File Name: 0402200204_040120-822338-sba-first

[START OF TRANSCRIPT]

Lauren: Welcome and thank you for joining today's live SBA web conference. Before we begin, please ensure you are in the WebEx event and have opened the chat panel by using the **[00:00:09 inaudible]** icon located at the bottom of your screen. You're welcome to submit written questions during the presentation and these will be addressed during Q&A. To submit a question, select all panelists from the drop-down menu in the chat panel, enter your question in the message box provided and press enter to send, that’s it. All audio connections are muted at this time. If you require technical assistance, please send a chat to the event producer. With that, I'll turn the conference over to Chris Eischen. Chris, please go ahead.

Chris: Thank you Lauren. Hello everyone and welcome to the seventh session of SBA first Wednesday webinar series for fiscal year 2020. We all know that today is April 1st or April fool's day and unfortunately the coronavirus is no joke and we're all working to fight this terrible virus. Within the email invitation that went out for today's session we included some SBA resources, so please check that out for additional information. Just one website that you could visit is www.sba.gov/coronavirus and that includes all the updated information.

Onto slide two. For today's session, we'll be focusing on regulatory updates for small business government contracting programs and by the end of the program you should have a better understanding of this topic as well as the resources available to you. If you're a new to our event, this is a webinar series that focuses on getting subject matter experts on specific small business topics such as regulatory updates and having them provide you with valuable information you can use in the performance of your job. We appreciate you taking the time to participate in the FY20 program, and we hope that you benefit from today's session.

On to slide three. As Lauren mentioned, I am Chris Eischen and I work as a Procurement Center Representative or PCR in Kansas City, Missouri. Additionally, Mr. Charles Mason, who is the PCR in Omaha, Nebraska, will be reading the questions submitted during the program for our speakers to address at the end of today's session. We both work in government contracting area four and slide three includes our information.

On to slide four. Please note that all lines are on mute. However, you may submit questions or technical issues in the chat box on your screen. The questions may be submitted anytime during today's session by entering them into the chat box and these questions will be addressed at the end of our speakers’ presentation. To make sure your question doesn't get overlooked, please ensure it is addressed to all panelists on the drop down and not just one individual. As most of you know, we have transitioned to WebEx and I've had been informed that some users may experience issues such as a block website or other error messages when attempting to access the conference log in from their computer.

If you are affected by this issue, please make sure you dial in and follow along with the slides provided in this Email. We will ensure the page numbers are clearly stated so you can follow along. If you are having any other technical issues, please call the AT&T support desk at the following number (301) 250-7202. This telephone number is also included in the email invitation for today's program and on slide four of the PowerPoint presentation. For more SBA small business program training and additional resources, please visit the SBA learning center at www.sba.gov.

On to slide five. Did you know that the Association of Procurement Technical Assistance Centers or APTAC posts a website where they post first Wednesday programs? Since these sessions are being recorded, you can re-listen to this program as well as previous sessions by visiting our website which is provided here on slide five. Additionally, Procurement Technical Assistance Centers or PTACs are a great resource and partnering with your local PTACs for an industry day, sharing RFI notices or sources sought announcement or simply referring small business concerns to PTACs are just a few reasons why they are such a useful resource for acquisition personnel. So please contact your local PTAC for additional information.

On to slide six. So, slide six is the program schedule for fiscal year 2020 and today's session on regulatory updates is the seventh topic in the series for this fiscal year. You will see we have it have had to adjust the schedule slightly due to speaker availability as well as adding some new topics to our program lists and the improvement of other topics that have been presented in the past. The list may continue to fluctuate based on speaker availability. However, we will keep you updated on all those changes. Just want you to know that participation continues to grow each and every month and the positive word of mouth is greatly appreciated.

On to slide seven. I'm sure many of you will want to receive credit for today's training, so you'll be happy to know that today's session is worth one CLP. On slide eight, which is the following slide, you will find the training certificate and I will go over the instructions when we get there. Now several of you may have received information for the training from a friend or colleague, but if you want to receive an email directly from us notifying you of upcoming first Wednesday webinar events, just send us an email at SBA learning. So that's sbalearning@sba.gov. In the subject line, please enter the words add to list and will ensure you're added to the distribution list.

So, slide eight as I mentioned, it's the certificate. First, you'll need to access the PowerPoint presentation that was emailed to you. Then you'll manually fill in your name where it states, “Enter your name here”. Next within the print settings, you'll select print current slide, which will allow for only the certificate to be printed. Once this is done, you can coordinate the CLP achievement through your training program. And another reminder, SBA does not track your CLPs or communicate with your training program regarding your CLP achievements.

So, onto slide nine. Today's training has been assembled to educate you on the regulatory updates and you will also be provided with additional SBA resources available for your use. Our speaker has graciously accepted our invitation and he will be directing me to continue on to the next slide. As I mentioned earlier, if you are unable to access WebEx, please follow along with the PowerPoint presentation that was included in your email for today's training. We will identify the page numbers so you can follow along. Also, please note that some viewers may experience a delay as a slide changes on your screen.

Now I am pleased to introduce today's speaker to you, Mr. Sam Lee, who is an attorney advisor for SBAs office of general counsel. We appreciate that you can meet with us today, Sam and I'll turn the program over to you now.

Sam: Thanks very much Chris and welcome everybody to first Wednesday with SBA. If you happen to hear a dog or a little girl or a sowing machine in the background, that's because I'm presenting to you from the official SBA, OGC, homeschool, doggy daycare and fashion design center. So, I hope you'll bear with me if you hear in the background voice. I'm here to present the regulatory updates or SBA things I've been working on in the last year. Things are of course moving quickly at SBA to respond to the Corona virus as Chris mentioned. These rules, however, are government contracting focus rules they're outside of what we're doing on the Corona virus. So, I hope to be able to keep the presentation primarily focused on regulatory updates. Next slide.

And next slide. So, we'll start with a proposed rule that we issued to comply with the administration's regulatory reform initiative. This is to try to call through SBA regulations to remove regulations that are unnecessary or redundant. We started with the Service-Disabled Veteran Owned Small Business Concern Program, SDVOSBC, and we're seeking comments on this proposed rule. You can see the federal register, notice number four there, 85FR6106. Our comments are due April Six, on the four regulations that we've identified as being unnecessary or redundant. Now, keep your eyes out for other proposed rules on this regulatory reform initiative. We're going through all of our regulations to try to look for regulations that aren't necessary anymore.

Next slide. We also have a proposed rule out to make certain categories of businesses eligible for government surplus property. In particular, we're focusing on small businesses owned and controlled by veteran, small businesses located in major disaster area and small businesses located in Puerto Rico. The proposed rule is out. We've gotten comments on that. We're working on a final rule and then once we issue that final rule, we're going to work with the GSA, the General Services Administration and the heads of the state agencies for surplus property to make sure that the businesses in those three categories are eligible for surplus property.

Next slide. We also have a proposed rule that we've issued on making major changes to our mentor protégé program and our other government contracting program. As you might know, SBA operates two separate mentor protégé programs. One for 8(A) participants called the 8(A) Mentor Protégé Program and one for all of their small businesses called the All Small Mentor Protégé Program. We propose to combine both of those programs into one program because they have identical benefits. So, there would just be one SBA Mentor Protégé Program. We've made a number of changes within the program to reflect things that we've learned over time with these programs.

First of all, we would say that Mentor Protégé Agreement would not count. It terminated within some period of time according to the proposed rule was 18 months. We're getting comments on that. We now require some submissions from mentors, but we would say that mentors cannot co-submit competing offers on solicitation. We asked about mentor's eligibility, if they have revenues of 100 million or more. We've got a lot of comments on that. And then we implemented statutory requirements about protégés from Puerto Rico down counting for the limit of three protégés per mentor.

Next slide. But this rule is not just limited to the Mentor Protégé Programs. We've made proposed changes to our joint venture rules and general government contracting changes in our joint venture rules. We propose to eliminate SBA's approval for competitive 8(A) joint ventures. As you might know, SBA currently does not allow or need approval outside of the 8(A) program. So, if we were to eliminate approval for competitive 8(A), the only required SBA approval would be for sole source 8(A) joint ventures. We also propose to change the current three award in two years rule to get rid of the three-award part of it. Some people have referred to this as that the infinity awards in two years proposal. We've collected comments on that and as well as all the other changes that we're talking about, we'll be finalizing that rule shortly.

We put in some proposed rules about facility security, officers and size and joint venture partners. That's fairly detailed material, but we did receive a lot of comments on that and we're working through those. With Multiple Award Contracts or MACs, we've proposed to make several changes. The major one is the second bullet there, where we've opposed that eligibility for a small business set aside order on an unrestricted multiple award contract will be based on the time of the offer for the order. That's a change from the current status where the eligibility is based on the time of offer for that contract and a multiple award contract, which...

Chris: Sam, I believe you're on mute potentially.

Lauren: Please stand by. It looks like Sam has temporarily disconnected from the call; we'll wait for him to dial back in shortly. Please **[00:13:25 inaudible]** just stand by. Would one of our presenters like to reach out to Sam and see if we can get him reconnected?

Chris: Lauren now we'll resend him the information to see if he has that beneath that.

Alison: So, this is Alison Ayman. Sam is struggling to reconnect it looks like. So, I'm going to attempt to fill in for him while we wait for him to reconnect. He's much more familiar with these roles than me, but I will do my best if that is good with everyone. Chris, that sounds good?

Chris: Allison, go ahead.

Alison: Sure. So, Sam, I think when he got disconnected was talking about the changes to eligibility for multiple award contracts. And he was saying that under the old rules affirm which was eligible at the MAC level. So, it's status at that time the order for the MAC Multiple Award Contract would dictate eligibility for any orders issued against the MAC. But this proposal allows firms to authorize that firms' eligibility to be determined at the time of a set aside order against a fallen open MAC. And then if there's a satisfied Multiple Award Contracts then eligibility were slow through to orders for set aside contracts other than filling open max.

Next slide. So, I actually think that it might make more sense for Sam to go into all these changes when he returns 'cause I don't want to miss state any of those. So, I think let's, let's skip this slide. Slide 15. If we can keep track of where we need to return to when Sam will come back. Real quickly, we'll see how far forward we need to go before I feel confident and feel again fully. Would we go to this side 17 as well? And I'll try to pull back as we need to.

And then 18. 19. Is there a section on HUBZones if I can ask please fill in on that**?** Let's fast forward to the HUBZones section, wherever that is. I don't think I have controls **[00:16:02 inaudible].**

Great, so we're on slide 26, I think for keeping track, when Sam comes back in 15 through 25, we just jumped past and we can return to those and make sure Sam goes over them better than I would've been able to. I, however, am the primary attorney who works on the HUBZones program, so I can go through this quick review of the HUBZones changes. We recently published a final rule in December issuing the first comprehensive review of the HUBZones regulations since the program was implemented. So that's what we're talking about now under this **[00:16:48 inaudible]** final rule for HUBZones with MAC, which are currently frozen through the end of 2021 through December 31st, 2021 will be updated every five years so that those updates are to be expected early 2022. Just to clarify, when we talk about the MACs being frozen, we're talking specifically about qualified census track, qualified non-Metro counties and re-designated areas.

Those are the types of HUBZones areas that are frozen and will be updated every five years. Other types of designation that are more fluid historically including qualified disaster areas will continue to be added. So, if disaster hits, we don't want us to wait five years to update the MACs to reflect that. Any new qualifying Indian lands will be added to the MAC as appropriate and as well as new base closure areas will continue to be added as appropriate. In addition to that change, we are in the process of moving to an annual recertification process. Meaning that once affirm is certified that certification lasts for one year. It has to annually recertify instead of every three years. But once a firm either certified or recertified, that certification will be effective for all HUBZones contracts during the following one-year period.

That means firm no longer has to be eligible at both the time of offer and award for HUBZone contracts. This is really big change and so firms have to be eligible again at the time of certification or re-certification and then that eligibility carries through the rest of the year. The last bullet on this and this slide talks about a similar issue that I just discussed when Sam dropped out talking about multiple award contracts. So, in the HUBZone program for a non-HUBZone Multiple Award Contracts can you name full and open multiple award contract other than a GSA federal supply schedule contract? A firm now must be certified as a HUBZone at the time of offer for every order issued against every order that's set aside for HUBZones against that full and open multiple award contracts. So, this is the only true for HUBZones right now, the proposal that we were just discussing, we'll mirror this change for the rest of the programs, but the change is already in effect for HUBZone. Next slide?

Chris: So, Allison, I believe Sam might be back on the line.

Sam: Hi folks. Can you hear me now?

Chris: For sure.

Alison: So, Sam, I skipped over some of your slides because I didn't feel confident that I would just say them correctly and I moved forward to HUBZones. Do you want me to finish up HUBZones and then go back or do you want to go back to where you left it?

Sam: And I apologize for the technical difficulty. Thank you.

Alison: All right, so I'll...

Chris: Alison, go to slide 27 then.

Alison: Great, thank you. So additional changes that were in this new rule that was published in December. A firm continues to have 35% of its employees located in a HUBZone at the time of both certification and recertification. However, firms can dip below 35% during the year because again, certification once you're certified or recertified, your eligibility carries through for the rest of the year. The caveat, however, is the firms that receive hubs contract, they must continue to attempt to maintain compliance with 35%. And in this new rule we've defined attempt to maintain more narrowly than we have in the past to provide clarity to firms because it wasn't clear what attempts to maintain necessarily meant. So, we've defined it to mean that from affirm is it something to maintain compliance if a 35% requirement as long as it has at least 20% percent of its residents providing HUBZones.

So that means if a firm is performing in a HUBZone contract in order to remain in compliance to the attempt to maintain we'll have at least 20% HUBZones residency and if it's below a there's an obligation in the rules for that firm to notify SBA and it could be proposed for decertification. Another big change in this rule where we're referring to generally as the legacy HUBZones employees. Under that change if a HUBZone has an employee who resided in a HUBZone for at least six months before time of certification or time of recertification and that person resides in a HUBZone for an additional six months after either certification or recertification, then as long as the employee remains an employee of the firm say that person stays on payroll and continues working 40 hours per month, then that individual can continue to be counted as a HUBZone resident employee for as long as they work for the firm. Even if they move out of a HUBZone or if the location where they reside loses and it's up to designation.

So again, that's, that's a big change which should help firms be able to stay in the program. The idea there was to not punish firms that we're doing better and making money and getting contracts and able to pay their employees and when that happens in the past where I'm trying to make the decision if their employee moved out of a HUBZone it either fire them or hire people they didn't need. So, this change is meant to handle, to react to that situation and not punish firms for paying their employees more. And then lastly here on the side the rule says that employees who are temporarily living overseas in connection with the performance of a contract will be considered to reside over US residents. So that's a change or it's more of a clarification cause I think what we were doing in the past, but now our rules make clear that if someone is living overseas, then for purposes of determining a firm's compliance, the 30 to 35% requirement, we'll look at that. Overseas employees us residents.

Our next slide. Another change related to the principal office requirement, meaning requirement that firms have a principal office in a HUBZone provides that if a firm invest in HUBZones by purchasing a building or entering, entering into a long term lease in a building located in the hubs zone that firm will be being to meet the principal office requirement for at least 10 years, even if the location, the space, the area where the office is located, no longer qualifies as a HUBZone. So again, that's another big change meant to encourage firms to really invest in HUBZones by either buying a building or entering into long term leases. We have clarified our definition of employee to in a number of ways including clarifying that if a firm has an affiliate or one or more affiliates, then we'll determine whether or not there's a clear line of fracture between the HUBZone applicant and any affiliates and if there's not a clear line of fracture between the firm and its affiliates, and we would count the employees of the affiliates as employees of the HUBZone firm when we're calculating the firm's compliance with the 35% and principal office requirement.

This is not a change in any way to just center a longstanding policy, but it's just made clarity for the first time. And then last on this slide, starting January One of 2020, so this is in effect already, applications for HUBZone certification will be processed within 60 days of complete submission, meaning that the submission of a complete application including all the supporting documentation that's required. So, used to our regulations say we process within 90 days now we're processing within 60 days.

Our next slide. Another HUBZone related role change than it appeared in a different rule from the final rule. I was just expressing this was a direct final rule also published at the end of 2019. And it authorized something that we're calling governor designated covered areas. And essentially these are, these will become additional HUBZones in rural areas based on petitions that the governors can submit to SBA requesting that certain areas be designated as HUBZones. Areas that could be eligible for this designation or areas that are located outside of an urbanized area as defined by a census. So essentially rural areas. Areas of population in addition to his area of study have populations with 50,000 or less. And lastly is the last criteria is that the average unemployment rate for the area has to be at least 120% of the average unemployment rate for the U S or the state that the area is located at.

So, any, any areas that meet these criteria and aren't already HUBZones could become HUBZones if the state governor requests so that the request to have to be in the form of a petition. And then those petitions after we process them and designate areas of HUBZones have to be supported on an annual basis by submission of data from the governors showing that the areas continued to meet those three criteria I mentioned above. And what's not on the slide, but we've received questions and it's probably important to note is that we've determined that an area which becomes a governor designated hubs zone will remain one until either the governor doesn't submit the annual data or the data shows that the firm doesn't meet these three criteria, one of these three criteria above. Once that happens the area will essentially have a three-year transition days where it will remain a HUBZone for three additional years similar for re-designated areas **[00:27:14 inaudible]** with how that works. When qualified census tracks or qualified non-Metro counties lose their HUBZone designation, they get a three-year grace period essentially. So, this will mirror that rule. And so, areas won't suddenly lose their HUBZones status under this new designation. Not sure if there was more HUBZones stuff but let's check the next slide.

Okay, this goes into the slide into what SBA will look at when and consider when receiving a petition and essentially will SBA is going to look at the potential for job creation and investment in the areas that were included in the petition. We we'll look at the interest of small business concerns in the area. So, we'll expect that governors will have talked to their constituencies about whether this is something that they need and want. We'll look at whether the state or local officials have incorporated the area and an economic development strategy. And then lastly, we'll look at essentially what would be the impact on the area if we did not approve the petition. Meaning we did not designate the area as a HUBZone. Our expectation is that this information is all pretty readily available to governor's offices. And so, the petition shouldn't be too lengthy or burdensome to put together. And likewise, our reviews shouldn't be too lengthy or burdensome. So, we're hopeful that once we receive these petitions, we can process them quickly and get them MAC updated as quickly as possible. And this should be good in general for anyone who's in these areas. Let's see if there's, anything on HUBZones on the next slide. Okay.

Sam: I can jump in here and go through some of the final rules. We started with proposed rules and we can go back to the, the previous slides, but I'll just keep going through the slide deck starting with this one. One thing we did recently, August 2019, this now feels like five years ago, but it was only seven months ago. We read their size standards, their monetary base size standards to account for inflation. Then we went back, we had to do correction for judging, but now the five standards that you see on our website or at 121.201, which is where we have our size center stable, had accounted for inflation. We'll do that again in five years. Next slide please.

The FA issued a rule in February to February 2020 to implement a regulatory change that SBA made in 2013. So, if you're counting, that's a bit more than six years between the SBA rule and the FA rule the net effect of this is merely agencies have been doing this for quite a long time. Agencies have been setting aside orders in the multiple award contracts. So, for example, if you have a GSA schedule contract, many agencies go in there and they issue a small business set aside or a HUBZones set aside orders under that contract. That's what we mean by set aside under multiple work contracts. But now the FA has issued further guidance in this final rule from February and it's effective two days ago, March 30th.

And one thing it does is, it allows for agencies to put multiple mix codes on one contract. A mix code designate the industry for the contract and sets the size standard but there are some contracts that are very large and have many different services or supplies under them. So really, they should have more than just one industry designation. We've now allowed for that to happen. But because of the need to update some of the electronic contract writing system, that part of the rule does not go into effect until October 1st, 2022. So, if you're counting that's two and a half more years from when SBA issued final rule.

One other part of this rule is that it allows agencies to issues with **[00:31:26 inaudible].** With **[00:31:27 inaudible]** we are basically saying you have a pool of contract awards that are **[00:31:33 inaudible]** they are reserved or set a thigh for some sort of designation, small business HUBZone, 8 (A) something like that. You can do that within a wider or an open multiple award contract. Next slide.

I wanted to go over a few FA rules that are significant to small businesses. The FA issued a rule recently to implement section 89 of the 2019 national defense authorization act. The rule prohibits contracting for certain types of telecommunications and video surveillance services or equipment. The products that issue are those HUAWEI technology which is based in China ZTE Corporation and then several other companies that are based in China. This rule has multiple parts, the first part tells contractors to certify as to whether their offer includes the cover, telecommunications equipment or services and otherwise prohibit them from providing that sort of equipment. Next slide.

There is a second rule where the FA has provided for an annual representation. So, if you're a firm and you know that you're not providing any of this equipment to the government, you can just certify annually on that basis and be done with it. It doesn't have to be a contract by contract representation. Next slide.

Now, the next part of this section 889 implementation will take place later on this year. By statute it's required to be by August. And this part is upcoming far rule would be wider than just the particular contract or the annual certification. It would prohibit contracting with thing that use to cover telecommunications equipment or services. It is to be implemented through a separate FA case. I understand it go out for notice and comment, meaning the public will be able to see the proposed rule and be able to submit comments on that. Next slide.

The FA has also been updated to define what you mean by affiliates. As you might know, when SBA determines whether or not your small business, we take into account the size of your affiliated firm and there's a definition of affiliates in the FA. Now there's also a definition of SBA's rules. 13 CFR 121.103. Now we've made it easy. The FA references, SBA's rules. We should all go to SBA's rule at 121.103 in order to learn what an affiliate means. The FA also removed or a obsolete requirement for 8(A) contractors to get approval from SBA and from the contracting agency to subcontract some of their performance. Next slide.

The FA has issued several rules to implement statutory requirements. One of them is to provide that XPA procurement center representatives will not be view acquisitions and the categories including a conspiracy operation and awards that are awarded and performed outside the United States and its outlying areas. Next slide.

Before I get to this one, I also want to mention that after the slides were prepared the DOD issued a class deviation letter to implement another NDAA provision about 8(A) sole source justification. If you're a 8(A) firm that can receive sole source awards above the 8(A) sole source special to a 4 million, 7 million in manufacturing then you can now get sole source awards up to $100 million fund DOD without DOD completing a justification. Now, most 8(A) firms do not fall into that category. You have to be a NC owned firm, or you have to be the only 8(A) firm that can provide that particular requirement in order to get a full source award above the normal threshold. So, to those firms or the firms that are contracting outside of DOD that class deviation doesn't make much of a difference but to some firms, it's a large flexibility.

Now going back to the slides, there was a final action that SBA issued to waive the non-manufacturer rule for commercially available laptops and tablets, computers, or excuse me, commercial off the shelf, laptops and tablets, computers. And that non-manufacturer rule generally requires that if you're a small business reseller and then a certified contract, except for the exception though customer second, then you have to supply the product of a small business. The non-manufacturer waiver means that the small business reseller that wins that set aside contract can supply the product of any manufacturer for the commercial off the shelf laptops and tablets. I'll note that the non-manufactural does not apply to small business certified below the simplified acquisition threshold, but it does apply to suit your economic program set aside at any dollar level that includes HUBZone or a service tables that are women owned. It's just a small business that size below the fact that the manufactural doesn’t to... Next slide please.

And we've issued a proposed rule on the women owned certification program. I'm not really going to go over this much because the commentary has ended and we're about to go into a final rule, but generally SBA is going to stand up a free certification program for women owned small businesses. Currently there are **[00:38:10 inaudible]** called third party certifiers or TTC that conduct certification. SBA will be added to the group of entities that can certify women owned small businesses. We'll also have certification from the 8(A) program or the VA center for verification and evaluation. State entities are included as well as certification entities and will oversee the third-party certifiers. This was a proposal that we issued last year in 2019. We're finalizing this rule and we'll be publishing it shortly so that firms that want to receive women own small business set aside can understand how they can get certified not only by the TPC but also by SBA. Next slide.

Chris: Okay. We're on to slide 40.

Sam: One aspect about this women owned small business certification proposed rule is that it also would affect the 8(A) program was proposed that SBA would apply the personal net worth standard of 750,000 to the 8(A) program in addition to the economically disadvantaged women owned small business program. Next slide.

There's a FA proposed rule out about overseas contracts. I think the comment period on that has ended, but the idea was to allow, not require but allow small business contracting provisions to be applied on overseas contracts. Next

We have a few proposed rules coming up on size standards. We have to look through all of our size standards every five years. You'll see that you'll see implementation, the NDAA for 2020. Next slide.

We might waive a non-manufacturer rule for a few other industries, leather holsters, commercially handheld land, mobile radio, recreational gymnastic equipment. Next slide.

And then the FA has a number of proposed rules and upcoming final rules on the next slide that you should keep an eye out for. Now I have about five minutes left before I go to questions. I'd like to go back to the previous slides, including in particular the small business runway extension **[00:40:33 inaudible]**.

Chris: All right, Sam, we're going to start back and that's the one that you left off on.

Sam: Okay. So in addition to some of the proposals that we were talking about in the mentor protégé program and joint ventures and multiple award contracts or MAC, we also propose to make changes to the 8(A) program, including defining more so what it means to be a follow on requirements. Also, what it means to be an immediate family member for purposes of eligibility. We are making or proposing operational changes about declines and changing your mix code. Also, about how SBA would **[00:41:13 inaudible]** a procurement for non 8(A) competition where it might be statutorily required. That's significant to CEO's at one point there were because it would require SBA release for non 8(A) competition. What we propose is, even if a statute requires you to relieve you still should get SBA release before we loosen that requirement from the 8(A) program. And then we had a proposed change to the sole source limit that applies across the board to firms to change that to 100 million. Next slide.

So, this is what I was referring to with the runway extension act. We issued a final rule that was effective in January of this year. Again, so it was like, it was five years ago, but it was just in January where we said that now we're going to calculate annual receipt using an average of five years instead of three years. Now the statute that we're responding to initially said this would only be applicable to service firms, but we said, no, we're going to fight us to all **[00: 42:21: ECE]** based industry. And that includes construction and agricultural. Now this applies to certifications on or after January six. So, if you submitted an offer or you certified prior to January 6th of this year, you're still under the three-year average. After January six, you can use this five-year average.

We created a transition period of two years from January six, 2020 to January six, 2022. Well, you can pick between the two options between three years and five years. If you want to go on using three years up until 2022, that's okay. If you want to switch to the five-year average, you can do that as well. Now I'll note that at this point there's more...the five-year change does not apply to our loan program. And that of course includes the loan program that we're talking about. So, the response. Next slide.

We had a final rule on the national defense authorization act and the **[00:43:26 inaudible]** act. It's all consolidated in one really big rule. There's a lot to go over there. I'll try to touch on the ones that are most significant to the contracting workforce. One of them is to say that procurement center representatives can review any certification you didn't have it set aside. The idea here is maybe something would be appropriate for HUBZones where the government's not meeting a goal and maybe it's appropriate for 8(A) where SBA has a vested interest in business development. Maybe we should switch something from a small business set aside ‘cause one of those programs. We talked about the exceptions for DOD. I'll go on to the next slide.

We lifted out nine examples of areas where a contractor would not be making good faith to comply with its subcontracting plan. A large contractor with a contract over $700,000 is required to submit a subcontracting plan unless there are no subcontracting opportunities with goals in that plan. And if they don't meet those goals, the contracting officer can determine that the large contractor has not made a good faith effort to comply with the subcontracting plan. We SBA has not previously... given examples of what constitutes a good faith efforts. So, if you wish will be provided nine examples of what it might mean to not make a good state effort. And if you don't make a good faith effort that can be to contract remedy to liquidated damages or to pass the form for decertification. Next slide.

We created contracting preferences for a small business in disaster area is actually already in the FA. So for a disaster response and agency can use a small business set aside on top of a local area set aside, even sees that do so and award a small business contract off of a local area set aside, we'll receive doubly credit toward their goal. Next slide.

We issued a provisions to provide for set of five quarters off of small business set aside multiple award contracts. Now this doesn't apply to socioeconomics, set aside multiple award contracts and it doesn't apply to already awarded multiple award contracts. So, going forward, the idea is that first they'll know what type of set of size will be available at the time award and on future orders, so they know whether or not it's in their interest to submit an offer. Next slide

Chris: We're on to slide 21.

Sam: And we look at our limitation on some contracting, which is generally a 50% rule for services and supplies or 15% general construction, 25% for specialty construction. We found that there are some industries where small businesses don't participate and we provided that those industries would be excluded from the limitations on subcontracting where the cost is not the principle purpose of the acquisition. The industries listed there, airline travel, transportation or disposal under environmental remediation contract, cloud-Computing mass media and work performed overseas on awards under the **[00: 46:42 inaudible]** required to be performed by local contractor. Next slide.

We now allow contracting officers at their discretion to require firms provide evidence of compliance with the limitations on some contracting. Next slide.

And we emphasize that re-certification applies in our socioeconomic programs in addition to small business. There's the far high small business recertification requirements. It wasn't necessarily clear that those apply to socioeconomic categories. We want to make sure that our goal numbers are accurate. So, we applied recertification across the board to all the other programs as well. And if the firm can't recertify on a contract that's no dated or because of a merger acquisition, then you just can't count orders issued on that contract toward his goals. There's as an interesting provision in there for 8(A) where it says that if you're an a firm and you get an 8(A) contract and that contract has more than five years at the end of the fifth year **[00:47:50 inaudible]** service, we certify your 8(A) status. You can do that. Maybe you've graduated with a termination program. You can do that. The agency cannot issue future orders or options toward that contract that that's different from the other programs that's special to the 8(A) program. Next slide.

Subcontracting to a small business under our socioeconomic set aside, we now are allowing for a protest under what we call the ostensible subcontracting rule to ensure that firms, they get a socio-economic set of five. I'd say SBAs or HUBZones are doing that work themselves or with what we call civilly situated firms. And you know, HUBZone contract with another HUBZone firm, they shouldn't just be able to get that contract and then subcontract to say another small business or even to a large business. We're opening a protest on that issue. Next slide.

Contracting officers now by statute now because of that rule must publish a notice within seven days of the determination of consolidation or substantial bundling, then they have to publish that justification with the solicitation. Next slide.

Chris: Sam, I think we are all caught up and... Alison took those other ones. So, Charles, I know there are several questions. Whenever you are ready Sam and Alison will be ready for you.

Sam: We're ready.

Charles: Okay, great. Can everybody hear me?

Sam: I can hear you.

Charles: Okay, great. So, the first question is, is the new DOD deviation for meeting sole source 8(A) awards up to 100 million without having a JNA or all 88 participants regardless of socioeconomic program or only those under the previous $22 million ceiling, which would be ANC and Native American.

Sam: That $100 million special changes that 22 million directly addressing the former $22 million special only for DOD. In most cases only applies to ANC and tribal participants. There is a rare instance where an 8(A) firm is the only term, only 8(A) participant, excuse me, that can perform that requirement. A sole source may be eligible there, but an agency would have to do a market research to make that determination. For the most part, this is only going to be relevant to tribal owned entities.

Charles: Okay. The next question is please elaborate on time of offer for order eligibility for small business set aside.

Sam: Remember this is a proposed rule, so it's not in SBA rules yet. It's not in the FA yet. But the proposed rule was that if a small business wins a multiple award contract, the to get a set aside order during the term of that contract, the small business that has to be small at the time of the order, it wouldn't the status they'd back to the contract. There's a couple of exceptions. If the contract itself was set aside for small business, then the status flows through out the whole contract. So, the certified is at the contract level, then the order status dates back to the contract. We're also in the proposal accepting the FSS or the GSA schedule. But keep an eye out because things may change from the proposed rule to the final rule and of course after we issue our final award **[00:51:54 inaudible]** with the FA and they'll probably be in more guidance for the contracting workforce with the FA case.

Charles: Okay, great. Next question. If we do implement the Service-Disabled Veteran Owned Small Business Assessing Surplus Property, who at each district office would be responsible to review requests? Would this fall to the service, the SDVOSB liaison EDSs or BOA?

Sam: Yeah. Again, that's another proposed rule. So, we don't have final guidance on that. Typical surplus property program works through GSA and state agencies. SBA's goal here is really to make these three categories of businesses eligible for the program. And of course, we'll have some role in advising small businesses as we always do through our resource partners in our district officers. But the purpose of this rule really is to define eligibility.

Charles: Okay. Next question. Is sole source allowed for HUBZones contractors, and if so, what are the rules?

Alison: There are... there is authorities for HUBZone sole source contract. However, it differs if somebody in some authority under the 8(A) program. For the HUBZone program a contracting officer has to determine that there's only one or have to expect you to only receive one offer. So essentially there has to be only one HUBZone firm that would be interested and able to perform the work. In a defense, there are dollar thresholds under which the contract has to fall in order for a HUBZone sole source award to be made. The thresholds are 4 million and 7 million **[00:53:57 inaudible]** for all of the programs that's been stated. Right? I think those are the same specials as the other program. An award has to be able to be made at a fair and reasonable price. So, the, the big difference between an 8(A) sole source award and a HUBZone sole source award is that a HUBZone sole source award requires the contracting officer determine there's only one potential offer out there. It's, fairly limited, unfortunately.

Charles: Okay, great. Thank you. When you do all the changes in the calculation of average annual receipts be reflected in SAM. And how should the entities administrators complete the field if they choose to use the five-year calculation. Since SAM only asked for a three-year calculation.

Sam: I'm afraid, I don't know the timeline for SAM. SAM is the GSA system. I understand that they're working quickly to implement that change. But as you probably seen, they're working on data about seeing that is in **[00:55:09 inaudible]** and several other systems at the same time. But I will say if there's a question about five it has to come to SBA for determination. SBA is the only agency that can make a size determination. And when SBA makes a size determination, we will use our regulations. And that includes the flexibility to use a five-year average instead of a three-year average. So, if our firm certifying to small business size, I would rest assured that SBA's rules apply to that certification.

Speaker 4: Okay, great. Thank you. What is considered a long-term rule? How many years?

Alison: Yeah, this related to the HUBZone question. So, I think this is asking about the new hubs zone rule, allowing firms to invest in HUBZone properties and be treated as a HUBZone or it rather in compliance with the HUBZones catchable office role for a period of 10 years. We state that in order to take advantage of that that new flexibility a firm has to either, again purchase a property or enter a long-term lease and we define long term as 10 years or more.

Charles: Okay. Thank you. How are and have governors been made aware of the ability to petition for HUBZone. Other than local economy development groups or economic development groups bringing it to their attention? Has SBA offered any kind of info or intro to this new legislation?

Alison: So, my, my counterparts in the act and the HUBZone office itself, I worked for the general counsel's office. They could better answer that question and then I'm happy to send additional details. But from what I'm aware they have reached out to governor's offices directly and there's been a number of calls including with I don't know the name of the organization, but there's a national organization for the governor's offices. And I know we did a presentation or that the HUBZone office rather did a presentation to that group. Very shortly after the draft final will was published. And there's been a lot of efforts from both the HUBZone and office and our OCPL office to reach out to governor's office and make sure they're aware and have the authority and work with them to put together a petition. So again, if someone wants more details on what efforts have been made, I'm happy to respond in writing after this.

Charles: Okay, great. I just got really two quick questions that relate to each other. One says, did you say multiple Nate will not be used until 2022?

Sam: Yes, I do. Yes.

Charles: Okay. And then this follow up question is if we are allowed to apply multiple Nate's to over cure me, which size standard will be applied to the acquisition? Nate's have different small business standards and will effectively vendor can make an offer.

Sam: The way I would work is, a contractor would certify for all the dates on the contract. Then if we see if the contract or at least all the makes for the claims that it's submitting an offer on and then the contracting officer at the ordering agency would assign a one mix to the order and apply the size standard for that single mix on the order.

Charles: Okay. This is a HUBZone question. What is included in the recertification for HUBZone?

Alison: Good question. And since the annual recertification requirement is brand new the process is still being ironed out on SAs end. And actually, during this COVID-19 crisis, we are not requiring firms to go through the recertification if they are unable to or wouldn't comply with the requirements as this time. So, it's suspended at the moment. Although firms can recertify if they want to. For the time being firms that recertify again, right now would only be going signing into their account in the HTTS, which is the public HUBZones certification and tracking system. They'd go in and fill out a form, a recertification form essentially saying yes, they continue to meet the requirements, including 35% HUBZone residency and principal office and that would get submitted to SBA and that's once FDA reviews it, then that's it. Under the new rules however, I'll note that every three years recertification will involve more than that. It will involve the full document review. So similar to the initial certification documentation that's required, we'll be reviewing that documentation every three years under the new recertification requirements.

Charles: Okay, great. Thank you. Another question. SBAs position regarding blanket non-manufacturing rule exception was stated in a protest Aero Sage LLC, August 23/2018. Is this still good law and the synopsis of that case was SBAs comments also make it clear that a small business set aside procurement is exempt from the non-manufacturer rule, if the resulting contract will have a value between the micro purchased social and the simplified acquisition threshold.

Sam: Yes, that was the right division.

Charles: Okay. Who will oversee VA **[01:01:45 inaudible]** for certification?

Sam: I think that's outside of the scope of this has to be a presentation. I think that's a question for the VA.

Charles: Okay. Thank you. Okay, so there's another question here and it says, any idea when the decision on the 8(A) $750,000 net worth rule change will be decided?

Sam: We received comments on this. We've got a lot of comments on that rule in general. So, working through those comments, drafting a final rule. I think we are going to get into the **[01:02:38 inaudible]** with this after it goes to the office manage and budget and get this reviewed by other agencies. So, I will be not looking forward in the next month or two, but maybe sometime after that.

Charles: Okay. How does the non-manufacturing rule apply to NASA seat resellers or acquisitions above the say? For example, a requirement or Dell or Apple? Should this requirement be posted as full and open?

Sam: I think I need more facts to learn about that and some of these multiple award contracts unique aspects to that. So that may be a question of this person from NASA to ask NASA and particularly the seat contracting officers. But certainly, we can work with them at SBA to figure out how our rules would apply once we have a full understanding of the facts.

Charles: Okay, great. Thank you. Does the rise act double credit rule also apply for veteran owned small business goals at the department of veteran affairs?

Sam: That's a really interesting question. SBA is applying it to our program including the small business set aside program **[01:04:07 inaudible]** program and service table that awards feed into VOSB. But honestly, I haven't spoken to VA about this issue to understand what their plan is on BOSP.

Charles: Okay. So, this one says for clarification, orders placed against a GSA MAC full and open schedule can be now or can now be a small business set aside in this question?

Sam: That is correct. That's right.

Charles: Okay, great. Well that seems like that's all the questions. There might be a few more up there. Okay. One word here. Do the HUBZone firms need to be registered in sam.gov?

Alison: Yeah. That's always been the case. I think all of our, any firms wanting to participate in any of our socioeconomics programs including HUBZones will needs to be registered in SAM.

Charles: Okay, great.

Chris: And Charles in regards to the time que since we are over, if for some reason we didn't answer anyone's question Mark, if you want more clarification, please send an email to sbalearning@sba.gov and we'll make sure we get that taken care of for you. I want to thank Sam and Alison for all the great information that they provided here today and thank you all for being on our call and listening in. So, thank you for joining us today. Be safe and we will see you next month. Thank you.

Lauren: That concludes our conference. Thank you for using event services. You may now disconnect.

[END OF TRANSCRIPT]