



U.S. Small Business
Administration



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Small Business Regulation and Legislative Update

First Wednesday Virtual Learning Series 2018

Hosts

**Christopher Eischen, Procurement Center
Representative SBA Office of Government
Contracting, Area IV, Kansas City, MO**

**Gwen Davis, Procurement Center Representative
SBA Office of Government Contracting, Area IV,
Minneapolis, MN**

Welcome to “SBA Virtual Learning 2018”

1. Questions answered during the final 10 minutes.
2. Technical problems: Contact the moderator with a note or call AT&T Support Desk at 1-888-796-6118.
3. Page numbers stated for those working off hard copies of the program.
4. We cover the “**SBA Quick Reference**” as time allows.
5. For more SBA training visit the SBA Learning Center website <https://www.sba.gov/tools/sba-learning-center/search/training>

Association of Procurement Technical Assistance Centers (APTAC)

Procurement Technical Assistance Centers are a vital resource partner.

- APTAC posts past “First Wednesday” programming at this link:
<http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting officer resources: “How PTACs partner with federal agencies”: <http://www.aptac-us.org/federal-partners/>
- Find your nearest Procurement Technical Assistance Center at <http://www.aptac-us.org>

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

2018 SCHEDULE

1:00 to 2:00 Central Time

FY 2018	Date	Topic
1	October 4, 2017	Non-Manufacturer Rule
2	November 1, 2017	About SBA
3	December 6, 2017	SBA Programs You May Not Know About Natural Resources Assistance/Disaster Assistance
4	January 10, 2018	Historically Underutilized Business Zones
5	February 7, 2018	Certificate of Competency Program
6	March 7, 2018	Woman Owned Small Business (WOSB) Program
7	April 4, 2018	Size and Affiliation
8	May 2, 2018	Subcontracting Tools
9	June 6, 2018	SDVOSB
10	July 11, 2018	SBA Legislative Updates
11	August 1, 2018	Mentor/ Protégé Program

The program schedule above is for information only and is subject to change.

One Continuous Learning Point

- Self-service: Using the PowerPoint that was sent with your invitation for this training event, fill in your name on the certificate slide and save. Download the certificate and print for your records. You submit your request for training credit IAW your agency policy, i.e. FAITAS.
- Phoning in only: If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to sbalearning@sba.gov.

Today's Speaker

Michael J. McLaughlin
Acting Director
Office of Policy, Planning and Liaison
U.S. Small Business Administration
(202) 205-5353
Michael.McLaughlin@sba.gov

AGENDA

- Pending FAR Rules
- Pending SBA Rules
- SBA Final Rules
- NDAA 2018
- Section 809 Panel
- Category Management
- All Small Mentor Protégé Program – Leveraging for SB

Pending FAR Rules

- Similarly Situated Entities/Limitations on Subcontracting/Non-Manufacturer Rule Proposed Rule
- Joint Venture Proposed Rule
- Multiple Award Contracting Final Rule
- Part 19 and Contracts Awarded and Performed Outside the U.S. Proposed Rule
- Lower Tier Subcontracting Proposed Rule

Pending FAR Rules

- Similarly Situated Entities/Limitations on Subcontracting/Non-Manufacturer Rule Proposed Rule
 - FAR Case 2016-011
- Title: Revision of Limitations on Subcontracting
- Synopsis: Implements SBA's final rule (81 FR 34243) for section 1651 of the NDAA for FY 2013 (Pub. L. 112-239)
 - Revised the limitations on subcontracting and the nonmanufacturer rule.
 - Implements SBA's regulatory clarifications concerning application of the limitations on subcontracting, nonmanufacturer rule, and size determination of joint ventures.
 - Similarly situated entities count toward meeting limit
 - Joint venture – individual vs aggregate revenue/employee
- Status: As of 04/20/2018, CAAC Chair sent draft interim FAR rule to Office of Information and Regulatory Affairs (OIRA). Converted to proposed rule. OIRA reviewing.

Pending FAR Rules

- Joint Venture Proposed Rule
 - FAR Case 2017-019
- Title: Policy on Joint Ventures
- Synopsis:
 - Implements regulatory changes regarding joint ventures made by the Small Business Administration (SBA) in their final rule published in the Federal Register on July 25, 2016 (81 FR 48558).
 - Clarifies that 8(a) joint ventures are not "certified" in the 8(a) Program and that 8(a) joint venture agreements must be approved by SBA prior to award of an 8(a) contract.
- Status: As of 03/20/2018, DAR staff notified FAR staff that DARC agreed to draft proposed FAR rule. Awaiting CAAC concurrence.

Pending FAR Rules

- Multiple Award Contracting Final Rule
- FAR Case 2014-002
- Title: Set-Asides Under Multiple- Award Contracts
- Synopsis: Implements SBA's final rule (78 FR 61114) for sections 1311 and 1331 of the Small Business Jobs Act of 2010 (Pub. L. 111-240), which provides Government wide policy for partial set-asides and reserves, and setting aside orders for small business concerns under multiple-award contracts.
- Status: As of 06/20/2018, DARC agreed to draft final FAR rule. DAR staff processing.

Pending FAR Rules

- FAR Part 19 and Contracts Awarded and Performed Outside the U.S. Proposed Rule
- FAR Case 2016-002
- Title: Applicability of Small Business Regulations Outside the United States
- Synopsis: Considers applicability of small business regulations to contracts performed outside the United States.
- Status: As of 01/17/2018, DAR staff notified FAR staff that DARC agreed to draft proposed FAR rule. Awaiting Civilian Agency Acquisition Council (CAAC) concurrence.

Pending FAR Rules

- Lower Tier Subcontracting Proposed Rule
- FAR Case 2018-003
- Title: Lower Tier Subcontracting Proposed Rule
- Synopsis: Implements section 1614 of the NDAA for FY 2014
 - implemented in the SBA regulations on 12/23/2016 (81 FR 94246)
 - allows prime contractors to receive credit toward goals in their small business subcontracting plans for subcontracts awarded by their subcontractors.
- Status: Report out 7/11/2018

Pending SBA Rules

- LOS adjustments, order set asides, posting notice of bundling, PCR review of DOD overseas contracts, double credit for local area small business set asides, examples of bad faith in subcontracting proposed rule
- SDVO Ownership and Control Proposed Rule – Comments due March 30 (83 FR 4005)
- WOSB Certification Proposed Rule
- HUBZone Proposed Rule

Pending SBA Rules

- SBA Draft Proposed Rule: National Defense Authorization Acts of 2016 and 2017, Recovery Improvements for Small Entities after Disaster Act of 2015, and Other Small Business Government Contracting Amendments
 - Limit the scope of review of Procurement Center Representatives for certain Department of Defense procurements performed outside of the United States
 - Establish that failure to act in good faith in providing timely subcontracting reports shall be considered a material breach of the contract
 - Establish procedures for the publication of acquisition strategies if the acquisition involves consolidation or substantial bundling
 - Solicit comment or provide information on:
 - exclusions from calculating compliance with the limitations on subcontracting
 - an agency's ability to set aside orders under set-aside contracts
 - contracting officer's authority to request reports on a prime contractor's compliance with the limitations on subcontracting
 - examples of bad faith in subcontracting proposed rule
- Status: In process

Pending SBA Rules

- SDVO Ownership and Control Proposed Rule
 - Implement provisions of The National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017).
 - SBA responsible for issuing regulations relating to ownership and control for the Department of Veterans Affairs verification of Veteran-Owned (VO) and Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC)
 - Provides one definition of ownership and control for these concerns, which will apply to the Department of Veterans Affairs in its verification and Vets First Contracting Program procurements, and all other government acquisitions which require self- certification.
 - Circumstances where a _____ firm can qualify as VO or SDVO when there is a surviving spouse or an employee stock ownership plan (ESOP)
- Comments due: March 30, 2018
- Status: In Process
- Reference: 83 FR 4005

Pending SBA Rules

- WOSB Certification Proposed Rule
- Implements Section 825 of the National Defense Authorization Act for Fiscal Year 2015 (2015 NDAA) to establish a certification program for WOSB and EDWOSB
 - Third Party Certification
 - Certification by States and Other Agencies
 - Certification by SBA
- Published 12/18/2015
- Comments received by: 2/16/16
- Status: Final Rule in Process
- Reference: 80 FR 78984

Pending SBA Rules

- HUBZone Proposed Rule
- Comprehensive amendment to Historically Underutilized Business Zone (HUBZone) Program regulations:
 - To reduce the regulatory burdens imposed on HUBZone small business concerns and government agencies
 - Retention of HUBZone residency for employees
 - Annual recertification and representation at every offer
 - 20% threshold limit
 - Amends definitions, e.g., employee (3 hours, owners, 1099s, affiliates)
 - To implement new statutory provisions
 - NDAA 2018 section 1701(i): Redesignated areas - retain status until 2021
 - To eliminate ambiguities in the regulations
- Intent:
 - to make it easier for small business concerns to understand and comply with the program's requirements - stability
 - to make the HUBZone program a more attractive avenue for procuring agencies

VA OHA Protests and Appeals Final Rule

- Protests of Center for Verification and Evaluation (CVE) eligibility and appeals of denials or cancellations of inclusion in the CVE database
- Implements portion of Section 1832 of the NDAA 2017
- Only applies to VA
- Non-VA SBA SDVO protest and appeal process remains
- Reference: 83 FR 13626 (March 30, 2018)
- Effective October 1, 2018

SBA Direct Final Rule

- Conforming Statutory Amendments and Technical Corrections to Small Business Government Contracting Regulations
- Synopsis:
 - Amends the Small Business Act by replacing fixed dollar amount thresholds with references to the micro-purchase and simplified acquisition thresholds as per NDAA 2018
 - Updates sole source dollar amounts for SDVOSB and HUBZone small business regulations to conform with FAR
 - Allows indirect ownership by US citizens in the HUBZone program to more accurately align with the underlying statutory authority.
 - Technical changes to address mistakes and typos made in previous rulemakings. For example, update some cross-references, grammar, syntax, and provide clarity.
- Reference: 83 FR 12849
- Published: March 26, 2018
- Effective: May 25, 2018

SBA Direct Final Rule (continued)

- § 121.103 How does SBA determine affiliation?
- (h)(3)(ii) Two firms approved by SBA to be a mentor and protege under § 125.9 of this chapter may joint venture as a small business for any Federal government prime contract or subcontract, provided the protege qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement, and the joint venture meets the requirements of §§ 124.513 (c) and (d), §§ 125.8(b) and (c), §§ 125.18(b)(2) and (3), §§ 126.616(c) and (d), or §§ 127.506(c) and (d) of this chapter, as appropriate.

SBA Direct Final Rule (continued)

- **§ 121.404** When is the size status of a business concern determined?
- **(g)** However, the following exceptions apply **to this paragraph (g)**:

SBA Direct Final Rule (continued)

- § 121.406 How does a small business concern qualify to provide manufactured products or other supply items under a small business set-aside, service-disabled veteran-owned small business, HUBZone, WOSB or EDWOSB, or 8(a) contract?
- (d) The performance requirements (limitations on subcontracting) and the nonmanufacturer rule do not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold (as both terms are defined in the FAR at 48 CFR 2.101).

SBA Direct Final Rule (continued)

- § 125.6 What are the prime contractor's limitations on subcontracting?
- (f) *Inapplicability of the limitations on subcontracting.* The limitations on subcontracting do not apply to:
 - (1) Small business set-aside contracts with a value that is greater than the micro-purchase threshold but less than or equal to the simplified acquisition threshold (as both terms are defined in the FAR at 48 CFR 2.101); or
 - * * * * *

SBA Direct Final Rule (continued)

- **§ 125.18 What requirements must an SDVO SBC meet to submit an offer on a contract?**
- **(e) (1)** However, the following exceptions apply to this paragraph (e)(1):
- **§ 125.22 When may a contracting officer set-aside a procurement for SDVO SBCs?**
- **(a)** The contracting officer first must review a requirement to determine whether it is excluded from SDVO contracting pursuant to § 125.21.

SBA Direct Final Rule (continued)

- § 125.23 When may a contracting officer award sole source contracts to SDVO SBCs?
- (a) None of the provisions of §§ 125.21 or 125.22 apply;
- (b) (1) \$ 6,500,000 for a contract assigned a manufacturing NAICS code, or
- (2) \$ 4,000,000 for all other contracts;

SBA Direct Final Rule (continued)

- Amend § 126.200 by removing the words "unconditionally and directly" in paragraph (b)(1)(i).
- 51% ownership by U.S. citizens

SBA Direct Final Rule (continued)

- § 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?
- (h) Recertification.
- (1) However, the following exceptions apply to this paragraph (h)(1):
- § 126.612 When may a CO award sole source contracts to qualified HUBZone SBCs?
- (b)(1) \$ 7,000,000 for a contract assigned a manufacturing NAICS code, or
- (2) \$ 4,000,000 for all other contracts.

SBA Direct Final Rule (continued)

- Amend § 126.616 by removing the words "HUBZone protege" and adding in their place the words "HUBZone SBC" in paragraph (d)(2).
- § 127.503 When is a contracting officer authorized to restrict competition or award a sole source contract or order under this part?
- (h)(1) However, the following exceptions apply to this paragraph (h)(1):

NDAA 2018 Section 846

- Procurements under e-commerce portal shall not exceed SAT
- Commercial product means commercially available off-the-shelf items, but does not include services
- 3 years after contract is awarded, GAO shall report on, among other things, the effect of the program on agencies ability to meet SBC goals

NDAA 2018 Section 846 (Continued)

- Section 846 – Procurement through Commercial e-Commerce portals
 - Phase I - 90 Days of enactment – Implementation Plan
 - Phase II - 1 year after submission of plan – report
 - Recommendations for changes or exemptions
 - Impact on MAS, SB set-asides, other preferences
- Phase III – 2 years after implementation plan – issue guidance on use
- Additional Implementation Phases – selection of participating agencies, award of contracts

NDAA 2018 Section 846 (Continued)

- A procurement of a product made through a commercial e-commerce portal under the program is deemed to be an award of a prime contract for purposes of the goals established under the Small Business Act if the purchase is from a supplier that is a small business concern.
- Nothing in this section shall be construed as limiting the authority of a department or agency to restrict competition to small business concerns.

NDAA 2018 Section 846 (Continued)

- Section 805 – Simplified Acquisition Threshold increased to \$250,000
- Section 806 – Micro-Purchase Threshold increased to \$10,000
- Section 1702 – inserts SAT and MPT into Section 15(j) of the Small Business Act (the statutory SB reserve)
 - Replaces dollar amounts

NDAA 2018 Section 846 (Continued)

- LOS and NMR will not apply to small business set-asides below \$250,000
- Section 1702 also defines prime contract, for purposes of the Small Business Act, as a contract or contractual action entered into by the Federal Government to obtain supplies, materials, equipment, or services of any kind.
- **(j) Small business reservation.(1)** Each contract for the purchase of goods and services that has an anticipated value greater than MPT but not greater than SAT shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

NDAA 2018 Section 1701 (Continued)

- Section 1701 (HUBZone)
- Uses state median income to calculate status for nonmetropolitan county
- Base Closure Area will remain HUBZone for at least 8 years
- Re-designated area eligible for 3 years
- State governors may petition for HUBZone designation
- HUBZone application review within 60 days of complete application

NDAAs 2018 Section 1701 (Continued)

- HUBZone recertification no later than every 3 years
- Program Examination – if ineligible, firm has 30 days to show qualified, may not compete for HUBZone contracts during that time
- Map will not change until January 1, 2020, then will be updated every 5 years
- SBA must annually report on whether HUBZone is promoting economic development in distressed areas

Everything except map freeze, will be effective January 1, 2020

Section 809 Panel Report

- Created in Section 809 of NDAA 2016
- 18 Person Panel
- Streamline and improve Defense acquisition

Volume 1 of 3 (January 2018)

Section	Topic	Section	Topic
1	Commercial Buying	5	Services Contracting
2	Contract Compliance and Audit	6	Small Business
3	Defense Business Systems: Acquisition of Information Technology Systems	7	Statutory Offices
4	Earned Value Management for Software Programs Using Agile	8	Statutory Reporting

- <https://section809panel.org/>

Section 809 Panel Report

Volume 1 of 3 (January 2018) Section 6

- Critical of DOD's focus on dollars and contract awards to small business for goaling purposes, the panel does not recommend changes to goaling for DOD.
- Recognizes the importance of products and services to DOD that do not directly enhance warfighting capabilities and will outline alternative means for companies offering such support to sell to DOD in a future report.
- Prioritize working with SBCs that enhance warfighting capability
- Consolidate organization of DOD small business programs
- Better outreach and communication and clear points of entry (PTACs)
- Enhancements to SBIR, RIF, consortia and technology accelerators
- Allowing firm that outgrows size standard to remain small for three additional years unless acquired

Section 809 Panel Report, Volume 2 of 3 (June 2018)

- Volume 2 issued

Volume 2 of 3 (June 2018)

Section	Topic	Section	Topic
1	Improving Defense Acquisition	5	Services Contracting
2	Acquisition Workforce	6	Additional Streamlining Recommendations
3	Simplified Commercial Source Selection	7	Title 10 Reorganization
4	Cost Accounting Standards	8	Operationalizing the Dynamic Marketplace

- Volume 3 is in process

Protest : American Relocation Connections

- Protest that BPA above the SAT under the FSS must be set aside for small business
- Regulatory implementation of Small Business Act, rule of two does not apply to FSS
- *Kingdomware* involved VA Act
- Nothing in *Kingdomware* addresses FAR Part 19, 8.4 or SBA's rules
- CO has the discretionary authority to set aside an order against the FSS, but is not required to do so
- Protest dismissed
- B-416035, May 18, 2018

Category Management

- Agencies have “Spend Under Management” goals and “Best in Class” goals
- Agencies still have to meet STATUTORY small business and socioeconomic prime contracting goals
- FY 2017, 43% BIC dollars to SBCs
 - 25.7% SUM dollars to SBCs
 - 75% of BIC contractors are SBCs
- \$22 Billion BIC spending out of \$442 Billion

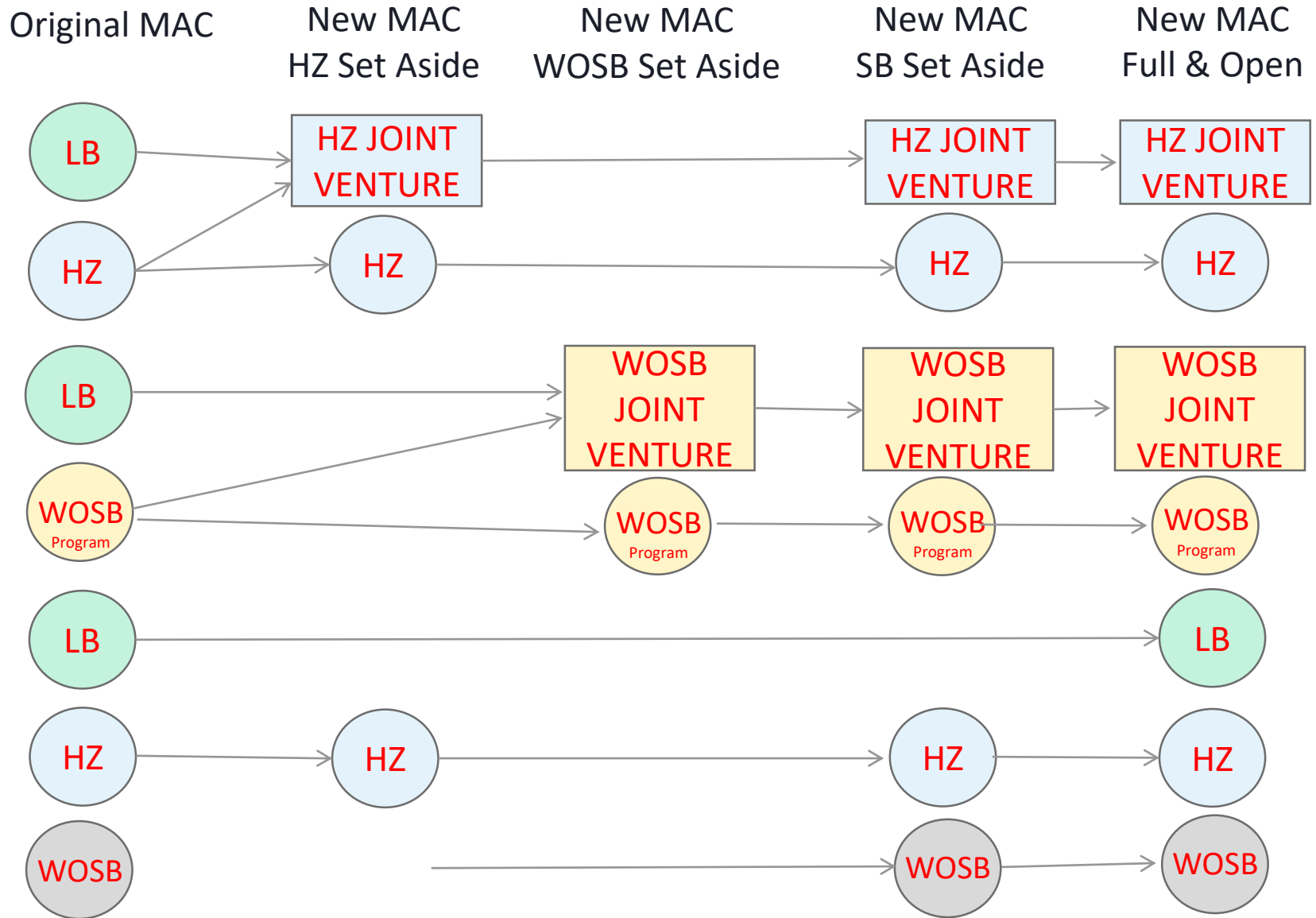
Mentor Protégé Programs

- SBA has two Mentor Protégé Programs
 - 8(a) Business Development Program
 - All Small Mentor Protégé Program (ASMPP)
 - ASMPP launched October 1, 2016
 - Online Application through [Certify.SBA.gov](https://certify.sba.gov)
 - 8-10 day average turnaround time
 - Over 500 MPP agreements in place
 - Are they in your Outreach and Market Research?
- Both SBA Mentor Protégé Programs permit Joint Ventures
 - Provides an exclusion from affiliation
 - JV takes on entity status of Protégé for award (e.g., HUBZone, WOSB, SDVOSB, SDB, SB)
- Retains existing small business and “other than small” business concerns that operate in the Category Management sphere
 - Strengthens industrial base
 - Increases transition efficiencies (e.g., clearances, experience)
 - Contributes to statutory goals for small business
 - Provides needed capacity to Best in Class contracts

Mentor Protégé Programs

- Helps Contracting Officers meet statutory small business and small business socio-economic goals
 - Strengthens acquisition strategy
 - Small Business teaming maximizes small business participation as contractors
- Helps Agency Heads mitigate effects of consolidation
 - Facilitates competition by and among small business concerns
 - Avoids unnecessary and unjustified consolidation or bundling
- Provides Small Business Protégés with competitive advantage
- Provides Mentors with access to set-asides
- Creates jobs and builds wealth for participants
- For information on ASMPP
 - visit sba.gov/allsmallmpp
 - email AllSmallMPP.gov

Mentor Protégé Programs



Contact Information

- Michael McLaughlin
 - Director (A), Office of Policy, Planning & Liaison
 - 202-205-5353
 - Michael.McLaughlin@sba.gov
 - www.sba.gov/oppl

- Questions?

“SBA Quick Reference”

Types of SBA Contacts and Offices

- A. SBA Government Contracting Area Offices
 - 1. SBA Procurement Center Representatives (PCRs)
 - 2. SBA Commercial Market Representatives (CMRs)

- B. SBA District Offices
 - 1. Business Opportunity Specialists (BOS)

- C. SBA Regional Offices

- D. SBA Headquarters

SBA Quick Reference - SBA Headquarters

- | | |
|----------------------------------|---|
| 1. HUBZone status protests | FAR 19.306
13 CFR 126.801 |
| 2. NAICS code appeal | FAR 19.303
13 CFR 121.1103 |
| 3. Non-manufacturer rule waivers | FAR 19.102(f)(1)-(7)
13 CFR 121.1204 |
| 4. SDVOSB status protest | FAR 19.307
13 CFR 125.23 |
| 5. WOSB Program status protest | FAR 19.308
13 CFR 1275.600 |