

Small Business Regulation and Legislation Update

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Federal Government FY 2015

- SB 23 % Goal 25.7462%
 - 3rd Consecutive year
- SDB 5% Goal 10.0570%
 - Highest Ever
- WOSB 5% Goal 5.0546%
 - First Time Ever Met
- SDVO 3% Goal 3.9263%
 - Highest Ever
- HUBZone 3% Goal 1.8230%

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
- Sealift, Inc., B-409001, Jan. 6, 2014

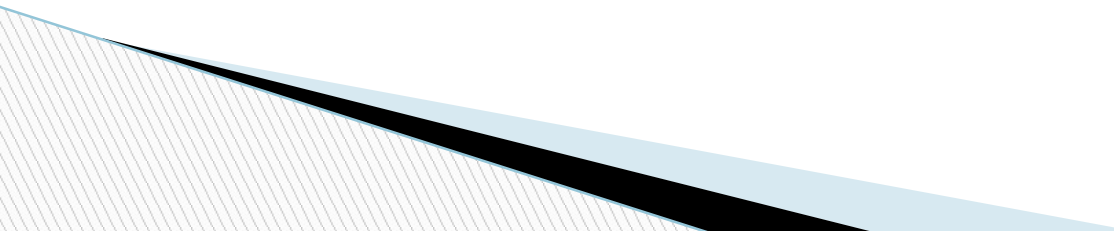
NDAA 2013 Proposed Rule

- 79 FR 77955 (Dec. 29, 2014)
- Comment period closed May 6, 2015
- Combined Supplies/Services – NAICS code will dictate applicable performance requirements
- Only work performed by the subcontractor will count
 - work that the subcontractor subcontracts will count toward the subcontract amount that cannot be exceeded

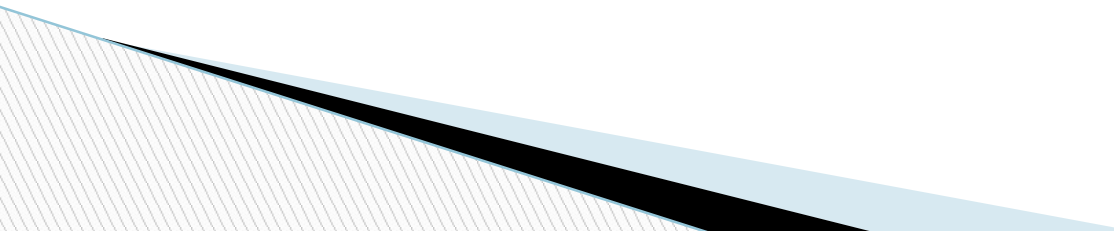
NDAA 2013 Proposed Rule

- Joint Venture – Any JV will be considered small as long as each member qualifies as small under size standard
 - but excessive JV between two firms can result in affiliation
- Rebuttable presumption of affiliation among family members, firms which derive 70% of revenue from another firm

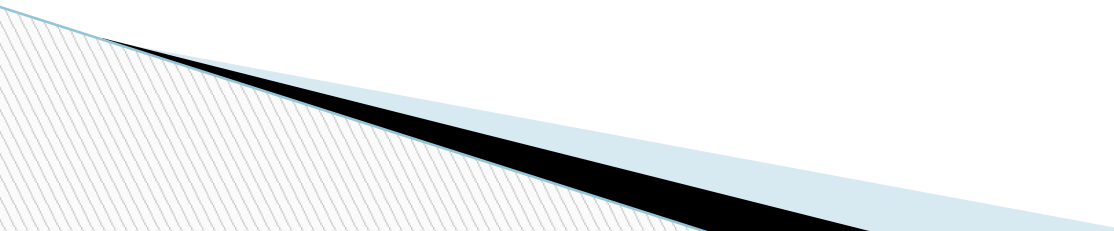
NDAAs 2013 Proposed Rule

- LOS and NMR do not apply to small business set asides below \$150,000
 - CO must request waiver of the NMR prior to posting solicitation, and must notify potential offerors of applicable waivers of the NMR
 - Recertification required where acquisition occurs after offer but prior to award
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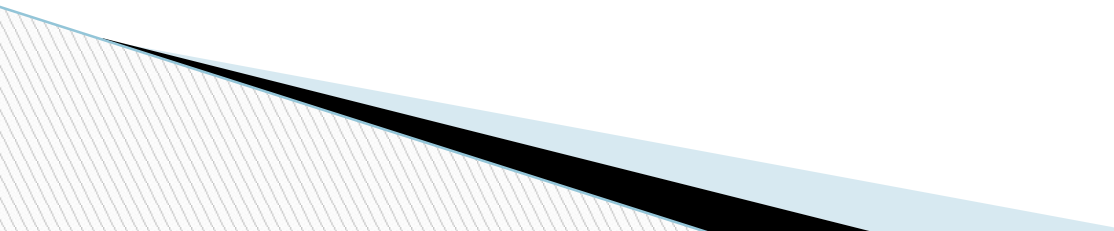
NDAA 2013 Proposed Rule

- (d) Waivers for the purchase of software. (1) SBA may grant an individual waiver for the procurement of a software item 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, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.
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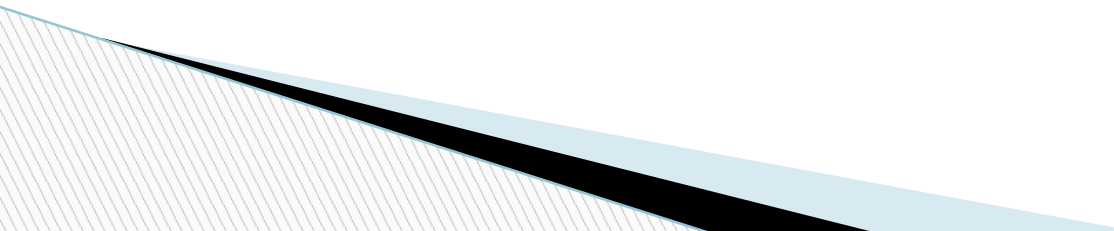
NDAAs 2013 Proposed Rule

- (2) If the value of services provided related to the purchase of a supply item that meets the requirements of paragraph (a)(1) of this section exceed 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.
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NDAA 2013 Proposed Rule

- (3) 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.
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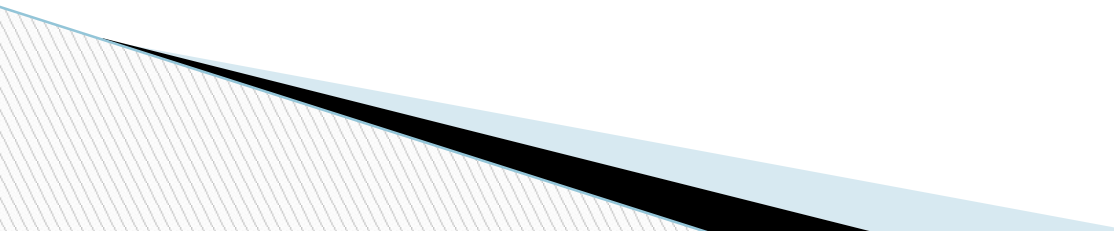
Information Value Added Technology Reseller

- 81 FR 4436 (January 26, 2016)
 - NAICS 541519, Footnote 18
 - 150 employees
 - At least 15% and not more than 50% value added services, as measured by the total contract price.
 - Manufacture the products or supply the product of a small business, unless SBA has issued a waiver
 - Less than 15%, classify under manufacturing
 - More than 50%, classify under service
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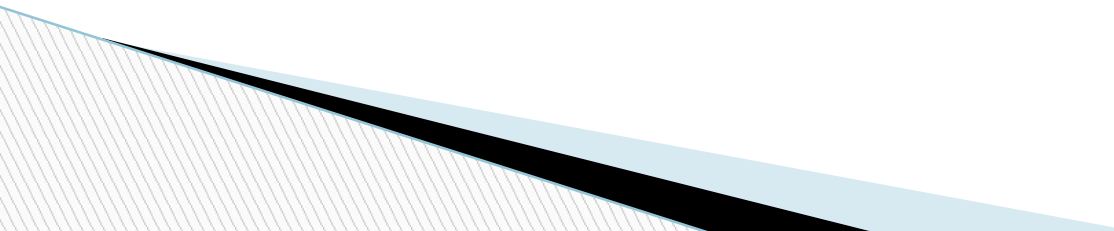
Mentor Protégé

- SBA has the authority to establish program for all small business concerns, “shall be identical” to 8(a) mentor protégé program, except to the extent necessary
 - 15 U.S.C. 657r
- SBA has the authority to review and approve small business mentor protégé programs of other agencies
 - Within one year of final regulations
 - Does not include DoD

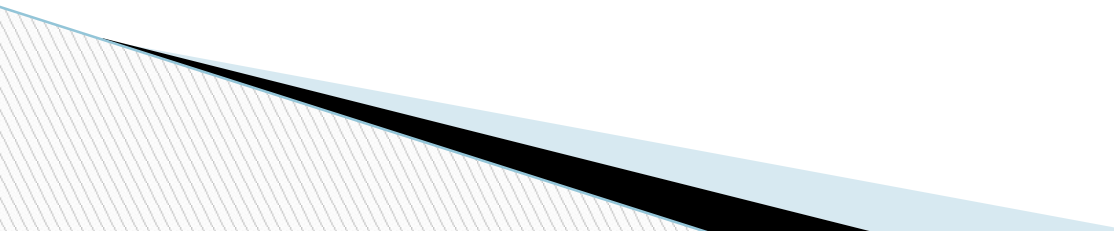
Mentor Protégé Proposed Rule

- Proposed Rule 80 FR 6618 (February 5, 2015), comment period closed May 6, 2015
 - JV must be in writing
 - JV may not be populated (except with administrative personnel)
 - How do we know Protégé is performing required percentage of work?
 - Should all JVs be separate legal entities for tracking purposes?
 - HUBZone JV – consistent with other programs
 - JV certifications and performance of work reports
 - Application – Open Season?
 - Mentors – for profit?
 - How many proteges can a mentor? How many mentors can a protégé have?
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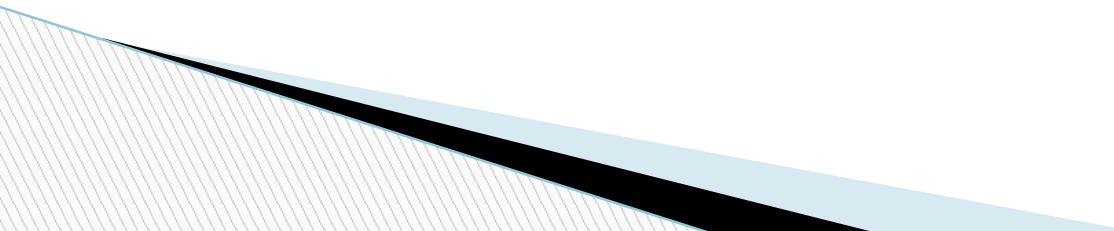
Mentor Protégé Proposed Rule

- Protégé – small for primary industry?
 - Current 8(a) program – half size standard, no 8(a) contract, developmental stage
 - More than one mentor?
 - SBA verifies small business or socioeconomic status
 - Written agreement approved by SBA – identify assistance
 - Lasts up to 3 years, with one 3 year extension
 - Annual reports – SBA may not approve continuation
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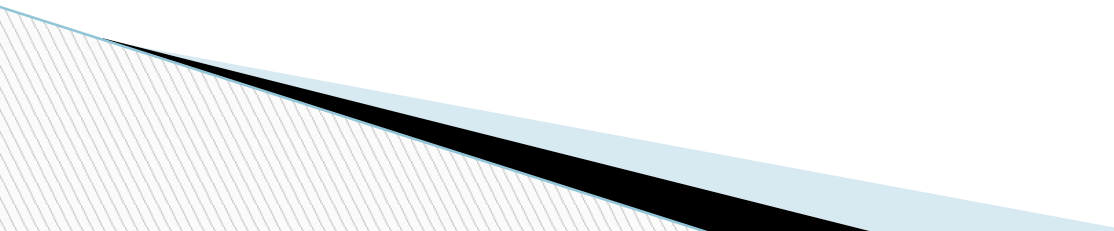
Mentor Protégé Proposed Rule

- Size of an approved JV may still be protested
 - Change in primary industry classification – entity owned firm may not own another Participant that at the time of application or in the previous 2 years participated in the 8(a) program under same primary NAICS code
 - Voluntary suspension – disaster, lapse in appropriation
 - Benefits reporting by entity owned concerns
 - Reverse Auctions – SBA rules apply (Rule of Two COC)
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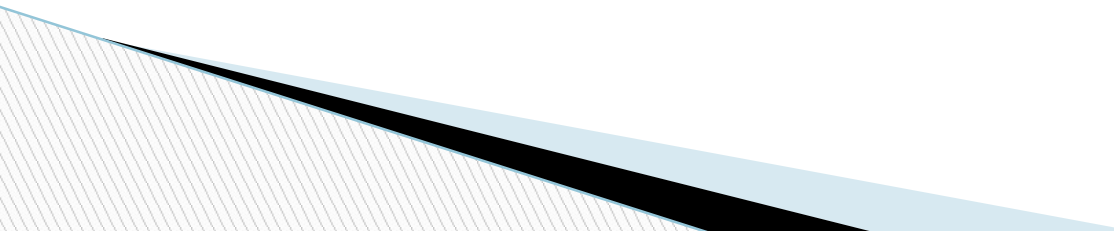
Credit for Lower Tier Subcontracting

- Proposed Rule 80 FR 60300 (10/06/15), Comment period closed 12/07/2015
 - Where the subcontracting goals pertain only to an individual subcontracting plan, the contractor may receive credit for small business concerns performing as first tier subcontractors or 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.
 - Implements Section 1614 of NDAA of 2014, 15 USC 637(d)(16)
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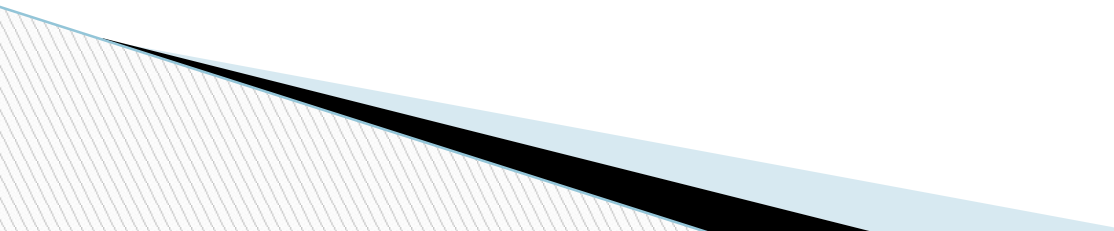
Lower Tier Subk Proposed Rule

- Prime contractors must incorporate the subcontracting plan goals of their lower tier subcontractors in their individual subcontracting plans.
 - 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 meet their subcontracting plan goals.
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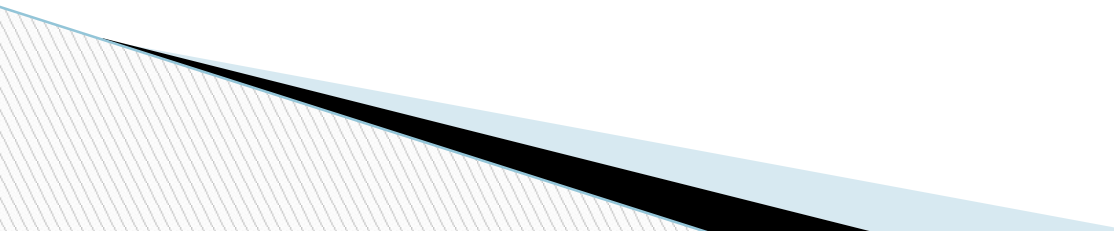
Lower Tier Subk Proposed Rule

- The actual subcontracting dollars are only reported once for the same award to avoid double counting the dollars, notwithstanding the fact that a small business subcontract may be reported under more than one subcontracting plan.
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Lower Tier Subk Proposed Rule

- Prime contractors may accept a subcontractor's electronic self-certification as to size, if the solicitation for the subcontract contains a clause which provides that the subcontractor verifies by submission of the offer that the size representations and certifications are accurate and complete. Electronic submission may include any method acceptable to the prime contractor including, but not limited to, size representations and certifications made in SAM (or any successor system).
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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)
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Section 825 of NDAA of 2015

- SBA must conduct new study of industries where WOSBs are underrepresented by January 2016 – Study sent to Congress
 - 81 Fed. Reg. 11340 (Effective March 3, 2016)
 - 80 EDWOSB NAICS
 - 365 WOSB NAICS
 - 445 Total 6-digit NAICS
- www.sba.gov/wosb

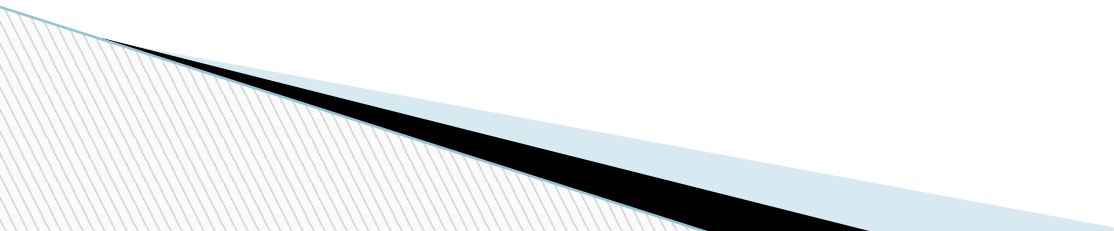
Section 825 of NDAA of 2015

- WOSB Certification – by Federal agency, a State government, SBA, or national certifying entity approved by SBA
 - Advance Notice of Proposed Rulemaking
 - 80 FR 78984 (December 18, 2015)
 - Comment Period closed February 16, 2016
 - www.regulations.gov RIN 3245-AG75

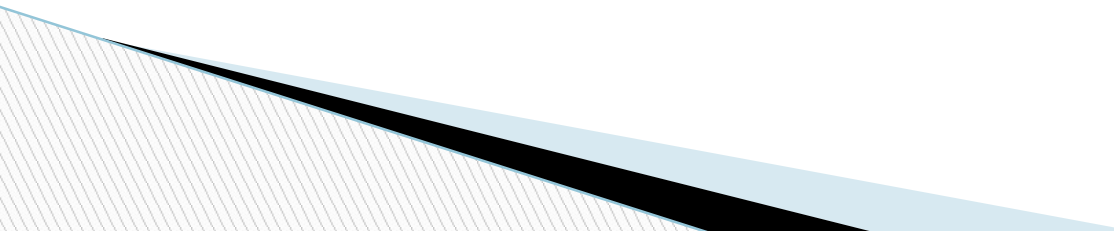
NDAA 2016, P.L. 114-92, 11/25/15

- Section 868 – SBA Scorecard
 - 50% prime goals
 - 50% subk goals, number of SBCs awarded contracts, number of SBCs awarded subks, other factors
- 870 – OSDDBU – notice from SBC that solicitation unduly restricts the ability of SBCs
- 871 – SES – Responsible for meeting subcontracting goals

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

- 864 – Non-manufacturer rule does not apply to contracts where principal purpose is acquisition of services or construction. Only applies where principal purpose is the acquisition of supplies.
 - 863 – Substantial bundling – notice must be published at least 7 days before solicitation
 - 867 – Allows past performance of all team members to be considered for bundled or consolidated contracts
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NDAA 2016, P.L. 114-92, 11/25/15

- 866 – HUBZone – Includes disaster areas, expands Base Closure Area, allows ownership by Native Hawaiian Organization
 - 869 – Authorizes petitions for reconsideration of industry size standards to SBA's Office of Hearings and Appeals
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Contact Information

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 - Questions?
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