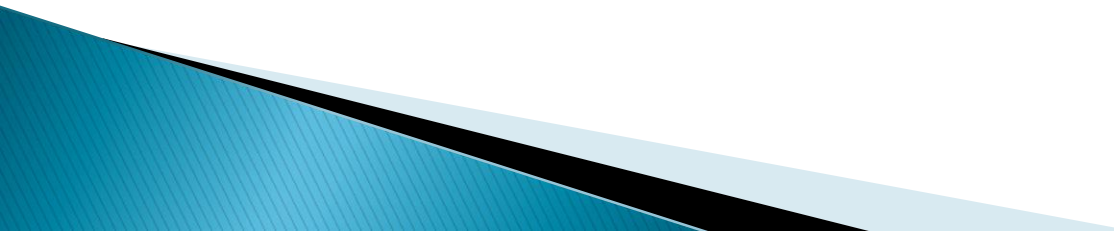


Small Business Regulation and Legislation Update

Kenneth Dodds
Director,
Office of Policy, Planning & Liaison
Small Business Administration
April, 2017

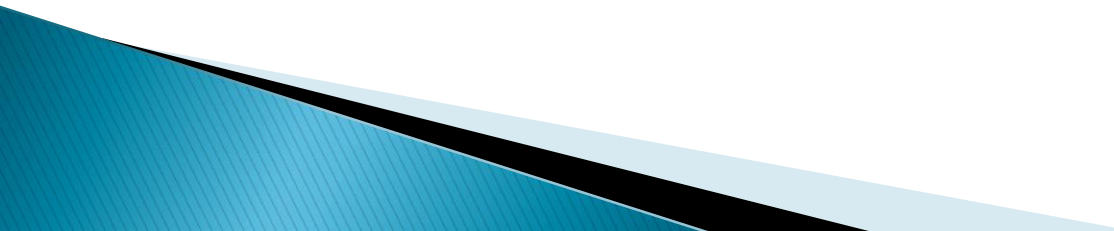
Limitations on Subcontracting

- ▶ Section 1651 National Defense Authorization Act of 2013
 - ▶ In the case of a contract for services, may not expend on subcontractors more than 50 percent of the amount **paid** to the concern under the contract
 - ▶ In the case of a contract for supplies (other than from a regular dealer in such supplies), may not expend on subcontractors more than 50 percent of the amount, less the cost of materials, **paid** to the concern under the contract
 - ▶ **Similarly Situated Entities** – Contract amounts expended by a covered small business concern on a subcontractor that is a similarly situated entity shall not be considered subcontracted
 - ▶ SBA Final Rule – 81 FR 34243 (May 31, effective June 30, 2016)
- 

NDAA 2013 Final Rule – LOS

- ▶ Similarly situated entity is a subcontractor that has the same small business program status as the prime contractor.
- ▶ This means that: for a HUBZone requirement, a subcontractor that is a qualified HUBZone small business concern; for a small business set-aside, partial set-aside, or reserve a subcontractor that is a small business concern; for a SDVO small business requirement, a subcontractor that is a self-certified SDVO SBC; for an 8(a) requirement, a subcontractor that is an 8(a) certified Program Participant; for a WOSB or EDWOSB contract, a subcontractor that has complied with the requirements of part 127.
- ▶ 13 CFR 125.1

NDAA 2013 Final Rule – LOS

- ▶ In addition to sharing the same small business program status as the prime contractor, a similarly situated entity must also be small for the NAICS code that the prime contractor assigned to the subcontract the subcontractor will perform.
 - ▶ 13 CFR 125.1
- 

NDAA 2013 Final Rule – LOS

- ▶ In the case of a contract for services (except construction), it will not pay more than 50% of the amount paid by the government to it to firms that are not similarly situated.
- ▶ Any work that a similarly situated subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded.
 - 13 CFR 125.6(a)(1)

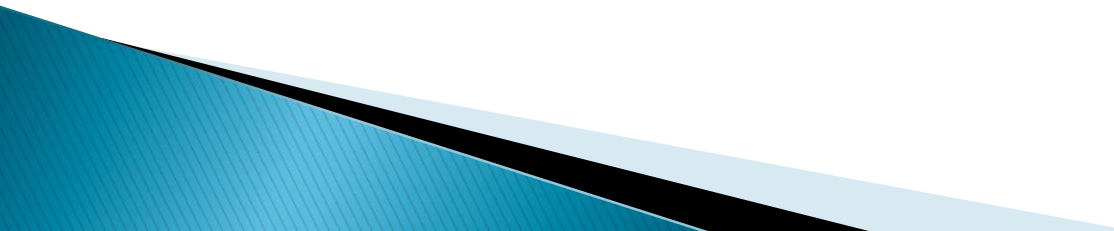
NDAA 2013 Final Rule – LOS

- ▶ In the case of a contract for supplies or products (other than from a nonmanufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not similarly situated.
- ▶ Any work that a similarly situated subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded.
- ▶ Cost of materials are excluded and not considered to be subcontracted.
 - 13 CFR 125.6(a)(2)(i)

NDAA 2013 Final Rule – LOS

- ▶ In the case of a contract for general construction, it will not pay more than 85% of the amount paid by the government to it to firms that are not similarly situated.
- ▶ Any work that a similarly situated subcontractor further subcontracts will count towards the 85% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.
 - 13 CFR 125.6(a)(3)

NDAA 2013 Final Rule – LOS

- ▶ In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime may be paid to firms that are not similarly situated.
 - ▶ Any work that a similarly situated subcontractor further subcontracts will count towards the 75% subcontract amount that cannot be exceeded.
 - ▶ Cost of materials are excluded and not considered to be subcontracted.
 - 13 CFR 125.6(a)(4)
- 

NDAA 2013 Final Rule – LOS

- ▶ Mixed contracts. Where a contract combines services and supplies, the contracting officer shall select the appropriate NAICS code as prescribed in § 121.402(b) of this chapter.
- ▶ The contracting officer's selection of the applicable NAICS code is determinative as to which limitation on subcontracting and performance requirement applies.
- ▶ In no case shall the requirements of paragraph (a)(1) and (a)(2) of this section both apply to the same contract.
- ▶ The relevant limitation on subcontracting in paragraph (a)(1) or (a)(2) of this section shall apply only to that portion of the contract award amount.
 - 13 CFR 125.6(b)

NDAA 2013 Final Rule – LOS

- ▶ Subcontracts to similarly situated entities. A small business concern prime contractor that receives a contract listed in §125.6(a) and spends contract amounts on a subcontractor that is a similarly situated entity shall not consider those subcontracted amounts as subcontracted for purposes of determining whether the small business concern prime contractor has violated §125.6(a), to the extent the subcontractor performs the work with its own employees.
- ▶ Any work that the similarly situated subcontractor does not perform with its own employees shall be considered subcontracted SBA will also exclude a subcontract to a similarly situated entity from consideration under the ostensible subcontractor rule (§ 121.103(h)(4)).
 - 13 CFR 125.6(c)

NDAA 2013 Final Rule – LOS

- ▶ Determining compliance with applicable limitation on subcontracting.
The period of time used to determine compliance for a total or partial set-aside contract will be the base term and then each subsequent option period. For an order set aside under a full and open contract or a full and open contract with reserve, the agency will use the period of performance for each order to determine compliance unless the order is competed among small and other-than-small businesses (in which case the subcontracting limitations will not apply).
- ▶ (1) The contracting officer, in his or her discretion, may require the concern to comply with the applicable limitations on subcontracting and the nonmanufacturer rule for each order awarded under a total or partial set-aside contract.
- ▶ (3) Work performed by an independent contractor shall be considered a subcontract, and may count toward meeting the applicable limitation on subcontracting where the independent contractor qualifies as a similarly situated entity.
 - 13 CFR 125.6(e)

NDAA 2013 Final Rule – JVs

- ▶ Exception to affiliation for certain joint ventures. (i) A joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement, subcontract or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract.
 - 13 CFR 121.103(h)(3)

NDAA 2013 Final Rule – NMR

- ▶ The rental of an item(s) is a service and should be treated as such in the application of the nonmanufacturer rule and the limitation on subcontracting.
- ▶ SBA's waiver of the nonmanufacturer rule means that the firm can supply the product of any size business without regard to the place of manufacture. However, SBA's waiver of the nonmanufacturer rule has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act or the Trade Agreements Act.
 - 13 121.406(b)(4) & (7)

NDAA 2013 Final Rule – NMR

- ▶ (e) Multiple Item Acquisitions. (1) If at least 50% of the estimated contract value is composed of items that are manufactured by small business concerns, then a waiver of the nonmanufacturer rule is not required. There is no requirement that each and every item acquired in a multiple-item procurement be manufactured by a small business.
 - 13 CFR 121.406(e)(1)

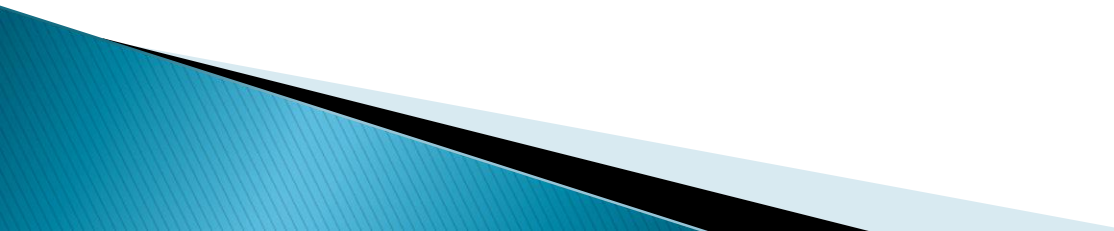
NDAA 2013 Final Rule – NMR

- ▶ (2) If more than 50% of the estimated contract value is composed of items manufactured by other than small concerns, then a waiver is required. SBA may grant a contract specific waiver for one or more items in order to ensure that at least 50% of the value of the products to be supplied by the nonmanufacturer comes from domestic small business manufacturers or are subject to a waiver.
- ▶ (3) If a small business is both a manufacturer of item(s) and a nonmanufacturer of other item(s), the manufacturer size standard should be applied.
 - 13 CFR 121.406(e)

NDAA 2013 Final Rule – NMR

- ▶ Where appropriate, SBA will generally grant waivers for an individual contract or order prior to the issuance of a solicitation, or, where a solicitation has been issued, when the contracting officer provides all potential offerors additional time to respond.
 - 13 CFR 121.1203(a)

NDAA 2013 Final Rule – NMR

- ▶ SBA may grant a waiver after contract award, where the contracting officer has determined that the modification is within the scope of the contract and the agency followed the regulations prior to issuance of the solicitation and properly and timely requested a waiver for any other items under the contract, where required.
 - 13 CFR 121.1203(b)
- 

NDAA 2013 Final Rule – NMR

- ▶ (a) Contracting officers must provide written notification to potential offerors of any waivers being applied to a specific acquisition, whether it is a class waiver or a contract specific waiver. This notification must be provided at the time a solicitation is issued. If the notification is provided after a solicitation is issued, the contracting officer must provide potential offerors a reasonable amount of additional time to respond to the solicitation.
- ▶ (b) If a contracting officer does not provide notice, and additional reasonable time for responses when required, then the waiver cannot be applied to the solicitation. This applies to both class waivers and individual waivers.
 - 13 CFR 121.1206

NDAA Final Rule – Software

- ▶ NAICS code 511210 – For purposes of Government procurement, the purchase of software subject to potential waiver of the nonmanufacturer rule pursuant to § 121.1203(d) should be classified under this NAICS code.
 - 13 CFR 121.201, Footnote 20

NDAA 2013 Final Rule – Software

- ▶ Waivers for the purchase of software. (1) SBA may grant an individual waiver for the procurement of software provided that the software being sought is an item that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and the item:
 - ▶ (i) Has been sold, leased, or licensed to the general public, or has been offered for sale, lease, or license to the general public;
 - ▶ (ii) Is sold in substantial quantities in the commercial marketplace; and
 - ▶ (iii) Is offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace.
 - 13 CFR 121.1203(d)(1)

NDAA 2013 Final Rule – Software

- ▶ If the value of services provided related to the purchase of a supply item that meets the requirements of paragraph (1) of this section exceeds the value of the item itself, the procurement should be identified as a service procurement, even if the services are provided as part of the same license, lease, or sale terms. If a contracting officer cannot make a determination of the value of services being provided, SBA will assume that the value of the services is greater than the value of items or supplies, and will not grant a waiver.
 - 13 CFR 121.1203(d)(2)

NDAA 2013 Final Rule – Software

- ▶ Subscription services, remote hosting of software, data, or other applications on servers or networks of a party other than the U.S. Government are considered by SBA to be services and not the procurement of a supply item. Therefore SBA will not grant waivers of the nonmanufacturer rule for these types of services.
 - 13 CFR 121.1203(d)(3)

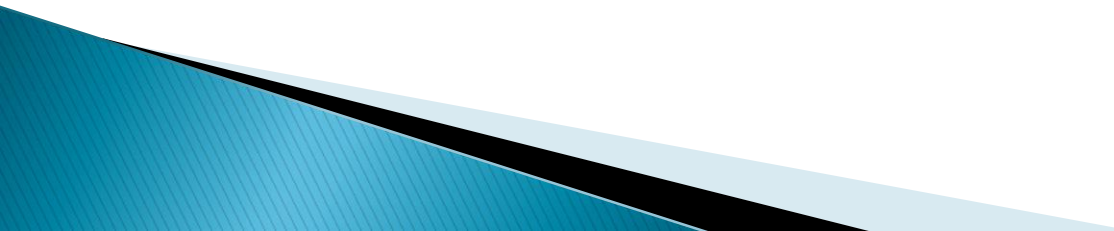
NDAA 2013 Final Rule – 15(j)

- ▶ The performance requirements (limitations on subcontracting) and the nonmanufacturer rule do not apply to small business set-aside acquisitions with an estimated value less than \$150,000.
 - 13 CFR 121.406(d)
- ▶ Inapplicability of limitations on subcontracting.
The limitations on subcontracting do not apply to: (1) small business set-aside contracts with a value less than 150,000, or (2) subcontracts (except where a prime is relying on a similarly situated entity to meet the applicable limitations on subcontracting).
 - 13 CFR 125.6(f)

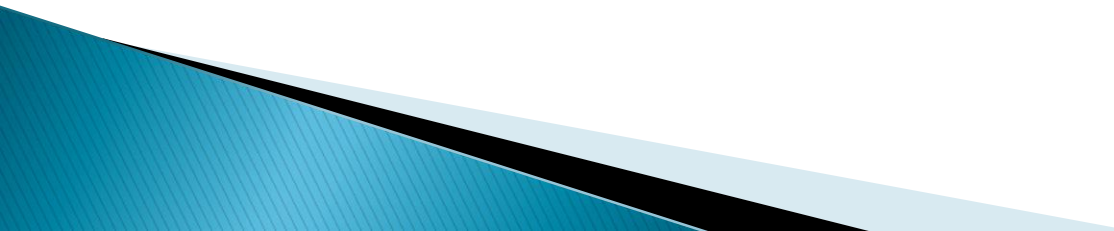
NDAA 2013 Final Rule – Subk

- ▶ (8) A prime contractor that identifies a small business by name as a subcontractor in a proposal, offer, bid or subcontracting plan must notify those subcontractors in writing prior to identifying the concern in the proposal, bid, offer or subcontracting plan
- ▶ (9) Anyone who has a reasonable basis to believe that a prime contractor or a subcontractor may have made a false statement to an employee or representative of the Federal Government, or to an employee or representative of the prime contractor, with respect to subcontracting plans must report the matter to the SBA Office of Inspector General. All other concerns as to whether a prime contractor or subcontractor has complied with SBA regulations or otherwise acted in bad faith may be reported to the Government Contracting Area Office where the firm is headquartered.
 - 13 CFR 125.3(c)

NDAA 2013 Final Rule – HUBZone

- ▶ A qualified HUBZone SBC may submit an offer on a HUBZone contract for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at § 121.406 of this chapter.
 - 13 CFR 126.601(f)
- 


Mentor Protégé Final Rule

- ▶ One for 8(a) BD and One for All Other Small Businesses
 - ▶ Joint Venture Agreement must be in Writing
 - ▶ Joint Venture may not be populated (except for administrative personnel)
 - ▶ Joint Venture must be separately identified in SAM as JV
 - ▶ All Mentor Protégés will be Approved by the Office of Business Development
- 


Mentor Protégé Final Rule

- ▶ Change from mentor must have good financial condition to Mentor must demonstrate that it can fulfill its mentor protégé obligations
- ▶ Generally, a mentor will have no more than one protege at a time.
 - SBA may authorize a concern to mentor more than one protege at a time where it can demonstrate that the additional mentor–protege relationship will not adversely affect the development of either protege firm (e.g., the second firm may not be a competitor of the first firm).
 - Under no circumstances will a mentor be permitted to have more than three proteges at one time in the aggregate under the mentor–protege programs authorized by §§ 124.520 and 125.9 of this chapter.
 - Applies to entire corporation family, all affiliates/divisions
- ▶ Small business may be both a protégé and a mentor at the same time
- ▶ Proteges must qualify as small for primary NAICS or secondary NAICS – applies to 8(a)
- ▶ Protégé may have up to 2 mentors in its lifetime in any program

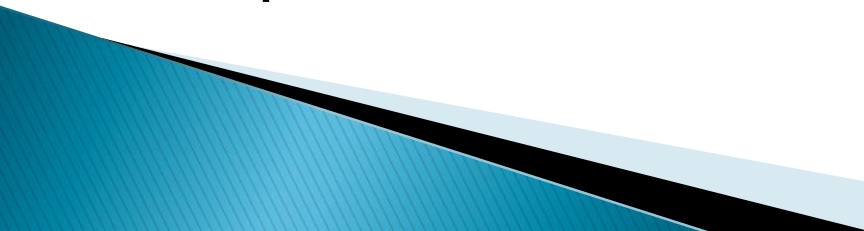
Mentor Protégé Final Rule

- ▶ 8(a) mentor/protégé may notify SBA that it is transferring relationship to small MP relationship after graduation
 - ▶ Mentors may own up to 40% of protégé – will not be required to divest at end of relationship
 - ▶ Mentor may transfer relationship to purchaser
 - ▶ Size of an approved 8(a) JV may be protested
- 


Mentor Protégé Final Rule

- ▶ A protégé firm may generally have only one mentor at a time.
 - ▶ SBA may approve a second mentor for a particular protégé firm where the second relationship will not compete or otherwise conflict with the assistance set forth in the first mentor–protégé relationship and:
 - (i) The second relationship pertains to an unrelated NAICS code; or
 - (ii) The protégé firm is seeking to acquire a specific expertise that the first mentor does not possess.
- 


Mentor Protégé Final Rule

- ▶ Relationship lasts 3 years, with 3-year extension, but reviewed annually to ensure protégé is receiving identified assistance and contracts are being properly performed by appropriate parties
 - ▶ Past performance and experience of JV members or subs must be considered by the CO
 - ▶ Protégé must identify all other mentor protégé relationships
 - ▶ At the conclusion of a relationship, protégé must report on whether it benefitted
- 

Mentor Protégé Final Rule

- ▶ Protégé must perform 40% of work performed by JV, and 40% of aggregate performed by members of the JV at any tier
 - Joint Venture must certify it will comply with performance requirements, and report to SBA and the CO on performance
 - ▶ All Mentors must be for-profit
 - ▶ HUBZone JV rules align with other programs
 - ▶ Applicants may request reconsideration of denial
- 

Mentor Protégé Final Rule

- ▶ Mentor that fails to provide assistance:
 - may result in termination of the agreement;
 - mentor prohibited from acting as mentor for two years;
 - SBA may request for agency to stop work and/or allow protégé to perform
 - May be grounds for debarment
- 

Mentor Protégé Final Rule

- ▶ SBA does not currently certify small, WOSB, or SDVO – but status can be protested in connection with procurement
- ▶ SBA will not review all small mentor protégé joint ventures – but JV structure can be protested in connection with procurement
- ▶ Once a firm qualifies as other than small for the size standard for its primary NAICS code, it will not be eligible for any further contracting benefits from its mentor–protégé relationship
 - 13 CFR 125.9(d)(1)(iii)

JV agreement must contain:

- ▶ (2) Every joint venture agreement to perform a contract set aside or reserved for small business between a protege small business and its SBA-approved mentor authorized by § 125.9 or § 124.520 of this chapter must contain a provision:
 - ▶ (i) Setting forth the purpose of the joint venture;
 - ▶ (ii) Designating a small business as the managing venturer of the joint venture, and an employee of the small business managing venturer as the project manager responsible for performance of the contract. The individual identified as the project manager of the joint venture need not be an employee of the small business at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the small business if the joint venture is the successful offeror. The individual identified as the project manager cannot be employed by the mentor and become an employee of the small business for purposes of performance under the joint venture;
 - ▶ (iii) Stating that with respect to a separate legal entity joint venture, the small business must own at least 51% of the joint venture entity;

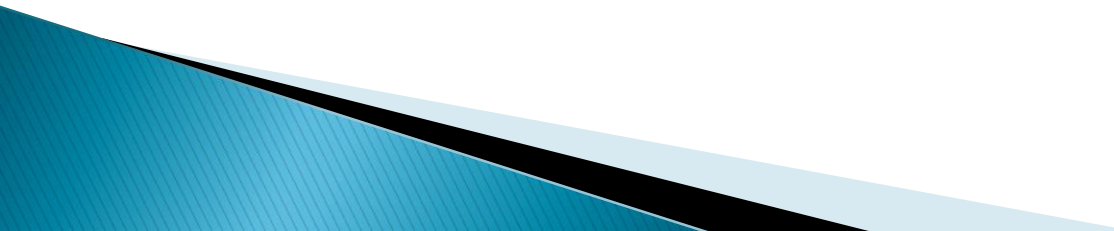
JV agreement must contain:

- ▶ (iv) Stating that each participant must receive profits from the joint venture commensurate with the work performed by the concern;
- ▶ (v) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on a contract set aside or reserved for small business will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;
- ▶ (vi) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available;

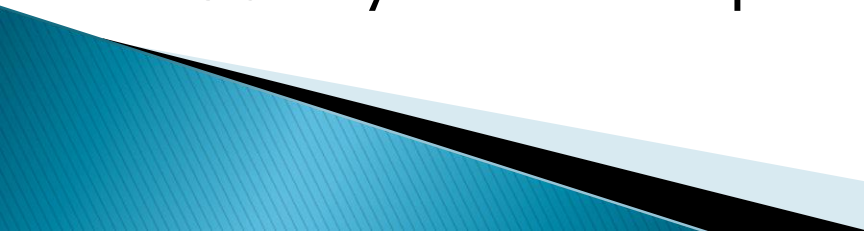
JV agreement must contain:

- ▶ (vii) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the small business partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the small business partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available;

JV agreement must contain:

- ▶ (viii) Obligating all parties to the joint venture to ensure performance of a contract set aside or reserved for small business and to complete performance despite the withdrawal of any member;
 - ▶ (ix) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the small business managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;
- 

JV agreement must contain:

- ▶ (x) Requiring that the final original records be retained by the small business managing venturer upon completion of any contract set aside or reserved for small business that was performed by the joint venture;
 - ▶ (xi) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and
 - ▶ (xii) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.
- 

Lower Tier Subk Final Rule

- ▶ 81 FR 94246 (12/23/16), Implements Section 1614 of NDAA of 2014, 15 USC 637(d)(16)

Where the prime contractor has an individual subcontracting plan, the prime contractor shall establish two sets of small business subcontracting goals, one goal for the first tier and one goal for lower tier subcontracts awarded by other than small subcontractors with individual subcontracting plans.

Under individual subcontracting plans the prime contractor shall receive credit for small business concerns performing as first tier subcontractors (first tier goal) and subcontractors at any tier pursuant to the subcontracting plans required under paragraph (c) of this section in an amount equal to the dollar value of work awarded to such small business concerns (lower tier goal).


Other-than-small, lower tier subcontractors must have their own individual subcontracting plans if the subcontract is at or above the subcontracting plan threshold, and are required to make a good faith effort to meet their subcontracting plan goals. The prime contractor and any subcontractor with a subcontracting plan are responsible for reporting on subcontracting performance under their contracts or subcontracts at their first tier.

Lower Tier Subk Final Rule

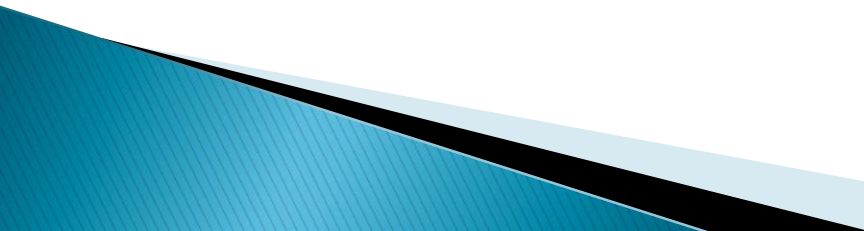
The prime contractor's performance under its individual subcontracting plan will be calculated using its own reporting at the first tier for its first tier goal and its subcontractors' first tier reports under their plans for the lower tier subcontracting goals.

The prime contractor's performance under the individual subcontracting plan must be evaluated based on its combined performance under the first tier and lower tier goal.

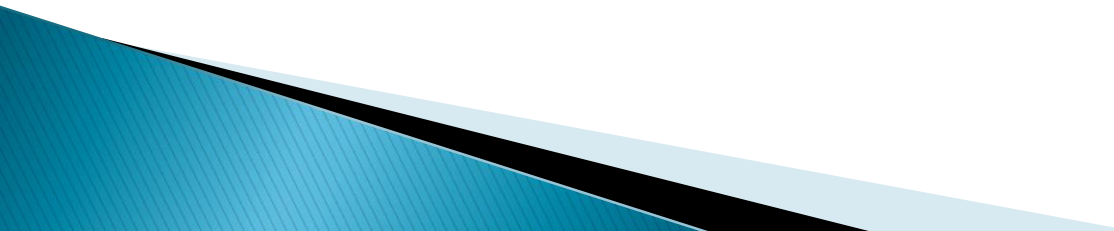
Other-than-small prime contractors and subcontractors with subcontracting plans shall report on their subcontracting performance on the Summary Subcontracting report (SSR) at their first tier only.



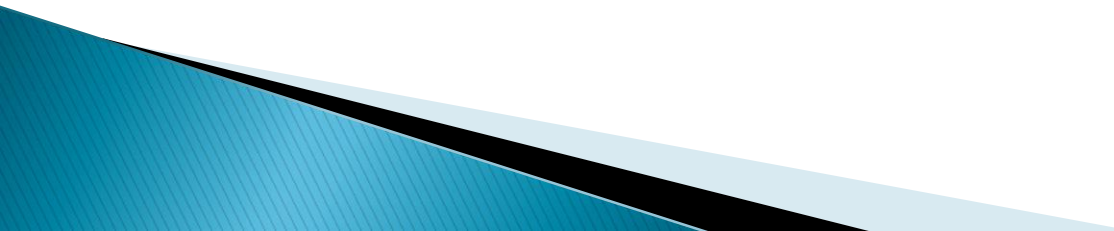
Lower Tier Subk Final Rule

- ▶ The contractor must assign to each subcontract, and to each solicitation, if a solicitation is utilized, the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract (see § 121.410 of this chapter).
 - ▶ A formal solicitation is not required for each subcontract, but the contractor must provide some form of written notice of the NAICS code and size standard assigned to potential offerors prior to acceptance and award of the subcontract.
 - ▶ The prime contractor (or subcontractor) may rely on a subcontractor's electronic representations and certifications, if the solicitation for the subcontract contains a clause which provides that the subcontractor verifies by submission of the offer that the size or socioeconomic representations and certifications are current, accurate and complete as of the date of the offer for the subcontract.
 - ▶ Electronic submission may include any method acceptable to the prime contractor (or subcontractor) including, but not limited to, size or socioeconomic representations and certifications made in SAM (or any successor system).
 - ▶ A prime contractor (or subcontractor) may not require the use of SAM (or any successor system) for purposes of representing size or socioeconomic status in connection with a subcontract
- 

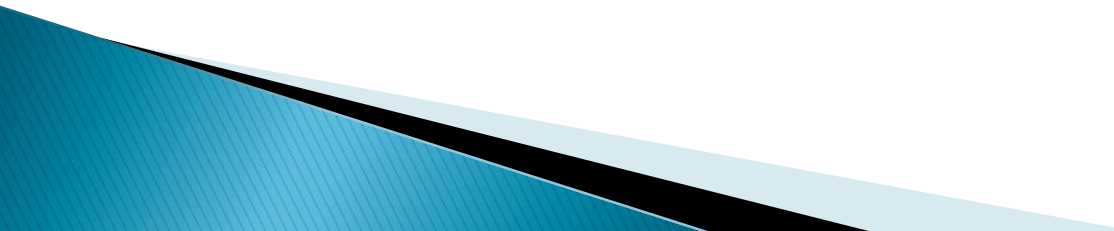
Lower Tier Subk Final Rule

- ▶ Except when subcontracting for commercial items, the prime contractor must require all subcontractors (except small business concerns) who receive subcontracts in excess of \$1,500,000 in the case of a subcontract for the construction of any public facility, or in excess of \$700,000 in the case of all other subcontracts, and which offer further subcontracting possibilities, to adopt a subcontracting plan of their own consistent with this section, and must ensure at a minimum that all subcontractors required to maintain subcontracting plans pursuant to this paragraph will review and approve subcontracting plans submitted by their subcontractors; monitor their subcontractors' compliance with their approved subcontracting plans; ensure that subcontracting reports are submitted by their subcontractors when required; acknowledge receipt of their subcontractors' reports; compare the performance of their subcontractors to their subcontracting plans and goals; and discuss performance with their subcontractors when necessary to ensure their subcontractors make a good-faith effort to comply with their subcontracting plans
- 

Lower Tier Subk Final Rule

- ▶ The prime contractor must provide a written statement of the types of records it will maintain to demonstrate procedures which have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the subcontracting plan established in accordance with paragraph (c)(1)(x) of this section, including the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; the efforts to identify and award subcontracts to such small business concerns; and size or socioeconomic certifications or representations received in connection with each subcontract.
- 

WOSB Sole Source Authority

- ▶ Designated industries by NAICS code
 - ▶ CO does not have reasonable expectation of receiving offers from 2 or more WOSBs or EDWOSBs
 - ▶ Estimated price does not exceed \$4 million (\$6.5 million for manufacturing)
 - ▶ Award can be made at fair and reasonable price
 - ▶ 80 FR 55019 (September 14, 2015), effective date October 14, 2015; FAR Interim Final Rule effective December 31, 2015 (80 FR 81888)
- 

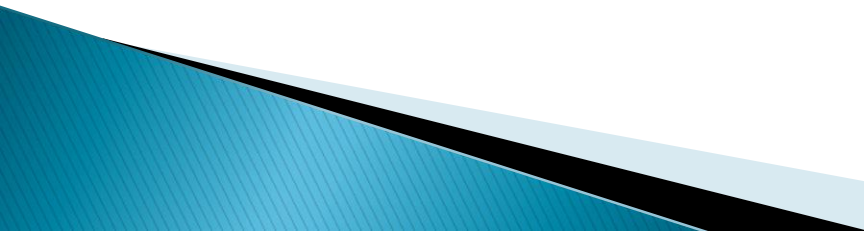
NDAA 2016, P.L. 114-92, 11/25/15

- ▶ 867 – Allows past performance of all team members (JV or subs) to be considered for bundled or consolidated contracts, or multiple award contracts above the substantial bundling threshold for the agency (DOD \$8 million, \$6 million NASA/GSA/DOE, \$2.5 million or more for all other agencies).
- ▶ Section 868 – SBA Scorecard
 - 50% prime goals
 - 50% subk goals, number of SBCs awarded contracts, number of SBCs awarded subks, other factors

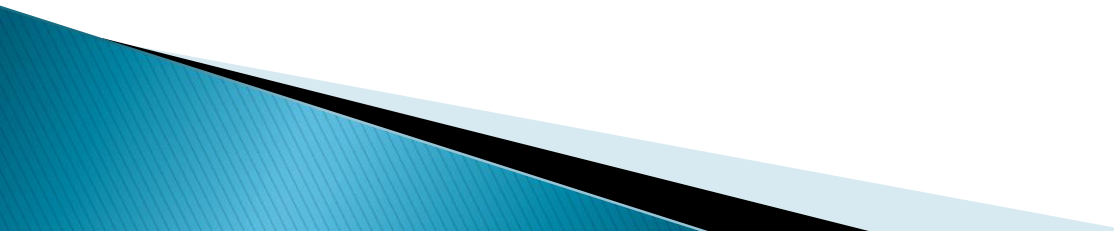
FAR Final Rule on Payment of Subcontractors

- ▶ (g) Past performance evaluations shall include an assessment of the contractor's—
 - ▶ (1) Performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219-9, Small Business Subcontracting Plan; and
 - ▶ (2) Reduced or untimely payments (as defined in 19.701), made to small business subcontractors, determined by the contracting officer to be unjustified. The contracting officer shall—
 - ▶ (i) Consider and evaluate a contractor's written explanation for a reduced or an untimely payment when determining whether the reduced or untimely payment is justified; and
 - ▶ (ii) Determine that a history of unjustified reduced or untimely payments has occurred when the contractor has reported three or more occasions of unjustified reduced or untimely payments under a single contract within a 12-month period (see 42.1503(h)(1)(vi) and the evaluation ratings in Table 42-2).
- ▶ The following payment or nonpayment situations are not considered to be unjustified:
 - ▶ (A) There is a contract dispute on performance.
 - ▶ (B) A partial payment is made for amounts not in dispute.
 - ▶ (C) A payment is reduced due to past overpayments.
 - ▶ (D) There is an administrative mistake.
 - ▶ (E) Late performance by the subcontractor leads to later payment by the prime contractor.
- ▶ 81 FR 93481 (December 20, 2016)

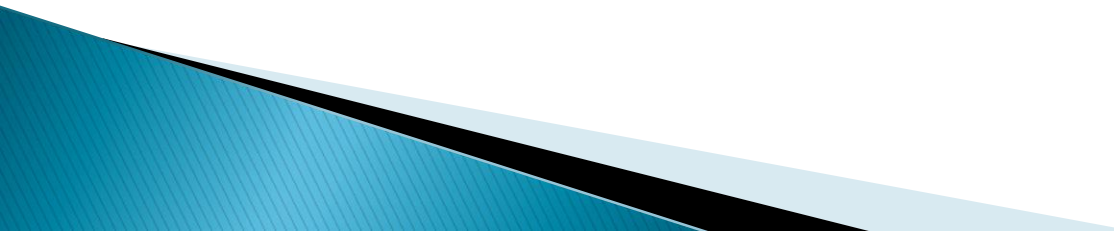
FAR Subcontracting Final Rule

- ▶ (1) Requiring prime contractors to make good faith efforts to utilize their proposed small business subcontractors during performance of a contract to the same degree the prime contractor relied on the small business in preparing and submitting its bid or proposal. To the extent a prime contractor is unable to make a good faith effort to utilize its small business subcontractors as described above, the prime contractor is required to explain, in writing, within 30 days of contract completion, to the contracting officer the reasons why it is unable to do so.
 - ▶ (2) Authorizing contracting officers to calculate subcontracting goals in terms of total contract dollars in addition to the required goals in terms of total subcontracted dollars.
 - ▶ 81 FR 45833 (July 14, 2016) effective November 1, 2016
- 

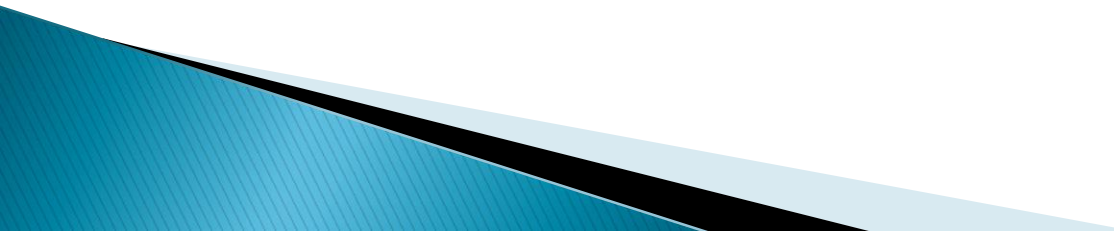
FAR Subcontracting Final Rule

- ▶ (3) Providing contracting officers with the discretion to require a subcontracting plan in instances where a small business rerepresents its size as an other than small business.
 - ▶ (4) Requiring subcontracting plans even for modifications under the subcontracting plan threshold if said modifications would cause the contract to exceed the plan threshold.
 - ▶ (5) Requiring prime contractors to assign North American Industry Classification System (NAICS) codes to subcontracts.
- 

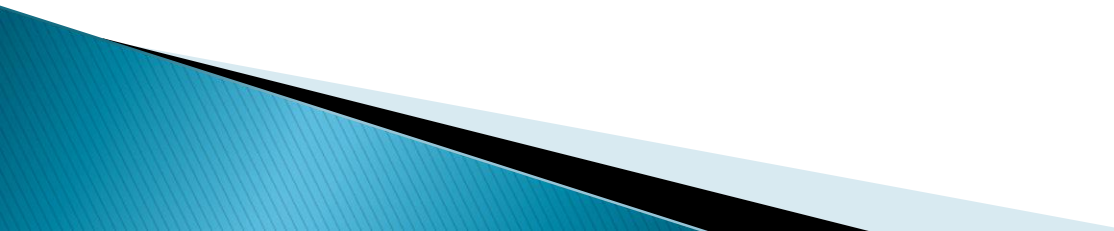
FAR Subcontracting Final Rule

- ▶ (6) Restricting prime contractors from prohibiting a subcontractor from discussing payment or utilization matters with the contracting officer.
 - ▶ (7) Requiring prime contractors to resubmit a corrected subcontracting report within 30 days of receiving the contracting officer's notice of report rejection.
 - ▶ (8) Requiring prime contractors to provide the socioeconomic status of the subcontractor in the notification to unsuccessful offerors for subcontracts.
- 

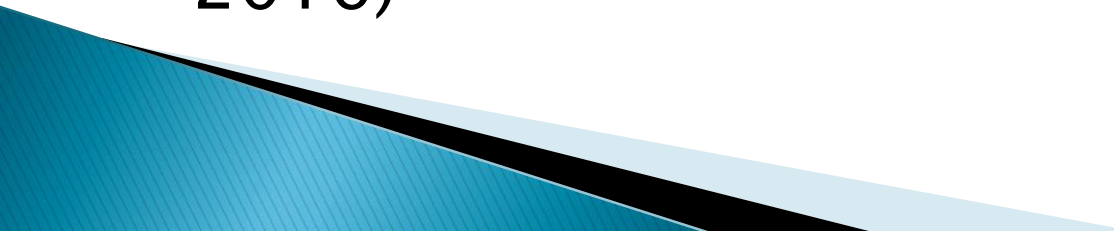
FAR Subcontracting Final Rule

- ▶ (9) Requiring prime contracts with subcontracting plans on task and delivery order contracts to report order level subcontracting information after November 2017.
 - ▶ (10) Funding agencies receiving small business subcontracting credit.
 - ▶ (11) On indefinite-delivery, indefinite-quantity contracts, the contracting officer may establish subcontracting goals at the order level (but not a new subcontracting plan).
- 

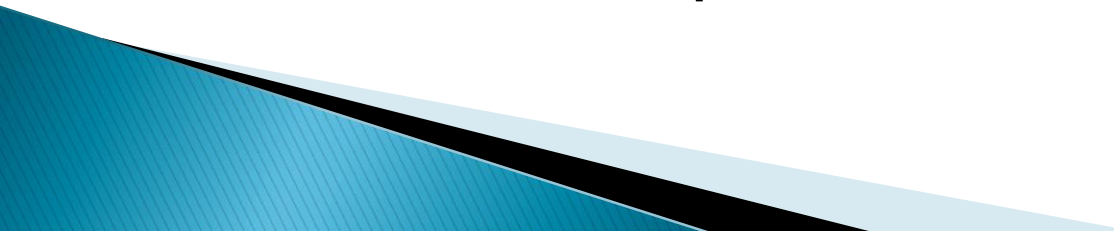
HUBZone Direct Final Rule

- ▶ Qualified Base Closure Area
 - ▶ Qualified Disaster Area
 - ▶ Native Hawaiian Organization
 - ▶ 81 FR 51312 (August 4, 2016), effective October 3, 2016
 - ▶ Implements Section 866 of the NDAA 2016, P.L. 114-92, 11/25
- 

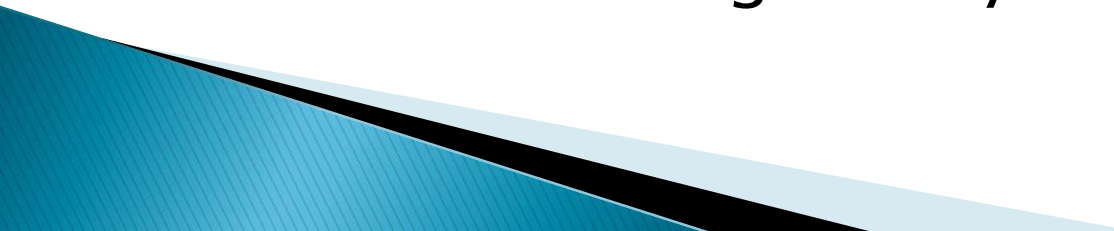
FAR Multiple Award Contracting

- ▶ Implements SBA Final Rule (78 FR 61114, October 2, 2013) implementing Section 1331 of the Jobs Act of 2010
 - ▶ Interim FAR rule (76 FR 68032, Nov. 2, 2011)
 - ▶ Reserves, partial set-asides and order set-asides under multiple award contracts
 - ▶ Proposed Rule 81 FR 88072 (December 6, 2016)
- 

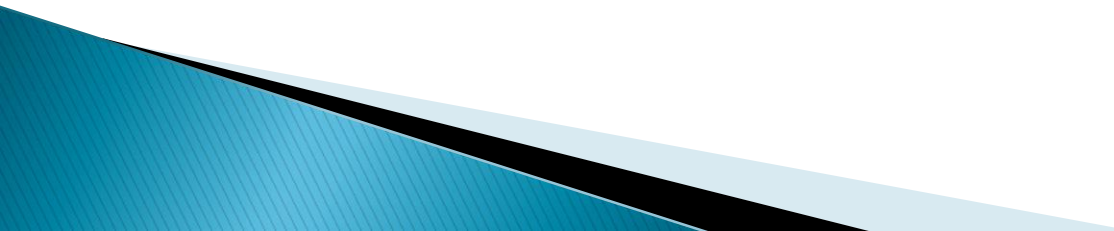
NDAA 2017

- ▶ 826 – Extends Comprehensive Subcontracting Plan until December 31, 2027
 - ▶ 1802 – GSA must issue small business goaling report without exclusions
 - ▶ 1811 – PCRs shall not review DoD acquisitions, and not considered for goaling, if Foreign Military Sale, Humanitarian, Contingency, Status of Forces Agreement or awarded AND performed outside U.S.
- 

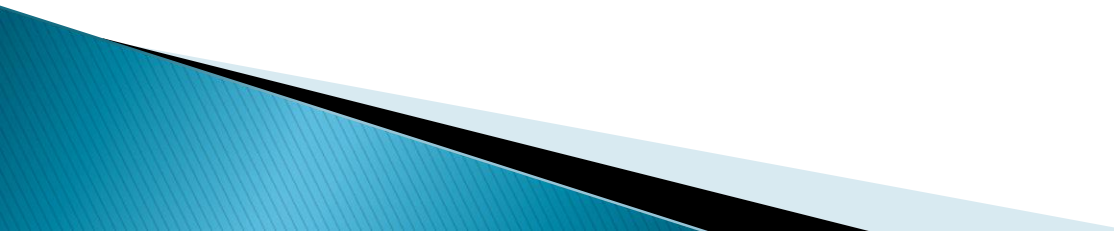
NDAA 2017

- ▶ 1812 – OSDDBU responsible for reviewing credit card acquisitions in FPDS between \$3,500 and \$150,000
 - ▶ 1813 – OSDDBU, Mentors, SBA, PCRs shall provide resources on compliance with regulations
 - ▶ 1814 – SBA shall provide DAU, FAI, SBDCs, PTACs list of regulatory changes
- 

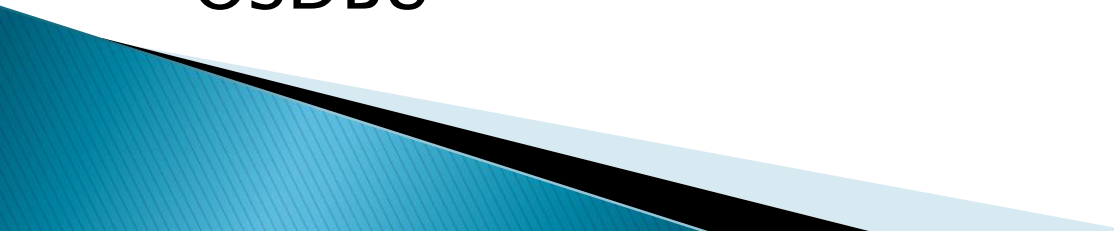
NDAA 2017

- ▶ 1821 – Failure to file subcontracting reports may be material breach and considered in past performance evaluation
 - ▶ OSDDBU responsible for reviewing Subcontracting Plans
 - ▶ SBA will issue examples of good faith compliance with Subcontracting Plan
- 

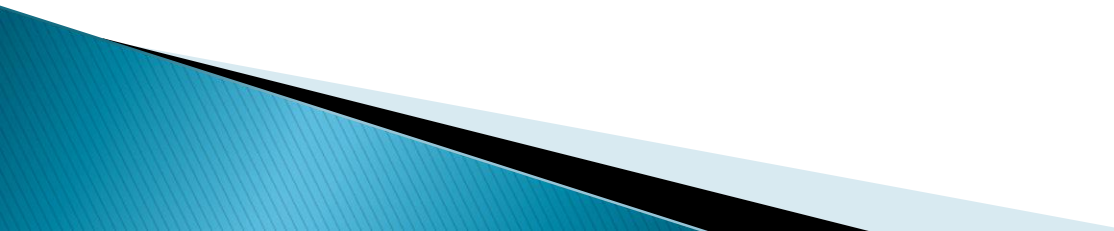
NDAA 2017

- ▶ 1822 – Pilot Program for Subcontractor to Obtain Past Performance ratings
 - Subcontractor does not have rating in CPARs, and is first tier subcontractor under subcontracting plan
 - Subcontractor applies with proposed rating
 - Submitted to OSDBU and Prime Contractor
 - If OSDBU and Prime agree, or one agrees, enter into CPARs
 - If OSDBU or Prime do not agree, or both do not respond, Subcontractor can submit rebuttal and neither favorable nor unfavorable rating is entered into CPARs
- 

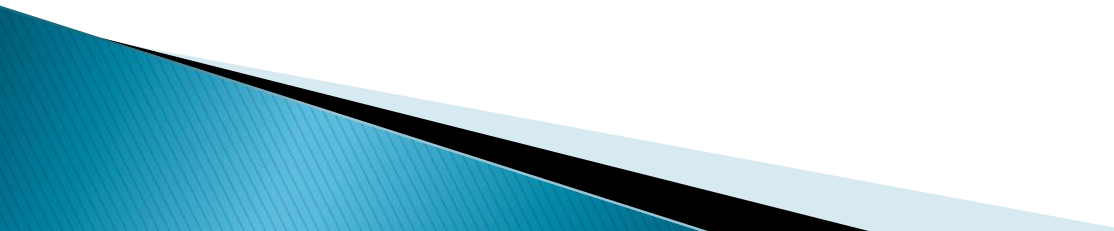
NDAA 2017

- ▶ 1822 – Subcontractor may use subcontract past performance as prime contract past performance
 - ▶ Pilot lasts 3 years from time first small business receives rating
 - ▶ GAO will issue report
 - ▶ Application to CMR, Other SBA Employee, or OSDBU
- 

NDAA 2017

- ▶ 1823 – DoD may request size determination for DoD Mentor Protégé, may not approve if SBA found Mentor Protégé affiliated
 - ▶ 1831 – Size Standard for Agriculture Enterprises; Subject to Rolling Review
 - ▶ 1832 – VA will use SBA definition for SDVO
 - ESOP and Surviving Spouse allowed
 - Appeals to SBA OHA
- 

NDAA 2017

- ▶ 1833 – Petitions for Reconsideration for previously established size standards may be filed within 30 days of final rule
 - ▶ 1834 – SBIR and STTR extended until 2022
 - ▶ 1835 – SBA and VA shall issue guidance
 - ▶ 851 – DOD report on major defense acquisition;
 - ▶ 890 – GAO Study on DoD contracts awarded to minority-owned and women-owned businesses
- 

Contact Information

- ▶ Kenneth Dodds
 - Director, Office of Policy, Planning & Liaison
 - 202-619-1766
 - kenneth.dodds@sba.gov
 - www.sba.gov/oppl
- ▶ Questions?