



Legislative and Regulatory Update

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U.S. Small Business
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Legislative & Regulatory Update

For Small Business Government
Contracting Programs

AUSA 2024

Legislative Action

NDAA for Fiscal Year 2024

[Pub. Law 118-31](#), Enacted Dec. 22, 2023

Sect. 862: Primes must notify CO if payment under a small-business subcontracting plan is 30+ days past due; cooperate with CO

Sect. 863: Increase SDVOSB goal to 5%

- SBA enacting for FY24

Sect. 864: Eliminate self-certification for SDVOSBs, prime and sub

- Would be effective Dec. 22, 2024

Sect. 865: Require DoD to consider the past performance of a small business's affiliates

Executive Action

Small Business Participation on Multiple Award Contracts

[OFPP Memo](#), Jan. 25, 2024; [DoD Memo](#), April 19, 2024

1. Award of new multiple-award contracts

- engage small-business specialists and PCRs earlier in the acquisition process
- consider on-ramps when developing the acquisition strategy

2. Award of orders under new and existing multiple-award contracts

- apply the rule of two to contract orders, with limited exception
- maximize orders to small businesses under the SAT

3. Best-in-Class contracts

- seek new entrants through BIC, or
- consider whether using an "open market" set-aside (outside of a BIC) would be more effective to finding new entrants

OMB Memo: Increasing SDB Dollars for FY24

M-24-01 Increasing the Share of Contract Dollars Awarded to Small Disadvantaged Businesses for Fiscal Year (FY) 2024 and in Subsequent FYs (Oct. 25, 2023)

- As required by [EO 14091](#), OMB set an SDB goal for FY24 of 13%
 - Agencies negotiate their SDB goals with SBA to cumulatively award 13% of Federal contract spending to SDBs
 - 8(a) program remains an important gateway for expanding contract access to those who have experienced past discrimination
- SDB goal for FY25 and beyond is 15%

Recent SBA Regulatory Action

SBA Direct Final Rule: Eliminate SDVOSB Self-Certification

[89 FR 48266](#) (June 6, 2024); [Clarification](#) published Aug. 1, 2024

- Must be certified by SBA for
 - agency's SDVOSB goals;
 - subcontracting plan SDVOSB goals
- Submitting application by December 22 qualifies until SBA makes a decision
- Clarified on Aug. 1 to state that “SDVOSBs may continue to self-certify until the grace period ends on December 22, 2024.”

SBA Interim Final Rule: WOSB Program Recertification

[89 FR 16445](#) (March 7, 2024)

- Administrator or designee may postpone the required program examination in light of appropriate, extraordinary circumstances
- Otherwise, certified WOSBs undergo a program examination every three years

SBA Final Rule: Loan Program Alternative Size Standard

[89 FR 11703](#) (Feb. 15, 2024)

- Raises the 7(a) and 504 loan programs' alternative size standards to
 - \$20 million in tangible net worth (previously \$15mil)
 - \$6.5 million in net income (previously \$5 mil)
- Raises the contract limit for SBA-guaranteed surety bonds to \$9 million (previously \$6.5 mil)
 - \$14 million for Federal contracts if CO certified that such a guarantee is necessary (previously \$10 mil)

Final Size Standard Methodology

[89 FR 74109](#) (Sept. 12, 2024); www.sba.gov/size

- Will be applied to the upcoming third 5-year review of size standards.
- Key changes from 2019 methodology:
 - replaces the percentage point difference method with a disparity ratio approach for analyzing Federal contracting in size standards
 - uses FPDS-NG/SAM data instead of Economic Census data to calculate industry factor percentiles for subindustry “exceptions”

SBA Proposed Rule: HUBZone and Other Programs

[89 FR 68274](#) (August 23, 2024); clarified Sept. 19 in [89 FR 76751](#)

- Eligibility at time of offer for HUBZone contracts, not annually
- Recertification frequency from annual to every 3 years
- Employee definition:
 - Decrease to 90 days for HUBZone employee residency (from 180)
 - Employee definition requires 80 hours per month (up from 40)
- Principal office requirements :
 - Must have lease starting 30 days before and ending 60 days after SBA review
 - Virtual offices not allowed
 - Shared spaces must have dedicated area
 - For 100% telework, 51% of employees must be in HUBZones
- “Attempt to maintain” HUBZone employee percentage:
 - One-year grace period after HUBZone contract award where can drop to 20%
 - Return to 35% by next certification date
- Limited to one legacy employee at a time

SBA Proposed Rule: HUBZone and Other Programs

[89 FR 68274](#) (August 23, 2024)

- Consolidated recertification requirements into new 125.12:
 - Long-term contracts
 - Merger, acquisitions, and contracting office request
- Aligned eligibility requirements across programs:
 - Consistent ownership and control criteria
 - 6 extraordinary circumstances where minority shareholders can veto
 - Uniform treatment of community property
 - Removed 90-day waiting period to reapply after
- Submitting false/misleading information may result in removal from multiple SBA programs
- Joint-venture and mentor-protégé clarifications

SBA Proposed Rule: Women-Owned Small Business

[89 FR 42816](#) (May 16, 2024)

- Aligning the language on outside employment across the 8(a), women-owned, and service-disabled veteran programs
- Removing outdated references to the VA's certification program
- Implementing statutory requirements on a firm needing to change its WOSB self-certification status based on a status protest
- Changes to definitions

Recent FAR Regulatory Action

FAR Final Rule: Order-level Protests

[89 FR 61333](#) (July 30, 2024)

- Provides processes and procedures for filing size and socioeconomic status protests for
 - partial set-asides and reserves under multiple-award contracts,
 - orders set aside under unrestricted multiple-award contracts, and
 - orders placed under multiple-award contracts where rerepresentation was requested
- Protests must be submitted within 5 business days of order award notification

FAR Interim Final Rule: Certification of SDVOSBs

[89 FR 13950](#) (Feb. 23, 2024)

- As of January 1, contracting officers were required to check SAM or SBA's Veterans Small Business Certification Program database (veterans.certify.sba.gov) to determine whether the firm is an eligible SDVOSB to qualify for an SDVOSB set-aside or sole-source contract.
- Firms also eligible if on SBA list of applicants as of Dec. 31, 2023 that have not received a determination

FAR Final Rule: 8(a) program

[88 FR 69523](#) (Oct. 5, 2023)

- Requires notice to 8(a) program when a procurement, previously in the 8(a) program, is determined to be a new requirement, not subject to 8(a) release requirements
- Requires notice when agency intends to procure an 8(a) follow-on using an existing limited-competition contract vehicle, when the current or previous 8(a) contract was available to all 8(a) participants
- SBA reserves the right to appeal these decisions



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