

US Army Corps of Engineers, Walla Walla District

Small Business Industry Day

October 18th, 2017

SBA Federal Contracting Programs

Legislative and Regulations Update

* All information is current as of the date above; changes made after such date are not reflected in this presentation



Presented by:

John Dicus

US Small Business
Administration
Seattle District, Spokane Branch
john.dicus@sba.gov

The Federal Rule Making Process

Before the Proposed Rule

- Agency begins rulemaking process based on many different causes
- Agency develops the proposed rule

The Proposed Rule

- Proposed rule is the official document that announces and explains the agency's plan to address a problem or concern
- Comments from general public allowed for specified period

Before the Final Rule

- Public comments are reviewed and answered and amendments to rule may occur
- Agency may re-open comment period

The Final Rule

- Final Rules are posted to federal register and generally go in effect within 30 days of publication.

After the Final Rule

- Final Rule is integrated into Code of Federal Regulations
- And in the case of Federal Acquisition, the FAR will subsequently implement the change

Where does all this occur?

The Office of the Federal Register

The Daily Journal of the United States Government

URL: <https://www.federalregister.gov/>

Major Recent SBA Rules Affecting Federal Acquisition:

Rule	Federal Register Number	Effective Date
Women-Owned Small Business Federal Contract Program	3245-AG72	10/14/2015
Small Business Government Contracting and NDAA of 2013 Amendments	3245-AG58	06/30/2016
Civil Penalties Inflation Adjustments	3245-AG80	08/01/2016
Small Business Mentor Protégé Programs	3245-AG24	08/24/2016
HUBZone and NDAA for FY16 Amendments	3245-AG81	10/03/2016
Adoption of 2017 North American Industry Classification Size Standards	3245-AG84	10/01/2017
Credit for Lower Tier Small Business Subcontracting	3245-AG71	01/23/2017

Women-Owned Small Business Federal Contract Program

Major Implications

- Allows Sole Source awards to Women-Owned Small Businesses (WOSBs) and Economically Disadvantaged Women-Owned Small Businesses (EDWOSB).

CFR(s) Amended

- 13 CFR 127

URL

- <https://federalregister.gov/a/2015-22927>

Small Business Government Contracting and NDAA of 2013 Amendments

Major Implications

- Changes all references of “Performance of Work Requirements” to “Limitations on Subcontracting.”
- Allows a Joint Venture (JV) to qualify as small for any contract as long as each partner to the JV qualifies individually as small under the size standard assigned to the contract
- Created the “Similarly Situated Entity” Rule
- Clarifies who may initiate a size protest or request a formal size determination

CFR(s) Amended

- 13 CFR 121, 13 CFR 124, 13 CFR 125, 13 CFR 126, 13 CFR 127

URL

- <https://www.federalregister.gov/d/2016-12494>

Civil Penalties Inflation Adjustments

Major Implications

- Increases Civil Penalties for misrepresentations in SBA Contracting Programs

CFR(s) Amended

- 13 CFR 124, 13 CFR 125, 13 CFR 126, 13 CFR 127

URL

- <https://www.federalregister.gov/d/2016-11868>

HUBZone and National Defense Authorization Act for Fiscal Year 2016 Amendments

Major Implications

- Authorized Native Hawaiian Organizations to own HUBZone small business concerns
- Expanded the definition of “base closure area” under the HUBZone program
- Authorized the inclusion of “qualified disaster areas” under the HUBZone program.

CFR(s) Amended

- 13 CFR 126

URL

- <https://www.federalregister.gov/d/2016-18251>

Small Business Size Standards; Adoption of 2017 North American Industry Classification System for Size Standards

Major Implications

- Created 21 new industries by reclassifying, combining, or splitting 29 existing industries under changes made to NAICS in 2012 (NAICS 2012)
- SBA's size standards for these 21 new industries have resulted in an increase to size standards for six NAICS 2012 industries and part of one industry, a decrease to size standards for two, a change in the size standards measure from average annual receipts to number of employees for one, and no change in size standards for twenty industries and part of one industry..

CFR(s) Amended

- 13 CFR 121

URL

- <https://www.federalregister.gov/documents/2017/09/27/2017-20705/small-business-size-standards-adoption-of-2017-north-american-industry-classification-system-for>

Small Business Size Standards; Adoption of 2017 North American Industry Classification System for Size Standards

Table – NAICS 2012 Industries or Their Parts Matched to NAICS 2017 Industries

NAICS 2012 Code	NAICS 2012 Industry Title	Status Code	NAICS 2017 Code	NAICS 2017 Industry Title
211111	Crude Petroleum and Natural Gas Extraction. <i>crude petroleum extraction</i> <i>natural gas extraction</i>	pt.	211120 211130	Crude Petroleum Extraction. Natural Gas Extraction.
211112	Natural Gas Liquid Extraction	pt.	211130	Natural Gas Extraction.
212231	Lead Ore and Zinc Ore Mining	pt.	212230	Copper, Nickel, Lead, and Zinc Mining.
212234	Copper Ore and Nickel Ore Mining	pt.	212230	Copper, Nickel, Lead, and Zinc Mining.
333911	Pump and Pumping Equipment Manufacturing	pt.	333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing.
333913	Measuring and Dispensing Pump Manufacturing	pt.	333914	Measuring, Dispensing, and Other Pumping Equipment Manufacturing.
335221	Household Cooking Appliance Manufacturing	pt.	335220	Major Household Appliance Manufacturing.

Small Business Size Standards; Adoption of 2017 North American Industry Classification System for Size Standards - Continued

Table – NAICS 2012 Industries or Their Parts Matched to NAICS 2017 Industries

NAICS 2012 Code	NAICS 2012 Industry Title	Status Code	NAICS 2017 Code	NAICS 2017 Industry Title
335222	Household Refrigerator and Home Freezer Manufacturing	pt.	335220	Major Household Appliance Manufacturing.
335224	Household Laundry Equipment Manufacturing	pt.	335220	Major Household Appliance Manufacturing.
335228	Other Major Household Appliance Manufacturing	pt.	335220	Major Household Appliance Manufacturing.
452111	Department Stores (except Discount Department Stores)	pt.	452210	Department Stores.
452112	Discount Department Stores. <i>insignificant perishable grocery sales</i> <i>significant perishable grocery sales</i>	pt.	452210 452311	Department Stores. Warehouse Clubs and Supercenters.
452910	Warehouse Clubs and Supercenters	pt.	452311	Warehouse Clubs and Supercenters.
452990	All Other General Merchandise Stores	nc.	452319	All Other General Merchandise Stores.

Small Business Size Standards; Adoption of 2017 North American Industry Classification System for Size Standards - Continued

Table – NAICS 2012 Industries or Their Parts Matched to NAICS 2017 Industries

NAICS 2012 Code	NAICS 2012 Industry Title	Status Code	NAICS 2017 Code	NAICS 2017 Industry Title
454111	Electronic Shopping	pt.	454110	Electronic Shopping and Mail-Order Houses.
454112	Electronic Auctions	pt.	454110	Electronic Shopping and Mail-Order Houses.
454113	Mail-Order Houses	pt.	454110	Electronic Shopping and Mail-Order Houses.
512210	Record Production	pt.	512250	Record Production and Distribution.
512220	Integrated Record Production/Distribution	pt.	512250	Record Production and Distribution.
517110	Wired Telecommunications Carriers	nc.	517311	Wired Telecommunications Carriers.
517210	Wireless Telecommunications Carriers (except Satellite)	nc.	517312	Wireless Telecommunications Carriers (except Satellite).
532220	Formal Wear and Costume Rental	nc.	532281	Formal Wear and Costume Rental.
532230	Video Tape and Disc Rental	nc.	532282	Video Tape and Disc Rental.
532291	Home Health Equipment Rental	nc.	532283	Home Health Equipment Rental.

Small Business Size Standards; Adoption of 2017 North American Industry Classification System for Size Standards - Continued

Table – NAICS 2012 Industries or Their Parts Matched to NAICS 2017 Industries

NAICS 2012 Code	NAICS 2012 Industry Title	Status Code	NAICS 2017 Code	NAICS 2017 Industry Title
532292	Recreational Goods Rental	nc.	532284	Recreational Goods Rental.
532299	All Other Consumer Goods Rental	nc.	532289	All Other Consumer Goods Rental.
541711	Research and Development in Biotechnology. <i>nanobiotechnologies research and experimental development laboratories except nanobiotechnologies research and experimental development laboratories</i>	pt.	541713	Research and Development in Nanotechnology.
			541714	Research and Development in Biotechnology (except Nanobiotechnology).

Small Business Size Standards; Adoption of 2017 North American Industry Classification System for Size Standards - Continued

Table – NAICS 2012 Industries or Their Parts Matched to NAICS 2017 Industries

NAICS 2012 Code	NAICS 2012 Industry Title	Status Code	NAICS 2017 Code	NAICS 2017 Industry Title
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology). <i>nanotechnology research and experimental development laboratories.</i> <i>except nanotechnology research and experimental development laboratories</i>	pt.	541713 541715	Research and Development in Nanotechnology. Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology).
721310	Rooming and Boarding Houses	nt.	721310	Rooming and Boarding Houses, Dormitories, and Workers' Camps.

Small Business Size Standards; Adoption of 2017 North American Industry Classification System for Size Standards - Continued

Table – General Guidelines To Establish Size Standards for New Industries Under NAICS 2017

If the NAICS 2017 industry is composed of:	The size standard for the NAICS 2017 industry code will be:
1. A single NAICS 2012 industry or part of a single NAICS 2012 industry	The same size standard as for the NAICS 2012 industry or part.

Small Business Size Standards; Adoption of 2017 North American Industry Classification System for Size Standards - Continued

Table – General Guidelines To Establish Size Standards for New Industries Under NAICS 2017

If the NAICS 2017 industry is composed of:	The size standard for the NAICS 2017 industry code will be:
<p>2. Two or more NAICS 2012 industries; two or more parts of an NAICS 2012 industry; parts of two or more NAICS 2012 industries; or one or more NAICS 2012 industries and part(s) of one or more NAICS 2012 industries, and</p>	
<p>2a. they all have the same size standard</p>	<p>The same size standard as for the NAICS 2012 industries or parts.</p>
<p>2b. they all have the same size measure (<i>e.g.</i>, receipts, employees, <i>etc.</i>) but do not all have the same size standard</p>	<p>The same size standard as for the NAICS 2012 industry or part that most closely matches the economic activity described by the NAICS 2017 industry, or The highest size standard among the NAICS 2012 industries and part(s) that comprise the NAICS 2017 industry, provided that the highest size standard does not include dominant or potentially dominant firms.</p>
<p>2c. they have different size measures (<i>i.e.</i>, for example, some are based on receipts and others on employees) and hence do not all have the same size standard</p>	<p>The same size standard as for the NAICS 2012 industry or part that most closely matches the economic activity described by the NAICS 2017 industry, or The highest size standard among the NAICS 2012 industries and part(s) that comprise the NAICS 2017 industry, provided that the highest size standard does not include dominant or potentially dominant firms.</p>

Credit for Lower Tier Small Business Subcontracting

Major Implications

- Allow an other than small prime contractor that has an individual subcontracting plan for a contract to receive credit towards its small business subcontracting goals for subcontract awards made to small business concerns at any tier.
- This rule only applies to subcontracting plans, not to agency prime contract goaling requirements.

URL

- <https://www.federalregister.gov/d/2015-25234>

CFR(s) Amended

- 13 CFR 121, 13 CFR 125

Small Business Mentor Protégé Programs

Major Implications

- Establishes a Government-wide mentor-protégé program for all small business concerns, consistent with SBA's mentor-protégé program for Participants in SBA's 8(a) Business Development (BD) program.

CFR(s) Amended

- 13 CFR, 13 CFR 121, 13 CFR 124, 13 CFR 125, 13 CFR 126, 13 CFR 127, 13 CFR 134

URL

- <https://www.federalregister.gov/d/2016-16399>

Small Business Mentor Protégé Programs

SBA Final Rule Expanding Mentor Protégé Program

- First announced in 2010 Small Business Jobs Act and further details in 2013 NDAA
- Proposed rule on February 5, 2015, but final rule not released until July 22, 2016
- Effective as of August 24, 2016
- Applies to ALL small business concerns
- Applications accepted on October 1, 2016
- Other Federal Agencies (except DoD) cannot have separate MP Program unless SBA Approved.

Small Business Mentor Protégé Programs

Benefits of the Program

- Increases small business opportunities in the federal market
- Mentor-protégé partners can compete for more contracts
- Improves small business development
- New potential for evaluation credit on subcontracts awarded to protégés
- Period of 3 Years, and can be extended an additional 3 years if approved by SBA

Small Business Mentor Protégé Programs

Mentors

- Can Provide Protégés:
 - Technical and management assistance
 - Financial assistance through loans and investments (own up to 40% of protégé)
 - Developmental assistance through subcontracts
 - Assistance in performing prime contracts through JV agreements
 - Trade education

Small Business Mentor Protégé Programs

Mentors

- Must be for Profit
- Can be Either a small or large business
- Mentor must show it can fulfill its obligations under the MP agreement
- Must possess good character and not on Excluded Parties List
- Not required to demonstrate good financial condition
- Maximum of 3 Protégés at any given time
 - Default is one, but SBA can approve where protégés are not competitors

Small Business Mentor Protégé Programs

Protégés

- Must be a Small Business
- Can (now) be a mentor and protégé at same time
- Maximum of 2 Mentors at a time
 - Cannot be in same industry

Small Business Mentor Protégé Programs

Joint Ventures

- Protégé and Mentor may form JV to qualify as a small business for any Federal government contract or subcontract, provided that protégé qualifies as small for size standard assigned to contract.
 - JV will also qualify for contracts reserved/set-aside for other programs, provided that protégé also meets the particular program requirements (e.g., WOSB set aside).
- Only opportunity for non-small business to share prime contract role on set-asides
- Past Performance was previously based on JV's past performance but now looks at the past performance of the individual JV Partners as well

Questions?

John Dicus

Small Business Administration
Spokane, WA
john.dicus@sba.gov
509-353-2513

