Recent Legislative Action
Veterans Small Business Enhancement Act of 2018

Public Law No. 115-416; 15 U.S.C. 657b(g)

• Amends the Small Business Act to direct SBA to give access to and manage the distribution of U.S-owned surplus property to small businesses owned and controlled by veterans.

• SBA intends to execute a memorandum of agreement between the SBA, the General Services Administration, and the head of the state agency for surplus properties.
Small Business Runway Extension Act of 2018


• Modifies the method for prescribing size standards for small businesses
• Under prior law, firms in industries with receipts-based size standards calculated size based on annual average gross receipts over three years
• Provides that, unless an agency has specific authorization for size standards, an agency’s receipts-based size standards for service-industry firms be based on annual average gross receipts over five years
• Leaves other industries unchanged at three years.
• GAO upheld SBA’s interpretation and rejected the protestor’s argument that the Act immediately changed receipts-based size standards to a five-year average. TechAnax, LLC; Rigil Corporation, B-408685.22, B-408685.25, Aug. 16, 2019.
Legislation to Watch (not enacted)

• H.R. 1615 - House-passed VA-SBA Act – received in Senate
  • Transfers SDVOSB and VOSB certification to SBA, requires 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 (does not apply to VA certification)
  • All functions of CVE would transfer to SBA

• H.R. 499 - House-passed Service Disabled Veterans Small Business Continuation Act, allows 3 years of control by surviving spouse after death of SDV who had less than 100% disability – received in Senate

• H.R. 2500 - House-passed NDAA for FY2020; includes changes to lower-tier subcontracting program, OSDBU dispute resolution for subcontractor non-payment, and permanent authority for DOD MPP
Legislation to Watch (not enacted)

• H.R. 5130 - Capturing All Small Business Act of 2019 – would extend employee-based average to 24 months, instead of current 12 months

• S. 2729 - Small Business Contracting Accountability Act of 2019 – Requiring OSDBUs to report to SBCs on non-compliance with 15(k) provisions

• S. 2852 - Establish accelerated payments applicable to contracts with certain small business concerns

• S. 2853 - Provide interim partial payment to small business contractors that request an equitable adjustment due to a change in the terms of a construction contract

• H.R. 190 (also S. 673) - Would exclude options from thresholds for sole-source contracts

• S. 1981 - Would change ownership requirements for WOSB and 8(a) programs for firms with venture-capital investment
Recent SBA and FAR Regulatory Action
Direct Final Rule: HUBZone Program Provisions for Governor-Designated Covered Areas

84 FR 62447

• Starting 2020, Governors may petition SBA to designate covered areas for HUBZone.
• “Covered area” means located outside of an urbanized area; population of not more than 50,000; and for which the average unemployment rate is at least 120 percent of the average unemployment rate.

• 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.

• 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.
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 death
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.
- Interim rule—comments are due Sept. 16, 2019.

![Table 1—Inflation Adjustment to Monetary-Based Size Standards](image)
**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” = Huawei Technologies Company, ZTE Corporation; also, in some cases, Hytera Communications Corporation, Hangzhou Technology Company or Dahua Technology Company, subsidiaries or affiliates
Final FAR Rule: Update of “Affiliates” and Section 8(a) Clauses

84 FR 47862

• 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.

• Effective October 10, 2019
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.
Proposed Rule: Consolidation of Mentor Protege Programs and Other Government Contracting Amendments

84 FR 60846

• Comments due January 17, 2020
• 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 Protege 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 order
Proposed Rule: Consolidation of Mentor Protege 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: HUBZone Comprehensive Review

83 FR 54812

- Proposed to define “attempt to maintain” HUBZone status during HUBZone contract performance as having at least 20% HUBZone employees (must be 35% at application and offer) and recruiting HUBZone employees.
- Proposed to include affiliate employees if no clear line of fracture between firms
- Proposed to move to annual recertification (from three-year), which would be effective for all HUBZone contracts for the one year period unless there is a merger or acquisition
Proposed Rule: HUBZone Comprehensive Review (cont)

83 FR 54812

• Proposed to require HUBZone status in DSBS at time of offer (not necessarily time of award)
• Proposed 35% employee residency at time of certification or recertification; attempt to maintain during contract performance
• For non-HUBZone multiple-award contract, proposed that firm must be certified as a HUBZone at time of offer on a HUBZone set-aside order
• An employee who resides in a HUBZone continues to count as HUBZone employee as long as an employee of the firm—even if employees moves or residence no longer qualifies
Proposed Rule: NDAA FY16/17 & RISE Act

83 FR 54812

• Proposed to allow COs to request information in connection with a contractor's compliance with applicable limitations on subcontracting (LOS) clauses

• Proposed exceptions to the LOS for
  1. airline travel,
  2. work performed by a transportation or disposal entity under a contract assigned the environmental remediation NAICS code (562910),
  3. cloud computing services,
  4. mass media purchases, and
  5. work performed by an independent contractor under a contract that was awarded pursuant to the Foreign Assistance Act of 1961.

• Proposed to require a prime contractor with a commercial subcontracting plan to include indirect costs in its subcontracting goals

• Proposed to clarify status recertification in 8(a) and socioeconomic programs

• Limit the scope of Procurement Center Representative reviews of Department of Defense acquisitions performed outside of the United States and its territories

• Double scorecard credit for local area small business set asides in connection with a disaster.
Proposed Rule: NDAA FY16/17 & RISE Act (cont.)

Proposed examples of failure to make a good faith effort to comply with a subcontracting plan

A. Failure to submit in eSRS by the report due dates;
B. Failure to pay small business concern subcontractors in accordance with terms;
C. Failure to designate and maintain an official to administer the subcontracting program;
D. Failure to demonstrate procedures adopted to comply with plan (e.g., flow-down clauses);
E. Adoption of policies that have as their objectives the frustration of the objectives of the plan;
F. Failure to correct substantiated findings from compliance reviews or participate in training;
G. Failure to conduct market research identifying potential small subcontractors;
H. Failure to obtain approval by the CO to change small subcontractors used in offers; or
I. Falsifying records of subcontracting awards to SBCs.
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." SBA is currently reviewing these comments in advance of drafting a final rule.

• The rule would eliminate 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 would
  • Stand up a free certification program offered by SBA;
  • Expand 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, the DOT Disadvantaged Business Enterprise Program, and the VA Center for Verification and Evaluation; and
  • Include detailed information about how SBA will oversee TPCs.
Proposed Rule: WOSB Certification Program (cont.)

84 FR 21256

Other changes:

• Proposed to use a $750,000 net worth standard when assessing economic disadvantage for EDWOSBs and both initial and continuing eligibility for the 8(a) Business Development Program in order to ensure consistency between SBA’s programs.

• Proposed to lay out the process for firms seeking to re-apply after declinations.

• Proposed to detail procedures for how WOSBs/EDWOSBs will maintain certification and how SBA will conduct program examinations.
Proposed Rule: Calculation of Average Annual Receipts

84 FR 29399

• Proposed to calculate average annual receipts using prior five years, instead of prior three years.
• Proposed to apply change to all industries with receipts-based size standards.
• Only would affect the application of SBA’s size standard rules after the effective date of a final rule.
• Until the effective date of a final rule, SBA will continue to apply the 3-year averaging period for calculating annual average receipts.
• Final rule expected December 2019
Proposed Rule: FAR Case 2018-003, Credit for Lower-Tier Small Business Subcontracting

• Proposed two sets of goals for individual plans: first-tier goals and lower-tier goals

• Propose to use these existing subcontracting reports in eSRS as a way for the prime contractor to monitor subcontractors' achievements

• Asks for input on the whether to have primes approve or acknowledge achievement for lower-tier goals
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. Regulatory Reform Initiative
3. Use of Federal Surplus Property for Veteran Owned Small Businesses and Small Businesses in Disaster Areas
Upcoming FAR proposed rules

1. Proposed 2019-009, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment
2. Proposed 2019-008, Small Business Program Amendments
3. Proposed 2019-007, Update of Historically Underutilized Business Zone Program
5. Proposed 2018-004 Increased Micro-Purchase and Simplified Acquisition Thresholds
6. Proposed 2017-019, Policy on Joint Ventures
Upcoming FAR final rules

1. Final 2014-002, Set-Asides Under Multiple-Award Contracts
2. Final 2016-011, Revision of Limitations on Subcontracting
3. Final 2018-007, Applicability of Inflation Adjustments of Acquisition-Related Thresholds
Other Notable Actions
FedBizOpps Moved to SAM.gov on Nov. 8

https://beta.sam.gov/

- The FBO transition to beta.sam.gov occurred November 7 – 12, 2019.
- Beta.SAM.gov was live on November 12, 2019.
- Users should use beta.sam.gov to migrate accounts, saved searches, followed opportunities, interested vendor lists.
DoD Draft Cybersecurity Maturity Model Certification (CMMC)

https://www.acq.osd.mil/cmmc/draft.html

- A unified DoD cybersecurity standard to reduce exfiltration of controlled unclassified information
- In draft v0.4 form currently—v1.0 to be released Jan. 2020
- To be included in RFIs starting June 2020, in RFPs starting Fall 2020
- Add verification to requirements in DFARS 252.204-7012. Be performed by certified independent 3rd party organizations.
- 5 levels of certification—5=advanced/progressive, 1-basic cybersecurity
- 18 domains—from media protection to physical protection to incident response
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.”
Section 809 Panel Volume III

Volume III report

• Section 809 Advisory Panel established by Congress in the FY 2016 NDAA to make recommendations on streamlining acquisition regulations

• Small Business Recommendations:

  1. Recommends exempting DOD from small business set-aside requirements where the products being purchased are readily available or readily available with customization

  2. Recommends replacing those DOD set-asides with a 5% price preference for small business.

  3. Recommends release from the 8(a) program if a response is not received from SBA within 15 business days
