

Walla Wall US Army Corps of Engineers Industry Day
October 13th, 2016

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



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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

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>

Women-Owned Small Business Federal Contract Program

Impactful Regulation Changes / Clarifications

- § 127.503 When is a contracting officer authorized to restrict competition or award a sole source contract or order under this part?
 - Requirement must be in industry designated by SBA as substantially underrepresented
 - WOSB or EDWOSB must be a responsible and the contracting officer DOES NOT have a reasonable expectation that 2 or more respective WOSB or EDWOSBs will submit offers.
 - Anticipated award price of the contract (including options) will not exceed \$6.5 Million in the case of a Manufacturing contract, or \$4 Million in the case of any other contract opportunity; and
 - Award can be made at a fair and reasonable price.

Women-Owned Small Business Federal Contract Program

Impactful Regulation Changes / Clarifications (Continued)

- § 127.600 Who may protest the status of a concern as an EDWOSB or WOSB??
 - Amended the protest regulations to make them consistent with the protest procedures for sole source contracts involving service-disabled veteran owned small business concerns (SDVOSBC) and HUBZone small business concerns.
 - Only the SBA or the Contracting Officer may protest the proposed awardee's EDWOSB or WOSB status for sole source awards while an interested party may protest the EDWOSB or WOSB status for all other EDWOSB or WOSB requirements.

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
- 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>

Small Business Government Contracting and National Defense Authorization Act of 2013 Amendments

Impactful Regulation Changes / Clarifications

- 125.2 What are SBA's and the procuring agency's responsibilities when providing contracting assistance to small businesses?
 - Revised the responsibilities of Procurement Center Representatives (PCRs) Including:
 - Including advocating against the unjust consolidation or bundling of contract requirements
 - Consulting with agency's OSDBU when replacing an activity performed by a small business concern to an activity performed by a Federal Employee
 - Allows PCRs to receive unsolicited proposals from small business concerns and to provide those proposals to the appropriate agency's personnel for review and disposition.
 - Advocate full and open competition in Federal contracting and recommend the breakout for competition of items and requirements which previously have not been competed
 - SBA Revises all references to “performance of work” requirements found in parts 121, 124, 125, 126, and 127 to “limitations on subcontracting.”

Small Business Government Contracting and National Defense Authorization Act of 2013 Amendments

Impactful Regulation Changes / Clarifications

- §125.6 What are the prime contractor performance requirements (limitations on subcontracting)?
 - SBA revises § 125.6 to take into account the new definition and calculation for the limitations on subcontracting
 - Creates an EXCLUSION from the limitations on subcontracting for SIMILARLY SITUATED ENTITIES
 - A “Similarly Situated Entity” is a subcontractor is a small business concern subcontractor that is a participant of the same SBA program that qualified the prime contractor as an eligible offeror and awardee of the contract.
- § 125.6(i) Addresses how the limitations on subcontracting apply to members of a Small Business Teaming Arrangement
- § 125.6(k) incorporates penalties for concerns hat violated the limitations on subcontracting requirements.
 - Fine associated with these penalties will be the GREATER of either \$500,000 or the dollar amount spent in excess of the permitted levels for subcontracting.

Small Business Government Contracting and National Defense Authorization Act of 2013 Amendments

Impactful Regulation Changes / Clarifications

- Joint Ventures
 - SBA proposes to amend § 121.103(h) to broaden the exclusion from affiliation for small business size status, to allow two or more small businesses to joint venture for any procurement without being affiliated with regard to the performance of that procurement requirement
- Calculation of Annual Receipts
 - SBA proposes to amend § 121.104, which explains how SBA calculates annual receipts when determining the size of a business concern. SBA proposes to clarify that receipts include all income, and the only exclusions from income are the ones specifically listed in paragraph (a).

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>

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

Impactful Regulation Changes / Clarifications

- Mentors (13 CFR 124.520 and 125.9)
 - Mentors may not have more than **THREE** protégés in the aggregate at one time under either of the mentor-protégé programs
- Protégés (13 CFR 124.520 and 125.9)
 - Requires that SBA verify that a firm qualifies as a small business before approving that firm to act as a protégé in a small business mentor-protégé relationship. Applications for SBA's Small Business Mentor-Protégé Program (13 CFR 125.9)
 - A protégé participating in either of the mentor-protégé programs generally will have no more than one mentor at a time. However, a protégé may have two mentors where the two relationships will not compete or otherwise conflict with each other and the protégé demonstrates that the second relationship pertains to an unrelated, secondary NAICS code, or the first mentor does not possess the specific expertise that is the subject of the mentor-protégé agreement with the second mentor.

Small Business Mentor Protégé Programs

Impactful Regulation Changes / Clarifications

- Benefits of Mentor-Protégé Relationships (13 CFR 124.520 and 125.9)
 - Joint Ventures between Mentors and Protégés are excluded from affiliation for all contracts so long as the protégé qualifies as small.
 - Proposed rule would permit a mentor to a small business to own an equity interest of up to 40% in the protégé firm in order to raise capital for the protégé firm

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>

Proposed SBA Rules Affecting Federal Acquisition:

Rule	Federal Register Number	Current Status
Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business-Certification	3245-AG75	Comments Period Closed 12/07/2015 and in Proposed Rule Stage
Credit for Lower Tier Small Business Subcontracting	3245-AG71	Comments Period Closed 12/07/2015 and in Final Rule Stage

Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business-Certification

Proposed Date:

- December 18th, 2015

Major Implications

- The SBA is seeking public comments to assist in drafting a viable proposed rule to implement a WOSB/EDWOSB certification program as self certification is no longer accepted.

URL

- <https://www.federalregister.gov/d/2015-31806>

CFR(s) Amended

- 13 CFR 127

Credit for Lower Tier Small Business Subcontracting

Proposed Date:

- October 6th, 2015

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.

URL

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

CFR(s) Amended

- 13 CFR 121, 13 CFR 125

Questions?

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