



U.S. Small Business  
Administration



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# Regulatory Update

## For Small Business Government Contracting Programs

April 1, 2020

## Hosts

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SBA Office of Government Contracting, Area IV,  
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# Welcome to “SBA Virtual Learning 2020”

1. Questions answered during the final 10 minutes.
2. Technical problems: Contact the moderator with a note or call AT&T Support Desk at 301-250-7202.
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.

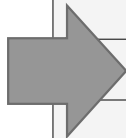
- APTAC posts past “First Wednesday” programming at this link: <http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting officer resources: “How PTACs partner with federal agencies”: <http://www.aptac-us.org/federal-partners/>
- Find your nearest Procurement Technical Assistance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

# FIRST WEDNESDAY VIRTUAL LEARNING SERIES

## FY 2020 SCHEDULE

**1:00 to 2:00 PM Central Time**

<b>FY 2020</b>	<b>Date</b>	<b>Topic</b>
1	October 2, 2019	Size & Affiliation
2	November 6, 2019	Understanding the Non-Manufacturer Rule
3	December 4, 2019	Subcontracting Plans
4	January 8, 2020	Surveillance Reviews
5	February 5, 2020	Historically Underutilized Business Zone (HUBZone) Program
6	March 4, 2020	Certificate of Competency (COC)
7	April 1, 2020	Regulatory Update
8	May 6, 2020	Procurement Center Representative (PCR) functions
9	June 3, 2020	Market Research
10	July 1, 2020	Woman Owned Small Business (WOSB) Program
11	August 5, 2020	All Small Mentor Protégé Program



The program schedule 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](mailto:sbalearning@sba.gov).

## “SBA 1st Wednesday Virtual Learning 2020”

This Certificate is awarded to

**Insert Your Name Here**

For completion of

# Regulatory Update

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01. Recommendation of One CLP.



Pamela J. Beavers  
Director, Area IV  
SBA Office of Government Contracting

04/01/2020

DATE



# Today's Speaker

**Sam Q. Le**  
**Attorney Advisor**  
**Office of General Counsel**  
**U.S. Small Business Administration**

# Recent SBA and FAR Regulatory Action

# Proposed Rule: Regulatory Reform Initiative for SDVOSBC

## 85 FR 6106

- SBA issued a proposal to remove from the CFR four regulations in the SDVO SBC Program that are no longer necessary because they are unnecessary or redundant.
- Removal will assist the public by simplifying SBA's regulations in the CFR.
- Comments are due April 6, 2020.
- Upcoming: Reg reform in SDB regulations

## **Proposed Rule:** Surplus Property for Veteran-owned, Puerto Rico, and Disaster—affected small businesses

**85 FR 3273**

- Implements three provisions of the Small Business Act to gives access to and manage the distribution of U.S-owned surplus personal property to three additional groups of small businesses
  - small businesses owned and controlled by veterans (15 U.S.C § 657b(g)),
  - small businesses located in major disaster areas (15 U.S.C. § 636(j)(13)(F)(ii)), and
  - small businesses located in Puerto Rico (15 U.S.C. § 636(j)(13)(F)(iii)).
- SBA will execute a memorandum of agreement between the SBA, the General Services Administration, and the head of the state agency for surplus properties.

# Proposed Rule: Consolidation of Mentor Protégé Programs and Other Government Contracting Amendments

84 FR 60846

- Combine 8(a) and ASMPP – identical benefits
- Changes to M/P program:
  - MPA would not count if terminated within 18 months
  - Would not require mentor good character in every instance
  - Mentor cannot submit competing offers
  - Consider whether to limit mentors to revenues less than \$100 million
  - Protégés from Puerto Rico don't count for 3 limit, up to 2
  - Eliminate reconsideration
  - Changes to M/P annual reviews

## **Proposed Rule: Consolidation of Mentor Protégé Programs (cont.)**

- Changes to joint venture rules:
  - Proposed to eliminate SBA approval for competitive 8(a) JV
  - Proposed to change 3-in-2 rule to 2 years
  - Consider measures to restrict changes in JV partners
  - Facility Security Officers may be administrative personnel
  - Clarification as to size of JV partners
- MAC codes and eligibility
  - Assign single NAICS code to order—must be included in underlying MAC
  - Except for FSS, eligibility for SBSA order on unrestricted MAC based on time of offer for order
  - Same for set-aside for status other than that for underlying contract

## **Proposed Rule: Consolidation of Mentor Protégé Programs (cont.)**

- Changes to 8(a) rules:
  - Defines follow-on requirement
  - More clarity on immediate family member
  - Appeal process for changes in primary NAICS code
  - Re-apply after decline after 90 days
  - Would eliminate provision that Participant cannot receive 8(a) BD benefits until SBA has approved business plan
  - Would require SBA release for non-8(a) competition even where statutorily required and where using limited contracting vehicle
  - Timeframes for bona fide place of business (at least 20 days before offer, review within 15 days of request)
  - Limit on sole-source awards proposed to change to \$100 million in all cases

# Final Rule: Calculation of Average Annual Receipts

## 84 FR 66561

- Implements Small Business Runway Extension Act of 2018
- Calculate annual receipts using average of prior five years, instead of prior three years
- Applies to all industries with receipts-based size standards
- Only applies to certifications on or after January 6, 2020—prior certifications must use 3-year average
- Includes two-year transition period (through Jan. 6, 2022) that allows firms to choose between 3-year average and 5-year average
- Does not apply to SBA business loan or disaster loan programs



# Final Rule: NDAA FY16/17 & RISE Act

[84 FR 65647](#)

## Procurement Center Representative Reviews

Section Revised: 125.2(b)(1)(i)(A)

The 2017 NDAA revised the Small Business Act to make two changes to the scope of review by PCRs:

- PCRs can review any solicitation, regardless of whether it is set-aside, partially set-aside, or reserved for small business.
  - Current regulation requires PCRs to review all acquisitions that are not set aside for small businesses. New regulation will not require review of every acquisition, but clarify that PCRs have the authority to review acquisitions at their discretion.
- Exceptions to PCR reviewing authority: Unless the contracting agency requests a review, PCRs will not review acquisitions that are (1) awarded by or for DoD; and (2) awarded pursuant to the Arms Control Export Act; humanitarian or civic assistance in conjunction with military operations; for a contingency operation; awarded pursuant to an agreement with the government of a foreign country in which Armed Forces of the United States are deployed; or where both the place of award and place of performance are outside of the United States and its territories.

# Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

## Good Faith Compliance with Subcontracting Rules

Sections Revised: 125.3(d)(3)(i) and (ii); 125.3(d)(11)

The 2017 NDAA revised the Small Business Act to provide that it's a material breach of contract if a contractor with a subcontracting plan fails to comply in good faith with the requirement to cooperate in studies or surveys required by the agency or SBA to determine compliance; and required that SBA provide examples of good faith efforts to comply with a small business subcontracting plan.

SBA has revised its regulations on contracting officer responsibilities to implement these changes:

- Added nine examples of activities that would reflect a failure to make a good faith effort to comply with a subcontracting plan (language mirrors examples in the FAR);
- Added a new paragraph that directs contracting officers to evaluate whether a contractor complied in good faith with the requirement to participate in studies/surveys.

# Final Rule: NDAA FY16/17 & RISE Act (cont.)

## 84 FR 65647

### **Contracting Preferences for Small Businesses in Disaster Areas**

Section Added: Part 129

The Recovery Improvements for Small Entities After Disaster Act revised the Small Business Act by authorizing contracting preferences for small businesses located in areas that have been declared major disasters (during the period of the disaster), and providing that agencies that award contracts to small businesses located in disaster areas will receive credit for double the contract amount.

SBA has added a new Part 129 to implement these changes:

- Contracting officers may set aside solicitations for emergency response contracts to allow only small businesses located in the disaster area to compete.
  - Note that these terms are defined in the new regulations.
- Agencies will receive double credit for awarding a contract through the use of a local small business or a set-aside restricted to SBCs, 8(a), WOSB, SDVO, or HUBZone SBCs located in a disaster area. SBA will provide the extra credit through the agency scorecard process.

# Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

## **Set-Aside Orders Off Small Business Set-Aside Multiple Award Contracts and Full and Open Multiple-Award Contracts**

Sections Revised: 125.2(e)(6) and 125.2(e)(6)(i)

- Revised to allow contracting officers to set aside orders for 8(a), HUBZone, SDVO, or WOSB firms under full and open MACs and small business set-aside MACs.
- This does not apply to socioeconomic set-aside MACs.
- It also does not apply to already-awarded MACs. Going forward, firms will know what types of set-asides will be available at the time of award and on future orders so they know if it's worthwhile to submit an offer.

# Final Rule: NDAA FY16/17 & RISE Act (cont.)

84 FR 65647

## Exclusions to Limitations on Subcontracting

Section Revised: 125.6(a)(1)

- Excludes direct costs from the LOS where costs are not the principal purpose of the acquisition.
- Specifically excludes following costs:
  - Airline travel
  - Work performed by a transportation or disposal entity under a contract assigned the environmental remediation NAICS code (562910)
  - Cloud computing services
  - Mass media purchases
- Excludes work performed overseas on awards made pursuant to the Foreign Assistance Act of 1961 or work required to be performed by a local contractor.

# Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

## Determining Compliance with Limitation on Subcontracting Rules

Section Revised: 125.6(e)

Added new paragraph to limitation on subcontracting compliance regulations to:

- Clarify that contracting officers can, at their discretion, require firms to provide evidence of compliance with the limitations on subcontracting if information demonstrating compliance is not already available.
  - Contracting officers are not required to request evidence of compliance.
- Include examples of documentation that contracting officers may request.
  - List is not intended to be exhaustive.
  - Contracting officers should only ask for documentation they don't already have.

# Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

## Recertification in SBA Socioeconomic Programs

Sections Revised: 125.18(e)(1), 126.601(h)(1), 127.503(h)(1), 124.521 and 124.1015

-SDVO, HUBZone, and WOSB regulations were revised to emphasize that firms must recertify status on full and open contracts and not only on contracts set aside for the socioeconomic program.

- If a firm can't recertify its status on an order for a contract that is novated, or where the firm acquires, is acquired by, or merges with another firm, the agency will not be able to count orders issued pursuant to the contract toward its program goals going forward.

-8(a) regulations were also revised to add a recertification provision. Unlike the other programs, however, if an 8(a) firm performing on an 8(a) contract can't recertify as an 8(a) at the end of the fifth year of the contract, the agency can't award future orders.

- Note that this is different than the other program regulations, which do not prohibit firms from performing on a contract even if they can't recertify their status.

# Final Rule: NDAA FY16/17 & RISE Act (cont.)

84 FR 65647

## **Subcontracting to a Small Business Under a Socioeconomic Set-Aside**

Sections Revised: 124.503(c)(1)(v), 124.507(b)(2), 125.18(f), 125.29(c), 126.601(i), 126.801(a), 127.504(c), and 127.602

- Addresses that there might be ostensible subcontracting on a socioeconomic set-aside with a small business not qualified for the set-aside.
- As part of a status protest, SBA would make determination on program participant's overreliance on a non-similarly situated subcontractor.
- SBA will not find that a prime is unduly reliant where prime can demonstrate that it will meet the LOS.
- Also applies to CVE protests filed at OHA.



# Final Rule: NDAA FY16/17 & RISE Act (cont.)

[84 FR 65647](#)

## Consolidation and Substantial Bundling Justifications

Sections Revised: 125.2(d)(1)(v), (d)(7)

- Must publish GPE notice within 7 days of **consolidation** determination
  - Cannot issue solicitation until 7 days after notice is published
  - Must publish justification for determination with solicitation
- Must publish GPE notice within 7 days of **substantial bundling** determination
  - Cannot issue solicitation until 7 days after notice is published
  - Must publish justification for determination with solicitation with the following:
    1. specific benefits anticipated a determination that benefits justify the bundling,
    2. identification of alternative contracting approaches with lesser bundling,
    3. assessment of impediments to small business prime participation, and
    4. actions to maximize participation of small business concerns as subcontractors

# Final Rule: HUBZone Comprehensive Review

84 FR 65222

- HUBZone maps, currently frozen through 2021, will be updated every five years
- Moves to annual recertification (from three-year), effective for all HUBZone contracts for the one-year period
- Requires HUBZone status in DSBS at time of *offer* (not time of award)
- For non-HUBZone multiple-award contract (other than FSS contract), firm must be certified as a HUBZone at time of offer on a HUBZone set-aside order

## Final Rule: HUBZone Comprehensive Review (cont.)

84 FR 65222

- Requires 35% employee HUBZone residency at time of certification and recertification; “attempt to maintain” during contract performance
- Defines “attempt to maintain” HUBZone status during HUBZone contract performance as having at least 20% HUBZone employees (must be 35% at application and recertification) and recruiting HUBZone employees
- An employee who resides in a HUBZone for at least 6 months before and after time of certification continues to count as HUBZone employee as long as an employee of the firm—even if employee moves or residence no longer qualifies
- Employees temporarily living overseas in connection with performance of a contract will be considered to reside at their U.S. residence

## Final Rule: HUBZone Comprehensive Review (cont.)

84 FR 65222

- Firms that invest in HUBZones by purchasing building or entering into long-term lease are deemed to meet principal office requirement for 10 years—even if office location no longer qualifies as a HUBZone
- Includes affiliate employees in 35% and principal office calculations if no clear line of fracture between firms
- Starting January 1, applications for HUBZone certification will be processed within 60 days of a complete submission

## Direct Final Rule: HUBZone Program Provisions for Governor-Designated Covered Areas

84 FR 62447

- Starting 2020, Governors may petition SBA to designate covered areas as HUBZones.
- “Covered area” means—
  - located outside of an urbanized area;
  - population of 50,000 or less; and
  - average unemployment rate is at least 120% of the average unemployment rate for US/state.
- The Governor shall, at least annually, submit data to the Administrator certifying that each Governor-designated covered area continues to meet the definition of a covered area.

## Direct Final Rule: HUBZone Program Provisions for Governor-Designated Covered Areas (cont.)

84 FR 62447

- In reviewing a request for designation included in such a petition, SBA may consider—
  - **the potential for job creation and investment** in the covered area;
  - the demonstrated **interest of small business concerns** in the covered area to be designated as a Governor-designated covered area;
  - how State and local government officials have incorporated the covered area into an **economic development strategy**; and
  - if the covered area was a HUBZone before becoming the subject of the petition, the **impact** on the covered area **if the Administrator did not approve** the petition.

# Final Rule: Adjustment of Monetary-Based Size Standards for Inflation

[84 FR 34261](#)

- Changes went into effect on August 19, 2019.
- Increases monetary-based size standards to account for inflation.
- Increases range from \$0.25 million for the lowest size standard to \$3 million for the highest.
- Correction to dredging NAICS code issued Nov. 20, 2019.

TABLE 1—INFLATION ADJUSTMENT TO MONETARY-BASED SIZE STANDARDS

Current monetary-based size standards (\$ million)	Size standards adjusted for inflation, before rounding (\$ million)	Size standards adjusted for inflation, after rounding (\$ million)
(1)	(2)	(3)
\$ 0.75 .....	\$1.05	\$1.0
5.5 .....	6.0	6.0
7.5 .....	8.1	8.0
11.0 .....	11.9	12.0
15.0 .....	16.3	16.5
18.0 .....	19.5	19.5
19.0 .....	20.6	20.5
20.5 .....	22.2	22.0
25.0 .....	27.1	27.0
27.5 .....	29.8	30.0
29.5 .....	32.0	32.0
32.0 .....	34.7	34.5
32.5 .....	35.2	35.0
36.5 .....	39.6	39.5
37.5 .....	40.6	40.5
38.5 .....	41.7	41.5
550 .....	596	600
Total Industries (including subindustries or "exceptions") .....		

# Final FAR Rule: Set-Asides Under Multiple-Award Contracts

[85 FR 11746](#) (Feb. 27, 2020)

- Effective March 30
  - Requirement to assign more than one NAICS code to a multiple-award contract not effective until Oct. 1, 2022
- Provides contracting officers additional guidance on the use of partial set-asides, reserves, and set-asides of orders under multiple-award contracts
- Amends FAR Parts 2, 4, 7-10, 13, 15, 16, 19, 42, 52
- Implements regulatory changes made by SBA in 78 FR 61114 (10/2/13)



## **Interim FAR Rule:** Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

84 FR 40216

- Requires offerors to represent whether their offer includes covered telecommunications equipment or services
- Prohibits contractors from providing any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system
- “Covered telecommunications equipment or services” = equipment from Huawei Technologies Company, ZTE Corporation; also, in some cases, Hytera Communications Corporation, Hangzhou Technology Company or Dahua Technology Company

## **Second Interim FAR Rule:** Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

**84 FR 68314**

- Permits annual representation on whether an offeror offers to the Government equipment, systems, or services that include covered telecommunications equipment or services.
- Creates new annual representation at FAR 52.204-26, Covered Telecommunications Equipment or Services—Representation and in paragraph (v) of FAR 52.212-3, Offeror Representations and Certifications-Commercial Items

## **Upcoming FAR Rule:** Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

FAR Case 2019-009

- Prohibits contracting with entities that use covered telecommunications equipment or services
- Effective August 13, 2020 by statute
- Will be implemented through separate rulemaking under FAR Case 2019-009.

## **Final FAR Rule: Update of “Affiliates” and Section 8(a) Clauses**

**84 FR 47862**

- Defines “affiliates” in Part 19 of the FAR by deleting existing language and replacing it with a reference to SBA’s regulations on determining affiliation at 13 CFR 121.103.
- Removes an obsolete requirement for 8(a) contractors to obtain approval from SBA and the contracting officer prior to subcontracting the performance of any contract requirements.

## Final DFARS Rule: Review of Defense Solicitations by PCRs

[84 FR 72561](#)

- Provides that SBA PCRs will not review an acquisition for
  - a) for foreign military sales;
  - b) in support of humanitarian and civic assistance;
  - c) in support of a contingency operation;
  - d) awarded pursuant to a Status of Forces Agreement or other agreement with the government of a foreign country in which U.S. Armed Forces are deployed; or
  - e) both awarded and performed outside the United States and its outlying areas.
- Restricts the use of set-asides if excluded from PCR review

## **Final Action:** Waiver of Nonmanufacturer Rule for Laptops/Tablets

[85 FR 13692](#)

- Grants class waiver of NMR for COTS laptops and tablet computers
- Applies to COTS laptops and tablet computers within NAICS code 334111 and PSC 7435
- Allow otherwise qualified regular dealers to supply the product of any manufacturer on a set-aside Federal contract or order for COTS laptops and tablet computers

# Proposed Rule: WOSB Certification Program

84 FR 21256

- SBA received comments from over 300 stakeholders, including individuals, small businesses, industry groups, and third-party certifiers, on its proposed rule, "Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business Certification."
- The rule eliminates the self-certification option to comply with 2015 NDAA amendment that requires a WOSB/EDWOSB to be certified by SBA, an authorized Federal or state entity, or an authorized third-party certifier (TPC) in order to be awarded WOSB/EDWOSB set-aside or sole source contracts.
- Specifically, the rule:
  - Stands up a free certification program offered by SBA;
  - Expands the list of Federal and state entities that will be authorized to certify WOSBs/EDWOSBs in lieu of certification by SBA's Women-Owned Small Business Program office, including the 8(a) Business Development Program and the Center for Verification and Evaluation; and
  - Details how SBA will oversee TPCs.

## **Proposed Rule: WOSB Certification Program (cont.)**

[84 FR 21256](#)

Other changes:

- Established a \$750,000 personal net worth standard for economically disadvantaged individuals in both the EDWOSB and 8(a) Business Development Programs.
- Detailed the process for firms seeking to re-apply after declinations.
- Detailed procedures for how WOSBs/EDWOSBs will maintain certification and how SBA will conduct program examinations.



## **Proposed Rule:** FAR Case 2016-002, Applicability of Small Business Regulations Outside the United States

84 FR 39793

- Proposed rule to allow small business contracting provisions to be applied on overseas contracts.
- Includes set-asides

## Upcoming SBA proposed rules

1. Small Business Size Standards: Services, Agricultural, Construction, Transportation, Manufacturing
2. NDAA FY20 Implementation

## Upcoming SBA potential regulatory actions

1. [Nonmanufacturer Rule Waiver for leather holsters](#) - comments submitted and being reviewed
2. [Nonmanufacturer Rule Waiver for commercially handheld landmobile radios](#) - comments submitted and being reviewed
3. [Nonmanufacturer Rule Waiver for recreational and gymnastic equipment](#) - comments submitted and being reviewed

## Upcoming FAR proposed rules

1. Proposed 2020-007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns
2. Proposed 2019-008, Small Business Program Amendments
3. Proposed 2019-007, Update of Historically Underutilized Business Zone Program
4. Proposed 2019-004, Good Faith in Small Business Subcontracting
5. Proposed 2019-003, Consolidation and Substantial Bundling
6. Proposed 2018-004, Increased Micro-Purchase and Simplified Acquisition Thresholds
7. Proposed 2017-019, Policy on Joint Ventures

## Upcoming FAR final rules

1. Direct Final 2020-02, Removal of Obsolete Definitions
2. Final 2016-011, Revision of Limitations on Subcontracting
3. Final 2018-007, Applicability of Inflation Adjustments of Acquisition-Related Thresholds



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