27, 2020)

- Effective March 30
 - Requirement to assign more than one NAICS code to a multiple-award contract not effective until Oct. 1, 2022
- Provides contracting officers additional guidance on the use of partial set-asides, reserves, and set-asides of orders under multiple-award contracts
- Amends FAR Parts 2, 4, 7-10, 13, 15, 16, 19, 42, 52
- Implements regulatory changes made by SBA in 78 FR 61114 (10/2/13)

Interim FAR Rule: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

84 FR 40216

- Requires offerors to represent whether their offer includes covered telecommunications equipment or services
- Prohibits contractors from providing any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system
- “Covered telecommunications equipment or services” = equipment from Huawei Technologies Company, ZTE Corporation; also, in some cases, Hytera Communications Corporation, Hangzhou Technology Company or Dahua Technology Company

Second Interim FAR Rule: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

84 FR 68314

- Permits annual representation on whether an offeror offers to the Government equipment, systems, or services that include covered telecommunications equipment or services.
- Creates new annual representation at FAR 52.204-26, Covered Telecommunications Equipment or Services—Representation and in paragraph (v) of FAR 52.212-3, Offeror Representations and Certifications-Commercial Items

Upcoming FAR Rule: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

FAR Case 2019-009

- Prohibits contracting with entities that use covered telecommunications equipment or services
- Effective August 13, 2020 by statute
- Will be implemented through separate rulemaking under FAR Case 2019-009.

Final FAR Rule: Update of “Affiliates” and Section 8(a)

84 FR 15762

- Defines “affiliates” in Part 19 of the FAR by deleting existing language and replacing it with a reference to SBA’s regulations on determining affiliation at 13 CFR 121.103.
- Removes an obsolete requirement for 8(a) contractors to obtain approval from SBA and the contracting officer prior to subcontracting the performance of any contract requirements.

DFARS Rule: Prompt Payments of Small Business

Contractors

- Provides for accelerated payments to small business contractors and subcontractors
- Establishes 15-day timeframe as a goal
- DoD will provide payment as quickly as possible, to the fullest extent permitted by law, with a goal of 15 days after receipt of proper invoices and documentation, and before normal payment due dates
- Accelerates payments to prime that makes accelerated payments to small business subcontractors
 - prohibits contractors from requiring any further consideration from, or charging fees to, their small business subcontractors when making accelerated payments.

DFARS Rule: Review of Defense Solicitations by

84 FR 72561
PCRs

- Provides that SBA PCRs will not review an acquisition for
 - a) for foreign military sales;
 - b) in support of humanitarian and civic assistance;
 - c) in support of a contingency operation;
 - d) awarded pursuant to a Status of Forces Agreement or other agreement with the government of a foreign country in which U.S. Armed Forces are deployed; or
 - e) both awarded and performed outside the United States and its outlying areas.
- Restricts the use of set-asides if excluded from PCR review

Final Action: Waiver of Nonmanufacturer Rule for Laptops/Tablets

[85 FR 13692](#)

- Grants class waiver of NMR for COTS laptops and tablet computers
- Applies to COTS laptops and tablet computers within NAICS code 334111 and PSC 7435
- Allow otherwise qualified regular dealers to supply the product of any manufacturer on a set-aside Federal contract or order for COTS laptops and tablet computers

Final Action: Size Standard Methodology (2019)

[84 FR 14587](#)

- To be used for next SBA five-year review of size standards
- Moves from an “anchor” approach to a “percentile” approach for evaluating industry characteristics
- Assigns a separate size standard for each NAICS industry instead of selecting a size standard from a limited number of fixed size standards
- Lowers the threshold for selecting industries for the evaluation of the Federal contracting factor to \$20 million in annual Federal contracting dollars from the \$100 million threshold previously
- Applies the 4-firm concentration ratio to all industries, as opposed to using it only when the ratio is 40% or more previously

Final Action: SBIR/STTR Policy Directive

84 FR 12794

- Combines SBIR and STTR policy directives into one document
- **Data rights:** minimum 20-year data rights protection period that starts from the date of award, government purpose rights after the protection period.
- **Obligations:** require Participating Agencies to “obligate” rather than “spend” the minimum percentage of extramural research, research and development (R/R&D) for the SBIR/STTR Programs.
- **Phase III preference:** Participating Agency must document whether it is the practical (to the greatest extent) to pursue a phase III SBIR/STTR award. If it is not practical, this must be documented in the file with a rationale provided to SBA.
 - must first consider a direct Phase III award and show how a preference was provided to the SBIR/STTR awardee.
- **Eligibility Requirements:** Allow participation by tribally-owned entities.
- DOD implemented in [Class Deviation 2020-O0007 – Protection of Technical Data and Computer Software Under Small Business Innovation Research Program Contracts](#)

Proposed Rule: Consolidation of Mentor Protégé Programs and Other Government Contracting Amendments

84 FR 60846

- Combine 8(a) and ASMPP – identical benefits
- Changes to M/P program:
 - MPA would not count if terminated within 18 months
 - Would not require mentor good character in every instance
 - Mentor cannot submit competing offers
 - Consider whether to limit mentors to revenues less than \$100 million
 - Protégés from Puerto Rico don't count for 3 limit, up to 2
 - Eliminate reconsideration
 - Changes to M/P annual reviews

Proposed Rule: Consolidation of Mentor Protégé Programs

(cont.)

- Changes to joint venture rules:
 - Proposed to eliminate SBA approval for competitive 8(a) JV
 - Proposed to change 3-in-2 rule to 2 years
 - Consider measures to restrict changes in JV partners
 - Facility Security Officers may be administrative personnel
 - Clarification as to size of JV partners
- MAC codes and eligibility
 - Assign single NAICS code to order—must be included in underlying MAC
 - Except for FSS, eligibility for SBSA order on unrestricted MAC based on time of offer for order
 - Same for set-aside for status other than that for underlying contract

Proposed Rule: Consolidation of Mentor Protégé Programs

(cont.)

- Changes to 8(a) rules:

- Defines follow-on requirement
- More clarity on immediate family member
- Appeal process for changes in primary NAICS code
- Re-apply after decline after 90 days
- Would eliminate provision that Participant cannot receive 8(a) BD benefits until SBA has approved business plan
- Would require SBA release for non-8(a) competition even where statutorily required and where using limited contracting vehicle
- Timeframes for bona fide place of business (at least 20 days before offer, review within 15 days of request)
- Limit on sole-source awards proposed to change to \$100 million in all cases

Proposed Rule: Regulatory Reform Initiative for SDVO SBC

[85 FR 6106](#)

- SBA issued a proposal to remove from the CFR four regulations in the SDVO SBC Program that are no longer necessary because they are unnecessary or redundant.
- Removal will assist the public by simplifying SBA's regulations in the CFR.
- Upcoming: Reg reform in SDB regulations

Proposed Rule: Surplus Property for Veteran-owned, Puerto Rico, and Disaster—affected small businesses

[85 FR 3273](#)

- Implements three provisions of the Small Business Act to gives access to and manage the distribution of U.S.-owned surplus personal property to three additional groups of small businesses
 - small businesses owned and controlled by veterans (15 U.S.C § 657b(g)),
 - small businesses located in major disaster areas (15 U.S.C. § 636(j)(13)(F)(ii)), and
 - small businesses located in Puerto Rico (15 U.S.C. § 636(j)(13)(F)(iii)).
- SBA will execute a memorandum of agreement between the SBA, the General Services Administration, and the head of the state agency for surplus properties.

Proposed Rule: WOSB Certification Program

84 FR 21256

- SBA received comments from over 300 stakeholders, including individuals, small businesses, industry groups, and third-party certifiers, on its proposed rule, "Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business Certification."
- The rule eliminates the self-certification option to comply with 2015 NDAA amendment that requires a WOSB/EDWOSB to be certified by SBA, an authorized Federal or state entity, or an authorized third-party certifier (TPC) in order to be awarded WOSB/EDWOSB set-aside or sole source contracts.
- Specifically, the rule:
 - Stands up a free certification program offered by SBA;
 - Expands the list of Federal and state entities that will be authorized to certify WOSBs/EDWOSBs in lieu of certification by SBA's Women-Owned Small Business Program office, including the 8(a) Business Development Program and the Center for Verification and Evaluation; and
 - Details how SBA will oversee TPCs.

Proposed Rule: WOSB Certification Program

84 FR 21256 (cont.)

Other changes:

- Established a \$750,000 personal net worth standard for economically disadvantaged individuals in both the EDWOSB and 8(a) Business Development Programs.
- Detailed the process for firms seeking to re-apply after declinations.
- Detailed procedures for how WOSBs/EDWOSBs will maintain certification and how SBA will conduct program examinations.

Proposed Rule: FAR Case 2016-002, Applicability of Small Business Regulations Outside the United States

84 FR 39793

- Proposed rule to allow small business contracting provisions to be applied on overseas contracts.
- Includes set-asides

Upcoming SBA proposed rules

1. Small Business Size Standards: Services, Agricultural, Construction, Transportation, Manufacturing
2. NDAA FY20 Implementation

Upcoming SBA potential regulatory actions

1. [Nonmanufacturer Rule Waiver for leather holsters](#) - comments submitted and being reviewed
2. [Nonmanufacturer Rule Waiver for commercially handheld landmobile radios](#) - comments submitted and being reviewed
3. [Nonmanufacturer Rule Waiver for recreational and gymnastic equipment](#) - comments submitted and being reviewed
4. [Nonmanufacturer Rule Waiver for diabetic test strips](#) – comments due May 20

Upcoming FAR proposed rules

1. Proposed 2020-010, SBIR/STTR
2. Proposed 2020-007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns
3. Proposed 2019-008, Small Business Program Amendments
4. Proposed 2019-007, Update of Historically Underutilized Business Zone Program
5. Proposed 2019-004, Good Faith in Small Business Subcontracting
6. Proposed 2019-003, Consolidation and Substantial Bundling
7. Proposed 2018-004, Increased Micro-Purchase and Simplified Acquisition Thresholds
8. Proposed 2017-019, Policy on Joint Ventures

Upcoming FAR final rules

1. Direct Final 2020-02, Removal of Obsolete Definitions
2. Final 2016-011, Revision of Limitations on Subcontracting
3. Final 2018-007, Applicability of Inflation Adjustments of Acquisition-Related Thresholds

Other Notable Actions

DoD Draft Cybersecurity Maturity Model Certification

(CMMC)
<https://www.acq.osd.mil/cmmc/>

- A unified DoD cybersecurity standard to reduce exfiltration of controlled unclassified information
- Released 31 January 2020
- The CMMC effort builds upon existing regulation (DFARS 252.204-7012) that is based on trust by adding a verification component with respect to cybersecurity requirements.
- The goal is for CMMC to be cost-effective and affordable for small businesses to implement at the lower CMMC levels.
- The intent is for certified independent 3rd party organizations to conduct audits and inform risk. See the CMMC Accreditation Body, www.cmmcab.org.

OMB Category Management Memo

Memorandum M-19-13

- Provides guidance to agencies on implementing category management (CM).
- Agencies are expected to take five actions:
 1. Create annual goals to successfully implement CM, consistent with small business and socioeconomic requirements,
 2. Develop plans to engage with industry and improve vendor relationships,
 3. Strengthen demand management plans to avoid wasteful spending,
 4. Share prices-paid and other related data to improve government buying, and
 5. Train employees in CM principles and practices.
- Emphasizes that agencies must implement category management consistent with small business and socio-economic goals.
- Footnote 31 (pg. 28): “agencies could not migrate work that would cause the agency to violate small business program requirements, such as taking away work from a contractor under the section 8(a) business development program without seeking release from SBA.”



U.S. Small Business
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