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Carla: Welcome and thank you for joining today's live SBA web conference. Before we begin, please ensure that you have opened the WebEx participant in chat panels by using the associated icon located at the bottom of your screen. Note that all audio connections are muted at this time. You are 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 send. If you require technical assistance, please send a chat to the event producer. With that, I'd like to turn the call over to Chris Eishen. Chris, please go ahead.

Chris: Thank you, Carla. Hello everyone and welcome to the ninth session of SBA's first Wednesday webinar series for fiscal year 2019. For today's session, we will be focusing on legislative and 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 are new to our event, this is a webinar series that focuses on getting subject matter experts on specific small business topics such as legislative and regulatory updates and having them provide you with the valuable information you can use in the performance of your job. We appreciate you taking the time to participate in the FY19 program, and we hope that you benefit from today's session. So, thank you to those of you who are new or who are repeat attendees and welcome to those of you who are new to our program.

Onto slide three. As Carla mentioned, I am Chris Eishen and I work as a Procurement Center Representative or PCR located in Kansas City, Missouri. Additionally, Miss Gwen Davis who is the PCR in Minneapolis, Minnesota, will be reading your questions submitted during the program for our speaker to address at the end of today's session. We both work in government contracting area four and slide three includes our information.

Onto slide four. Please note that all lines are on mute. However, you may submit your questions or technical issues in the chat box on your screen. Your questions may be submitted at any time during today's session by entering them into the chat box and these questions will be addressed at the end of our speaker's presentation. To make sure your question doesn't get overlooked, please ensure it's addressed to all panelists on the drop-down menu and not just one individual.

As most of you know, we have transitioned to WebEx and I've been informed that some users may experience issues such as a blocked website or other error messages while attempting to access the conference log in

from their computer. If you're 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. We're hopeful this issue will be resolved, and we apologize for any inconvenience.

Now if you are having any other technical issues, please call the AT&T support help desk at the following number 1-888-796-6118. This telephone number is also included in the email invitation for today's program and on slide four of the PowerPoint presentation. Otherwise just keep listening in and follow along with the PowerPoint presentation. For more SBA, small business program training and additional resources, please visit the SBA learning center at www.sba.gov.

Slide five. Did you know that the Association of Procurement Technical Assistance Centers or APTAC hosts a website where they post the first Wednesday programs? Since these sessions are being recorded, you can re-listen to this program as well as previous sessions by visiting their website which is provided here on slide five. Additionally, Procurement Technical Assistance Centers or PTAC are a great resource in partnering with your local PTAC for an industry day, sharing RFI notices or source of **[00:04:01 inaudible]** announcement or referring small business concerns to a PTAC are just a few reasons why they are such a useful resource for acquisition personnel. Please contact your local PTAC for additional information.

Slide six is the program scheduled for Fiscal Year 2019 and today's session on legislative and regulatory updates is the ninth topic in the series. You will see that we have added a couple of new topics to our program lists and approved on other topics that have been presented in the past. You may have noticed a slight change in the order of topics due to speaker availability. However, the email invitation for the next session will be sent out in a few weeks, so please keep a lookout for that information.

On to slide seven; I'm sure many of you want to receive credit for today's training, so you'd be glad to know that today's session is worth one CLP. On the following slide, which is slide eight, you'll find the training certificate and I will go over the instructions at that time. Now, several of you may have perceived the information for this 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 sbalearning@sba.gov that is, s-b-a-l-e-a-r-n-i-n-g@s-b-a-g-o-v. In the subject line, please enter the words add to list and we'll ensure you're added to the distribution list.

Now on slide, you will see the certificates and first you will need to access the PowerPoint presentation that was part of the SBA email invitation you received for today's session. Then you will go to slide eight. There you'll

manually fill in your name where it states insert your name here. Next, within the print settings, you will 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. Please note that SBA does not track your CLPs or communicate with your training program coordinator regarding your CLP achievements.

Onto slide nine. Today's training has been assembled to address legislative and regulatory updates, as well as provide you with additional 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 mentioned earlier, if you are unable to access the WebEx, please follow along with the PowerPoint presentation that was included in the email for today's training. We will identify the page number so you can follow along. Also, please note that some viewers may experience a delay as the 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 SBA's office of General Counsel. We appreciate that you could meet with us today, Sam, and I'll turn the program over to you now.

Sam:

Thanks so much, Chris, and thanks everybody for attending this session on legislative and regulatory updates. We can start with slide 10. First, I'll go through recent legislative action out of Congress.

Onto next slide; we're on slide 11. The first statute I'll discuss is the John McCain NDAA for Fiscal Year 2019. Since probably about 2013 or so, the NDAA's have been a large source of small business contracting legislation. So, from about 2013 to 2017 there were a slew of major small business legislative changes in the National Defense Authorization Act. You might be familiar with changes to the limitations on subcontracting, the introduction of the all small mentor protégé program, and changes to SBA's non-manufacturer rule. All those happened through the NDAA's. This year however, for Fiscal Year 2019, which was passed in calendar year 2018, there were fewer changes than in previous NDAA's, and we'll look at some of the changes that happened outside of the NDAA's after we talk about this statute. The changes in the NDAA, the National Defense Authorization Act for Fiscal Year 2019 include, changes to the prompt payment rules, the SBIR program, construction contracting, SPS goaling program and architect engineering contracts for military housing. Next slide please.

The NDAA is directed primarily at DOD contracting. So, some of the next few slides are going to be focused specifically on the Department of Defense. The section 851 of the NDAA addressed the requirement for DOD to develop a small business strategy to better leverage small businesses to enhance or support mission execution, and this requirement directs DOD to realign its

small business programs with agency mission under a unified management structure and to clarify points of entry into the defense market. The strategy should include plans to integrate small businesses into a holistic view of industry. In my view, part of this requirement for a small business strategy comes out of some critiques that DOD has received in the past about focusing too much on mirror percentages or dollar figures on small business attainment and not potentially looking at ways that small businesses can spur innovation or participate in research and development opportunities within DOD and [00:09:50 inaudible] DOD will take that in mind in looking at it small business strategy now and into the future.

The NDAA also addressed in section 852. The requirement for prompt payments to small business contractors. There's now under this rule a statutory goal of paying small business prime contractors within 15 days of receiving the invoice, and then also encouraging prime contractors to accelerate the large prime contractors' payments to their small business contractors. Next slide please.

The NDAA also addressed the Small Business Innovation Research program or the SBIR program. This program applies outside of DOD. It applies to the major research agencies including NIH and Department of Energy and others. It extends the SBIR and STTR programs to 2022 and extends a number of pilot programs also to that 2022 date. The director phase two awards, the civilian commercialization readiness program, the National Institutes of Health phase zero proof of concept and the administrative funding program. The amendment introduces a pilot program that accelerates the DOD's awards from the notification of award to funding and trying to reduce the time between the phase one and phase two awards.

Then the amendments put into law the Technical and Business Assistance program or TABA, and the purpose of TABA is to have agencies take on the role of providing market research and IT protection and some ancillary business function help to SBIR and STTR awardees. So, under the TABA program, SBIR awardees can receive up to \$6,500 in phase one, or up to \$50,000 in phase two for technical and business assistance in addition to the grants or contracts that they receive for the actual researcher innovation projects. That TABA program is currently being reviewed by the SBIR agencies and by SBA, and we hope to issue guidance at some near point in the future. Next slide please.

Chris: Next slide 14.

Sam: The NDAA had a lengthy provision in section 855 on construction change order transparency, and I think it's important here to understand the purpose for this. Small business construction contractors in particular had

complained to Congress for years that they would, when a construction contract, and then over the course of performance of the contract, there would be multiple change orders, unilateral change orders issued by the agency under the changes clause. The small businesses complained that they would comply with the change orders, but then in trying to get payments through an equitable adjustment for the change orders, the agency would delay in actually paying, the change order amount or delay in resolving the equitable adjustment.

Now, the change in the NDAA or the requirement in the NDAA does not fix that problem through any sort of contract change. What it does is to require transparency on government agencies for identifying how long it takes an agency to deal with the change order. An agency under this 855 now has to collect data on when it receives change order requests, and then collect data on how long it takes for that agency to resolve the equitable adjustment request of the change order invoice request.

First, the construction change order transparency rules require that the agencies provide construction contractors with information about the agency's policies and performance on the administration of change orders, and that information should be in the solicitation for a new construction contract that's set aside for small businesses. The required to start collecting that data and to present that data in solicitations starts, with the information from the date of enactment of this law in 2018, and agency should collect information on a time period basis. You can see the time periods in the five agency should collect information and present information on the time it takes for definitizing requests for **[00:15:13 inaudible]** adjustment over 30-day period, 60-day period, 90-day period, 180 days, 365 days or more than 365 days.

Next slide please. We're now on slide 15, which addresses small business contracting in Puerto Rico. This comes on the heels of hurricane damage in Puerto Rico. And the section 861 of the NDAA addresses the damage to Puerto Rico in a number of ways. First, it provides that agencies that award contracts to Puerto Rico businesses, which is a defined term under the statute, really means small businesses with a principal office in Puerto Rico, will receive double credit for those awards. Agencies will receive double credit for prime awards to Puerto Rico businesses. We already started that at SBA allowing agencies to receive double credits. We went back to the date of enactment of the NDAA in 2018 and has provided agencies double credit even for that last portion of Fiscal Year 2018, if an agency awarded a prime contract to a Puerto Rico business, but certainly for all Fiscal Year 2019 agencies are able to receive double scorecard credit for awards to Puerto Rico small businesses.

Agencies are also required to issue a standalone separate report on contracting with Puerto Rico businesses, and in addressing our mentor protégé program, the NDAA provides that a mentor in SBA's mentor protégé program that issues a subcontract to a Puerto Rico protégé can potentially earn pass performance credit for that subcontract. Pass performance credit on the mentor's prime contract because it issued the subcontract. And there's also provision that Puerto Rico protégé again, that participates in SBAs mentor protégé program can apply for costs incurred for training to the procuring agency on a contract, and this would be an application for cost presumably by the mentor actually. The mentor would be able to apply for costs. Next slide please.

We're now on slide 16. This slide discusses section 2804, which is a major development in DOD construction contracting. It reverses a rule from the early 80s that in its initial passage prohibited small business set asides over \$85,000 for the type of contracts in that first bullet, architectural and engineering services and construction design in connection with a military construction project or a military family housing project. Now that \$85,000 threshold had been adjusted over the years. First to 300,000 and then to 400,000, but NDAA 2019, removes the prohibition on doing set asides above the threshold, and it introduces a new threshold of \$1 million, and the rule in this new statute is that below \$1 million, a military agency that issues any sort of construction project in those categories must set aside the project.

We'll continue the old system that it does not restrict award under the 8A program. So even above \$1 million, the agencies are not restricted from using the 8A direct award program, or 8A competitive, and additionally, SBA would argue that the rule is not restrictive on set asides above \$1 million as well. This rule was recently finalized in the DFARS on April 30th, 2019 and you can see the federal register notice there. Now the \$85,000 and then the \$400,000 threshold is no more. Next slide please.

Now, I'm going to move on to legislation that was passed outside of the NDAA. A part of the reason that there was not as much small business legislation in the NDAA this year is some of it was held over until passage at the end of calendar year 2018. So, we'll talk about two statutes that were passed shortly before the end of the calendar year. The first is the Veteran Small Business Enhancement Act of 2018, and that statute directed SBA to grant access to a veteran owned small businesses to US owned surplus property. The way SDA intends to do that is to execute a memorandum of agreement with GSA and the heads of state agencies for surplus properties. Next slide please.

The Small Business Runway Extension Act of 2018 was also passed at the end of the calendar year. I think it might have been second week of

December, shortly before the government shutdown. That statute, the Runway Extension Act, modified the method for prescribing size standards for small businesses. It provides that if an agency does not have specific authorization for size standards, that agency can only prescribe a size standard if the size standard provides for service-based businesses to have their size determined over the course of five years.

Under prior law, agencies were able to issue size standards that used a three-year averaging period. But now under this Runway Extension Act if an agency prescribed the size standard, that size standard must use a five-year average at least for service-based industries. There's three different categories in the Small Business Act for types of businesses. One is manufacturing, and for a manufacturing firm, sizes determined based on an average number of employees over 12 months. The second is a service based businesses and that's now changed to five years for prescribing a size standard, and the third is all other businesses and that includes construction businesses or agricultural businesses, also retail businesses and wholesale businesses, and the size formula for those businesses, it's not changed by this statute. That remains at an average of three years. Next slide.

This is slide 19. This discusses how SBA provided guidance after the Runway Extension Act was passed just shortly before the government shut down. In fact, the Friday before the government shutdown, SBA issued an information notice to provide guidance on how SBA would implement the Runway Extension Act. SBA announced that the averaging period change is not effective until SBA implements the change in its regulations. Until SBA changes SBA's regulations, businesses submitting offers on government contracts still must report their receipts on a three-year average. This change in the regulations will happen at some point in the future, but it's probably going to go through a rule making process. SBA hopes to issue a proposed rule on this issue within the next couple of weeks. It's going to come out very shortly. Next slide please. That's all the legislation that there is to discuss. I'll move on to regulatory action.

Next slide. First, SBA recently issued a final rule on the ownership and control Service-Disabled Veteran Owned Small Business concerns, and this addressed requirement for the multiple government agencies that have Veteran Owned Small Business programs to use a common standard for ownership and control. Previously prior to this final rule, SBA had a set of ownership and control requirements for Service-Disabled Veteran Owned Small Businesses and the Department of Veterans Affairs had a separate set, had its own set of ownership control regulations.

Now under this final rule, the VA continues to run a separate program for servicing that businesses. That first program it's run by the Center for

Veterans Enterprise or CVE at the VA, and that program remains in effect and operating even after the issuance of the final rule. The difference now under this final rule is that FDA's program for SDVO businesses and VA's program use a common set of rules. They're taking from the same requirements for ownership and control of SDVO businesses.

The final rule also made slight changes to the rules that SBA had previously applied. First, it eases the requirements that a SDVO that make all decisions by defining extraordinary circumstances in which a non-veteran can have shared decision-making authority. The rule also allows for control of the company to shift when a veteran is called to active duty. Also, the rule implements a statutory requirement that for a veteran rated with service disability at 100%, a surviving spouse can own and control the firm for up to 10 years after the veteran's death and a firm could remain in service-disabled veteran owned status. Next slide.

On slide 22, you can see the title and the federal registered number for a waiver that SBA granted of the non-manufacture rule. The waiver provides that for positive airway pressure devices in certain NAICS codes and one PSC code. A dealer can provide the product of any manufacturer on a set aside contractor order. So for context on this, the non-manufacture rule provides that on a small business set aside contracts for supplies the or under any small business program like the 8A or SDVO program, the awardee must provide the product of a small business that is manufactured in the United States unless SBA has granted a waiver, and SBA might grant a waiver in an instance where SBA has determined that there are no small businesses available to manufacture that product.

In this case with positive airway pressure devices as they found that there are no small business manufacturers of positive airway pressure devices and SBA granted this class waiver. This means that an agency with a requirement for positive airway pressure devices can issue a small business set aside and purchase that product from a small business reseller without the reseller being required to provide the product of a small business or a product that's manufactured in the United States, at least under SBA's rules. There might be requirements under other sources of law that require domestic manufacturing that's not addressed in SBA's regulations. Next slide please.

This is slide 23 and this shows that SBA issued a new size standard methodology. The SBA is required to review its size standards every five years. These are the revenue based or employee-based size standards that determine whether firms qualify as small for the purposes of government contracting and for admission into SBA's programs such as the 8A and HUBZone programs. The methodology describes how SBA will conduct the

next five-year review of size standards, and it moves from an ankle approach to a percentile approach.

What that really means is that in the next five-year review SBA is less likely to cluster the size standards around particular figures. Right now, if you look at SBA size standards, you'll see a bunch of size standards that say \$12 million and then \$32.5 million and \$7 million. Now, under the percentile approach, SBA will allow those figures to vary more so rather than cluster. SBA is also required under this methodology to assign a separate size standard to each six-digit NAICS code instead of using a limited number of fixed size standards. SBA is committed in this methodology to analyzing a federal contracting factor for any industry in which there are more than \$20 million in federal sales. Then SBA is also looking to apply a concentration ratio, which measures the quality within an industry among the industry participants. Next slide please.

We're now onto slide 24, which looks at new policy directive that SBA issued on the SBIR and STTR programs. The new policy directive combines the two programs into one director rather than using two directives as it had before, and it make some major advances in the data rights granted to an SBIR or STTR awardee. Under the new directive, the awardees receive a minimum 20-year data rights protection from the date of award, and then the government has government purpose rights after the protection period.

The directive requires participating agents to obligate rather than spend the minimum percentage for the SBIR and STTR programs, and in addressing an issue that had come up several times over the last few years, SBA required in this policy directive that a participating agency must document whether it's practical to the greatest extent to pursue a phase three SBIR or STTR award, and if it's not practical, the agency has to provide that determination to SBA. The requirement is that an agency consider a direct phase three award and show how preference was provided to the SBIR awardee. This issue whether a firm is entitled to a phase three award recently came up in federal court, and I think this directive would go a long way toward addressing some of the concerns that the court raised in that decision. Finally, the policy directive clarified that tribally owned entities are allowed to participate in the program. Next slide please.

On slide 25, we're moving on to proposed rule on the HUBZone program. This proposed rule is a comprehensive review of the HUBZone program trying to address some of the impediments to the government reaching the statutory HUBZone goal. The rule defines the attempt to maintain term in the HUBZone regulations. The HUBZone program requires that a firm have 35% of its employees living in a HUBZone in order to be admitted into the

program. But if a firm wins a contract, it's only required to attempt to maintain that percentage. But prior to this rule making, SBA had not identified a particular number that correlates with attempting to maintain.

In this proposed rule, SBA would use a standard of having 20% of a firm's employees in a HUBZone as long as the firm was also recruiting HUBZone employees. The rule also proposes that SBA would include affiliated employees or employees of an affiliate in that 35% calculation if there's no clear line of fracture between the firm and its affiliate. We'll also move from a three-year certification to an annual certification, annual recertification for HUBZone firms. If we were to move to an annual recertification, a firm that recertifies would be eligible for HUBZone contracts for a year after that recertification date. The difference from the current state is that currently if a firm goes out for a HUBZone set aside, the firm has to be qualified as a HUBZone firm at the date of its offer and at the date of award. That means the firm has 35% of its employees living in HUBZones at the date of offer and at the date of award.

Under this proposed rule, if enacted, if the firm had been recertified earlier in the year, within the last 12 months, the firm would be deemed to have HUBZone status for a HUBZone set aside. So, it would not necessarily have to prove its 35% attainment at the time of award and time of offer for HUBZone set aside. Next slide please.

The rule would move just to looking at time of offer rather than time of offer and time of award. So, the firm would have to be recertified within a year prior to time of offer and SBA would allow that a firm count an employee that resided in a HUBZone at the time of the firm's application as a HUBZone employee. Even if the employee moves or the employee's residence no longer qualifies as a HUBZone. The idea there, that's the last bullet on this slide. The idea there is that an individual living in a HUBZone might have better economic circumstances because it's been working for a HUBZone firm and we don't want the HUBZone firm to be disadvantaged because that employee takes advantage of the circumstances and moves outside of the HUBZone.

Also, there's oftentimes these maps change, and the employee's residence no longer qualifies as a HUBZone, and in that situation we also don't want the HUBZone firm to be hurt. So essentially, as long as that employee stays with the firm, the HUBZone employee would continue to count as a living in a HUBZone, even if the status changes one way or another. Next slide please.

We have a proposed rule that we receive comments on regarding the NDAA 16 and 17 changes. This also addresses some of the requirements from

disaster legislation copyright act. This rule makes slight changes to SBA's rules regarding the limitations on subcontracting and subcontracting plans. First, the rule would allow contracting officers to request information to confirm a set aside awardees compliance with the limitation on subcontracting. The idea there is a contracting officer could review a firm's internal accounting or subcontract invoices in order to determine whether it's meeting the limitations on subcontracting such as the 50% for service contracts. The rule would also, again this is a proposed rule before it's finalized, it would create exception, so limitation on subcontracting for purchases in a number of industries, airline travel, transportation or disposal under environmental remediation, cloud computing, mass media purchases and work performed by an independent contractor under the Foreign Assistance Act.

The rule would require a prime contractor with a commercial subcontracting plan to include indirect costs in its subcontracting goals. It would allow for status recertification in the 8A and socioeconomic programs, just like there is now a surge recertification in such program. All those would be similar to the way it's done in size now. The rule enacts statutory requirement to limit PCRs from reviewing certain DOD acquisitions performed outside the United States, and it allows for double scorecard credit for local area small business set asides in connection with the disaster conducted under the Stafford Act. Next slide.

The rule also identifies a list of circumstances that would be considered a failure to exercise good faith to comply with a subcontracting plan. This really gets at the provision of liquidated damages for a large prime contractor that has a subcontracting plan. If under the FAR and under SBA's rules currently, a prime contractor that doesn't comply with the subcontracting plan can be assessed liquidated damages, but the prime contractor can defend itself by saying it made a good faith effort to comply with the plan. Or the question has always been what is a good faith effort and what is a failure to make a good faith effort?

So, SBA identified in this proposed rule nine circumstances that would show a failure to exercise good faith. You can see here that some of the examples are, a failure to submit in the eSRS by the due date, a failure to pay subcontractors in accordance with terms, failure to have an official administering the subcontracting program, failure to demonstrate procedures adopted to comply with the program, adopting policies that frustrate the objectives of the plan, failure to correct findings from compliance reviews or participate in training, failure to conduct market research to identify small subs, failure to obtain approval by the CEO to change small subcontractors use it offers as required by the contract, or falsifying records of subcontracting awards. Next slide please.

SBA recently issued a proposed rule on the women owned small business program to introduce a certification program. Now again, this is a proposed rule. It hasn't been finalized yet. So, there is at this time not an SBA run certification program. If finalized pros rule would implement a free certification program for Women Owned Small Businesses and EDWOSBs, Economically Disadvantaged Women Owned Small Businesses, and the introduction of the free certification program would eliminate the current self-certification option. SBA would continue to allow firms to be certified by a third-party certifier that would be overseen by SBA.

Under the proposed rule, SBA would also recognize certifications from the 8A program or the HUBZone program or states participating in the Department of Transportation disadvantaged business enterprise program, or the VA center for verification evaluation. SBA detailed more so how SBA will oversee the third-party certifiers, and we anticipate that the third-party certifiers will play a larger role other than certification because previously the SBA allowed for self-certification, so there was less of an incentive to go after a third party certification. But now if certification is required and there's no more self-certification, there's a potential that third party certifiers will become more integral to the operation of the program. Next slide please.

SBA proposed in this Women Owned Small Business certification program, proposed rule to adopt a 750,000 net worth standard for the EDWOSB program, and also to use that for continuing eligibility in the 8A program. SBA also further defined the steps for requesting reconsideration of a decline from the WOSB program and SBA proposed procedures for how to maintain certification and to comply with SBA program examinations. Next slide.

We also expect to issue new proposed rules over the next few months on revising SBA size standards in all industries, but we'll do it in batches, will do it in services, agricultural, construction, transportation, manufacturing. We'll do those in different batches. We're looking at consolidating the 8A and all small mentor protégé programs. We're looking to implement a HUBZone rule to have governors designate HUBZones. We'll issue that rule on the three to five-year average. Then we have some rules to carry out the administration's regulatory reform initiatives. Next slide.

A few deviations from DOD; DOD is deviated from the FAR in micro purchase threshold, same flat acquisition threshold and special emergency procurement authority. The DOD has issued a deviation to use SBA 2016 limitations of subcontracting rule in place of the old FAR rule. DOD also issued a minor deviation about the subcontractor reporting because eSRS

does not have room or does not allow for the entry of orders from BOAs or BPAs. Next slide.

On the civilian side, the civilian agencies are allowed to under CAC letter 2019/01 to deviate from the FARs limitations on sub-contracting and substitute SBA's 2016 LLS rule. The civilian agencies also are allowed to deviate on the thresholds to adopt the higher thresholds on micro purchase threshold and some flat acquisition threshold 10,000, 250,000 respectively. Now by allowed to, I mean that the CAC letter allows civilian agency to enact this deviation but doesn't require them to, so agencies can choose not to deviate and just wait to see what the FAR issues. Next slide.

The FAR is still working on proposed rules for applying the small business rules outside of the United States, that's right. Revision on the limitations on subcontracting, the policy on joint ventures and credit for a lower tier small business subcontracting. The FAR is also looking to finalize the rule on set aside under multiple award contracts. Next slide, please. Yes, next slide. Thank you.

Another notable action in March, the office of management budget issued its long-awaited category management memo, and this provided guidance to agencies on implementing category management. Agencies are expected to take five steps to create annual goals for category management, develop plans, strengthen those plans to avoid wasteful spending, share their data on prices paid, train employees in category management. For small business, this memo was significant in that it required that the agencies still comply with small business rules and with socio economic goals. To SBA this means you cannot use category management as an excuse for not meeting your goals, or for not complying with the recommendations from SBA. Significantly, footnote 31 of the memo specifies that an agency is not required to use category management if it might violate small business program requirements such as taking work away from an 8A contractor under an 8A contract without seeking release from SBA. Next slide.

Another major development in small business procurement is the issuance of the section 809 panels volume three, which is the last volume of that report. Now, in section 809 panel is a panel design to make recommendations to Congress and Department of Defense, but it's reports are just recommendations. They are not law, they're not regulation and nobody is required to enact or to follow what's issued in the recommendations. As far as small business, the panel recommended exempting DOD from set aside requirements for products that are, "Readily available or readily available with customization". That has created some discussion and controversy within government contracting and small business.

Instead of using set asides for those requirements, the panel recommend replacing the set asides with a 5% price evaluation preference and two other small or less controversial recommendations. First, that the panel recommended releasing from the 8A program if the response is not received within 15 days and then recommended that the government respond to the Court of Claims decision to analytical graphics by clarifying that the commercial item preference takes precedence over the small business rule of two. Next slide. That concludes my formal presentation. I'm happy to answer your questions.

Chris: Gwen, if you're ready, we'll take the questions now.

Gwen: The first one is regarding the non-manufacturing rule, and the question is, is Arrow sage LLC case number B 416381 footnote 8 still good law, and that's pertaining to the SBAs position that the exemption for the non-manufacturer rule under the SAP does not apply to 8A, HUBZones, SDVOSB or WOSB programs?

Sam: Yes, that's correct. What that comment is referring to with the question is referring to is SBA's rule that says that the non-manufacturer rule does not apply to small business set asides below the simplified acquisition threshold and by implication, and it's made clear and in that statement there, the non-manufacturer rule does apply to procurement under SBA socio economic programs meaning the 8A, HUBZone, Service-Disabled Veteran Owned and Women Owned Small Business programs at any dollar threshold. So, if you have, for example, a service table does that requirement that is say \$200,000, which is below the supplied acquisition threshold the non-manufacturer rule would apply.

Now at caution, anybody who works for the VA to consult their own legal counsel, because the VA has separate rules on the non-manufacturer rule, but for the government wide SDVO program, that statement is still good law. That applies equally to WOSB, HUBZone and 8A.

Gwen: The next question is, how does a small business proceed if they wish you to contest a non-manufacturing rule waiver?

Sam: Well, there're two types of waivers, there is an individual waiver and there's a class waiver. First on the individual waiver side, the individual waiver requests come from the contracting agency. So, if a small business wanted to contest the issuance of an individual waiver, it should contact that procuring agency and the individual waivers are related to just one specific contract. So, you should be able to identify the procuring agency. The small business is welcome also to contact SBA to contest the waiver as well.

On the class waiver side, the small business should contact SBA, for a class waiver. SBA always issues a notice in the Federal Register to inform the public that a class waiver is being considered by SBA. SBA will ask for comments on the possibility of a class waiver. So, a small business that wants to contest the waiver should make comments, but even after the comment period is ended, the small business still, if it wants to contest the class waiver contact SBA, and SBA can consider that and potentially issue a new notice in the Federal Register does start that process over again.

Gwen: Next question is, with respect to the changes to the SBIR STTR policy directive, will SBIR STTR awardees still be allowed to roll over or extend the SBIR STTR data rights period by an additional four years after receipt of another federal agency phase three award, or an additional five years after receipt of another defense agency phase three award?

Sam: I will have to get back to the questioner in that case. I think, I understand the question, but I'd have to go back to the directive to see how it addresses that particular issue. I do recall that was discussed, but I don't want to give the wrong answer, so I'll try to get back to Jeff Husky on that.

Gwen: Slide 25 on HUBZones, who will be verifying the at least 20% HUBZone employee requirement?

Sam: That's a requirement of eligibility and the program. So, SBA could be verifying that in the case of a program eligibility determination. Perhaps if there were to be a protest on future contract, we would not be verifying it on every contract, whoever it would be, something that would be coming up on a question of suspicion that the firm's not complying or in the case of a challenge from another firm.

Gwen: Next question is, does the proposed rule for WOSB certification program, meaning that there will no longer be a free certification for WOSB and EDWOSB?

Sam: No, there will still be a free certification, but it won't be a self-certification. Right now, firms can self-certify just like they self-certify a small business, they can self-certify as Women Owned Small Business. Now, there's an additional requirement now that the firms submit information into a document repository to confirm their small business, women owned small business status, but that repository is only checked if the firm wins the contract and the contracting officer needs to confirm the firm's status. What will change is that self-certification process will go away, and just like an 8A program or in the HUBZone program, the firm has to apply and receive certification before it can be considered a Women Owned Small Business.

But on the SBA side, that process will be free. SBA is also authorizing third party certifiers and those third-party certifiers might offer their services for pay or they might for free. It's up to them.

Gwen: The last question that I received was, was there any change to the nine-year graduation requirement from the 8A program as the time limit can be shortened or lengthened?

Sam: No, that nine-year graduation requirement is still in the program. There's going to be a few isolated incidents or situations where firms are allowed to suspend their participation in the program, such as if the principal is in the national guard and gets called up to active duty, or if there's a disaster in the 8A firms area and the firm wants to suspend its participation. In that case, the date from entry to the exit date might be more than nine years, but the total amount of time the program will remain nine years. It's just suspension period. That doesn't happen very often. So, for the normal 8A firm, it's going to be nine years from entry to graduation.

Gwen: Okay. All right. Sorry.

Chris: Perfect. I believe that is all the questions we have. If for some reason, we have missed your questions or you want to answer more or ask anything else, please send emails to sbalearning@sba.gov and we can follow-up with you. Once again, we want to thank Sam Lee for his continued support of our program and providing us with this great information. So, thank you Sam.

Sam: **[00:58:44 inaudible]**

Chris: Yes, absolutely. Just a heads up to everyone, our program next month will be held July 10th, which is a second Wednesday due to the 4th of July holiday. Once again, thank you for your continued support and have a great day.

Carla: That concludes our conference. Thank you for using AT&T event conferencing enhanced. You may now disconnect.

[END OF TRANSCRIPT]