

Laws / Regulations Impacting SB

MPCSC Offsite Meeting

November 6, 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.

House Passed following bills:

- H.R. 2763, "Small Business Innovation Research and Small Business Technology Transfer Improvements Act of 2017."
 - the SBA's annual report on the SBIR and STTR programs to be submitted by December 31, and
 - each federal agency required to establish an SBIR program to submit its annual report on such program by March 30.
 - requires (current law authorizes) DOD, for any contract under the Commercial Readiness Program with a value of at least \$100 million, to:
 - establish goals for the transition of Phase III technologies in subcontracting plans, and
 - require a prime contractor to report the number and dollar amount of contacts entered into for Phase III SBIR or STTR projects.
 - authorizes all agencies participating in the SBIR program, during FY2018-FY2022, to provide SBIR Phase II awards for a project to a small business concern without regard to whether such concern was provided a Phase I award for such project.

House Passed following bills:

- changes the temporary pilot program that a covered agency may establish for the allocation of SBIR and STTR program funds for awards for technology development, testing, evaluation, and commercialization assistance for SBIR and STTR phase II technologies, or to support the progress of research, research and development, and commercialization conducted under such programs to phase III, to a permanent Civilian Agency Commercialization Readiness Program.
- The bill extends until September 30, 2022, the deadline until which the SBA shall allow each agency required to conduct an SBIR program to use not more than 3% of program funds for administrative, oversight, and contract processing costs.

House Passed following bills:

- H.R. 2105, "NIST Small Business Cybersecurity Act of 2017."
 - amends the National Institute of Standards and Technology Act to require the National Institute of Standards and Technology (NIST) to consider small businesses when it facilitates and supports the development of voluntary, consensus-based, industry-led guidelines and procedures to cost-effectively reduce cyber risks to critical infrastructure.
 - NIST must consult with other federal agencies to disseminate, and publish on its website, standard and method resources that small business may use voluntarily to help identify, assess, manage, and reduce their cybersecurity risks.
 - The resources must: (1) include case studies of practical application, (2) be based on international standards to the extent possible, (3) be able to vary with the nature and size of the implementing small business and the sensitivity of the data collected or stored on the information systems, (4) be capable of promoting awareness of third-party stakeholder relationships to assist small businesses in mitigating common cybersecurity risks, and (5) be consistent with the national cybersecurity awareness and education program under the Cybersecurity Enhancement Act of 2014.

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 2014-003]

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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.*