



U.S. Small Business
Administration



Small Business Regulation and Legislation Update

Kenneth Dodds

Director

Office of Policy, Planning & Liaison

Small Business Administration

November 6, 2018

Pending FAR Rules

- **FAR Case 2016-11, Revision of Limitations on Subcontracting, Proposed Rule**
- **FAR Case 2018-20, Construction Contract Administration**
- **FAR Case 2017-19, Policy on Joint Ventures, Proposed Rule**
- **FAR Case 2014-002, Set Asides under Multiple Award Contracts, Final Rule**
- **FAR Case 2016-002, Applicability of Small Business Regulations Outside the United States, Proposed Rule**
- **FAR Case 2018-003, Credit for Lower-Tier Small Business Subcontracting Proposed Rule**

Pending SBA Rules

- **RIN 3245-AG86, National Defense Authorization Acts of 2016 and 2017, RISE After Disaster Act of 2015, and Other Small Business Government Contracting Amendments, Proposed Rule**
 - 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
- **RIN 3245-AG75, Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business -Certification Proposed Rule**
- **RIN 3245-AG38, Small Business HUBZone Program and Government Contracting Programs, Proposed Rule**
- **RIN 3245-AG94, Consolidation of Mentor Protégé Programs and Other Government Contracting Amendments, Proposed Rule**

SDVO Final Rules

- **SDV Ownership and Control for use by SBA and VA (83 FR 48908)**
- **VA protests and VA certification eligibility appeals to the OHA (83 FR 13626)**
- **Effective October 1, 2018**
- **Implements Section 1832 of the NDAA 2017**

SBA Direct Final Rule

- **83 FR 12849**
- **March 26, 2018**
- **Effective May 25, 2018 unless significant adverse comment is received by April 25, 2018**

SBA Direct Final Rule

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

NDAA 2018

- **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

- **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

- **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

- **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.**

NDAAs 2018

- **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**

NDAA 2018 – Section 1701

- **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 Report, Volume 1 of 3 (January 2018) Section 6

- **While 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. The panel 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**

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
- B-416035, May 18, 2018

American Relocation Connections, LLC v. U.S.

- **FSS RFQ initially set aside for small business**
- **Agency changed NAICS from prior procurement, lowering size standard from \$27.5 million to \$7.5 million**
- **The small business set aside rules do not apply to the FSS**
- **Agency conducted sufficient market research to determine the type and extent of any potential small business participation**
- **2 of 3 identified small businesses would not be expected to submit an offer, one would not be on contract the other would recertify as large**
- **NAICS appeal must be filed within 10 days of issuance of solicitation**
- **Denied, 2018 U.S. Claims 1380, October 22, 2018**

AeroSage, LLC

- Agency awarding 10 CLINs for fuel
- Protest that CLIN should be set aside for SBCs
- Section 15(j) below 150k reserved for SBCs
- Non-manufacturer rule does not apply to small business set-asides below 150k
- Agency argued value applied to entire contract, not individual CLINs for set aside analysis, but argued otherwise for bundling claim
- Each CLIN should be subject to set-aside analysis where awarded separately
- Agency conducted set aside analysis for entire acquisition, not CLINs
- Sustained in part, B-416381, August 23, 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**

NDAAs 2019

- **Section 821 – DOD MPT is \$10,000**
- **Section 823 – Inclusion of Best Available Information Regarding Past Performance of Subcontractors and Joint Venture Partners**
 - DOD required performance evaluations as part of a government wide reporting tool for first tier subcontractors and joint venture partners on construction and architect-engineering contracts
- **Section 838 – Modification to Procurements through e-Commerce Portal**
 - Satisfies full and open competition – multiple portal contractors, must safeguard data and not use data except as necessary
- **Section 839 – FAR Council review of exemptions from laws for commercial products & services**

NDA 2019

- **Section 852 - Prompt Payment of Small Business Contractors** – DOD pay small and large primes with small business subcontractors within 15 days to the fullest extent permitted by law
- **Section 855 - Construction Contract Administration** – Solicitation should have information on Agency's policies on timely definitization of request for equitable adjustment and information about Agency's past performance in definitizing requests for equitable adjustment
- **Section - 861 Puerto Rico Businesses** – Double credit for next four fiscal years for award to Puerto Rico Business; priority for surplus property transfers; mentor training costs applied to subcontracting plan

NDAA 2019

- **Section 851 – Department of Defense Small Business Strategy**
- **Section 854 – SBIR and STTR Extension of Pilot Programs**
- **Section – 858 – Funding for PTACs**
- **Section 859 – Authorization of Payment of Certain PTAC Costs**
- **Section 860 – Commercialization Assistance Pilot Program**

Contact Information

➤ **Kenneth Dodds**

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

➤ **Questions?**