

SBA Updates

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Small Business Administration

Government Contracting Area III



2013 National Defense Authorization Act (NDAA) regulations effective 30 June 2016

- Limitation on Subcontracting: Similarly situated small businesses do not count against the prime's percentage of work accomplished

It's not in the FAR yet, but GAO's decision in Sealift, Inc., B-409001 (Jan. 6, 2014) made it effective last January. Also SBA works with the CFR, not the FAR.



2013 National Defense Authorization Act (NDAA) regulations effective 30 June 2016

- Non-Manufacturer Rule: set-aside for small businesses, furnishes in the performance of the contract, the product of a small business manufacturer or producer .

Under the new rules, the SBA will not apply the nonmanufacturer rule, which is an exception to the limitation on subcontracting, to the mandatory small business set-aside contracts valued between \$3,500 and \$150,000.

2013 National Defense Authorization Act (NDAA) regulations effective 30 June 2016

- Affiliation based on identity of interest: Affiliation between family members, may be treated as one party with such interests aggregated.

New regulation codifies decisions by the SBA's Office of Hearings and Appeals (OHA) finding that certain familial relationships—married couples, parties to a civil union, parents and children, and siblings—give rise to a rebuttable presumption of affiliation.

The final rules also codify OHA decisions finding that there is a rebuttable presumption of affiliation if a firm derives 70% or more of its revenue from another firm over a three-year period.

2013 National Defense Authorization Act (NDAA) regulations effective 30 June 2016

- Joint Ventures: The parties to a joint venture are considered affiliates for all purposes, unless an exception exists or the joint venture receives no more than three contract awards over a two-year period.

New regulation: a joint venture of two or more concerns may submit an offer as a small business for any Federal procurement, subcontract, or sale, provided that each concern individually is small under the size standard corresponding to the NAICS code assigned to the contract without being deemed affiliated for size determination purposes.

2013 National Defense Authorization Act (NDAA) regulations effective 30 June 2016

- Calculation of Annual Receipts: Receipts means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships).

New rules clarify that passive income is to be included when calculating annual receipts for size purposes. IRS classifies passive income as rental activity or "trade or business activities in which you do not materially participate such as realized capital growth.

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- Mergers and Acquisitions: Within 30 days of an approved contract novation (or where contract novation is not required), a contractor must recertify its small business size status to the procuring agency, or inform the procuring agency that it is other than small.

The new rules provide that if a business submits an offer as a small business concern, and is the subject of a merger or acquisition after offer but prior to award, the offeror must recertify its size to the contracting officer prior to award.

Other changes

- S.2838: Proposal to change the length of a HUBZone redesignation status from 3 years to 7 years.
- Section 816 of NDAA 2016: Simplified Acquisition Threshold for special emergency authority changed from \$300K to \$750K in the US, \$1M to \$1.5M outside of the US.
- GSA FSS contracts: GSAR being amended to require transactional data reports; pilot program for select schedules and Special Item Numbers.

Questions?