

Laws / Regulations Impacting SB

MPCSC Meeting

September 20, 2017



President's Policy Actions

- Executive Orders
 - Reducing Regulation & Controlling Regulatory Costs
 - Buy American / Hire American

Watch Item:

- Buy American Improvement Act of 2017 – H.R. 904
 - Agencies to publicly disclose “Buy American” waivers in the Fed Reg and explain justification
 - Creates a consolidated annual report
 - » amount and \$ value of foreign purchases and # of waivers granted

Significant Enacted/Proposed Legislation

NDAAs for FY 2018

- **Sec 1701 – Improving Transparency and Clarity for SBs**
 - Agencies must report to Congress, SBs that no longer qualify as “small” post USG award
 - # of firms affected, USG awards \$, if SB set-aside impacted, etc
- **Sec 1741 – Modification to SB Subcontractor Past Performance Pilot:**
 - Modifies the pilot to include the use of contract performance for US allies (including NATO countries) in the rating of a SB sub-contractor’s past performance.

NOTE: the change does not affect the as yet undefined role that prime contractors have with “sponsoring” a SB sub-contractor past performance rating.
- **Sec. 860 – Applicability of Inflation Adjustments**
 - Prime contract & subcontract thresholds to be modified on same date
 - Ensures uniformity in applicable threshold for SB subcontracting plan at prime contract and **all** subcontract levels

Continuing Resolution (C.R.) FY 2018

- Sec. 101. Provides for the continuation of appropriations at the levels of, and under the terms and conditions of, the fiscal year 2017 Acts, reduced by 0.6791 percent.
- Sec. 102. Prohibits DOD from starting new programs, entering into multi-year contracts, or increasing production rates.
- Sec. 103. Specifies that funds in section 101 shall be available to the extent and in the manner that would be provided in the pertinent appropriations Act.
- Sec. 104. Provides for neither new starts nor resumption of activities for which funds were not available during 2017.
- Sec. 105. Continues all authorities, requirements, and limitations from 2017 appropriations Acts through the date in section 106. Allows for valid obligations and expenditures during the period of the Continuing Resolution (CR).
- Sec. 106. Continues appropriations through December 8, 2017, or the enactment of the pertinent appropriations Act.

Assuring Contracting Equity Act of 2017 (H.R.2362)

- Increases prime SB contracting goals in 15 USC 644(g)(1)(A) 23 to 25%
- Increases USG-wide socioeconomic goals:
 - Service Disabled Veteran Owned: 3 to 6%
 - Hubzone: 3 to 6%
 - Socially & economically disadvantaged: 5 to 10%
 - Women-Owned: 5 to 10%
- Limits “double-dipping” crediting by federal agencies to 2 socio-economic categories

USG SB Contracting Goals

SBA Administrator to Submit Congressional Report on Utilization of SB – Federal Contracts (S. 1038)

- Requires the SBA to
 - develop a report on SB participation in multiple award contracts with federal agencies , i.e.
 - whether awards are being reserved for 1 or more SB categories; and
 - whether each SB category is being given the opportunity to perform on multiple award contracts
 - determine whether current performance requirements for those contracts are feasible and appropriate for SB.

Significant Regulatory Developments

SBA HUBZone Program

[NDAA for FY16 - P.L. 114-92]

- Expands designated areas, qualification period, and/or qualifying criteria for:
 - Native Hawaiian Organizations (NHO)
 - **Major Disaster Areas - 5 years**
 - Catastrophic Incident Areas - 10 years
 - Base Closure Areas (BRAC) - 8 years
 - Native Hawaiian Organizations (NHO)

Regulatory Compliance Challenges

- SBA Rule - Lower Tier Credit [FY14 NDAA - Sec1614]
 - FAR case not yet presented to FAR Council to address prime contractor credit for lower tier subcontracting
- Small Business Subcontracting Improvement [FAR Case 2014]

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Backup

NDAA for FY 2017

- U.S. SBA to Improve Education on SB Regulations
- Uniformity of Service-Disabled Veteran Definition for VA Program and SBA Program

SBA Mentor Protégé Program

- SBA Mentor-Protégé Program – *final*
 - Government-wide mentor-protégé program for **ALL** SBs consistent with “criteria” under the SBA's mentor-protégé program for Participants in SBA's 8(a) Business Development (BD) program

Note: *Previously only certain SB subcategories qualified for certain USG mentor-protégé programs.*