

Laws / Regulations Impacting SB

MPCSC Offsite

June 6, 2018



Significant Enacted/Proposed Legislation

National Defense Authorization Act FY 2019

House - H.R. 5515

- **Subtitle E—Small Business Matters**
 - **Sec. 851. Department of Defense small business strategy.**
 - **Sec. 852. Prompt payments of small business contractors.**
 - Sec. 853. Increased participation in the Small Business Administration microloan program.
 - **Sec. 854. Amendments to Small Business Innovation Research Program and Small Business Technology Transfer Program.**
 - Sec. 855. Construction contract administration.
 - Sec. 856. Broadband and emerging information technology coordinator.
 - **Sec. 857. Amendments to the Small Business Investment Act of 1958.**
 - Sec. 858. Consolidated budget justification for the Department of Defense Small Business Innovation Research Program and Small Business Technology Transfer Program.
 - Sec. 859. Funding for procurement technical assistance program.
 - Sec. 860. Exemption of certain contracts from the periodic inflation adjustments to the acquisition-related dollar threshold.

Senate -

- TBD

Significant Regulatory Developments

Mentor Protégé Program-- DoD

- DoD Pilot Mentor-Protégé Program (MPP)– *final*
 - Program extended for 3 years (to Sept 2021)
 - New eligibility requirements
 - “Non-traditional defense contractors”
 - New reporting requirements for mentors
 - Assistance provided to protégé; success of assistance
 - Limitation on protégé firms participation in MMP
 - Only participate in 1 MPP agreement at a time
 - Only participate in 5 year period from date of 1st agreement

Mentor Protégé Program-- DoD

Continued...

- New elements to mentor agreements
- Amended requirements for business development
- Amended requirements for reimbursement fees

DFARS: Mentor Protégé Program-- DoD

- DoD Pilot Mentor-Protégé Program (MPP)– ***proposed***
 - Implement statutory modifications – [FY17 NDAA sec 1823 and 1813 (paragraph b)]
 - Revises definitions / requirements regarding “affiliation” between the mentor and their protégé
 - MPP Agreement prohibited if mentor is “affiliated” with the protégé
 - Requires addt’l assistance mentors will provide to protégés
 - Referral to Women's Business Centers
 - Providing understanding Federal contract regulations, including the FAR and DFARS

HUBZone, Mentor Protégé, and Other Gov't Contracting Amendments – SBA

- SBA Tribal consultation meetings
[Albuquerque, NM and Oklahoma City, OK– (June 7th & 8th)]
 - SB HUBZone / Gov't Contracting Programs (RIN 3245-AG38)
 - Comprehensive revision of Part 126 regulations to clarify current HUBZone program regulations, and implement various new procedures
 - Mentor Protégé Programs (MPP) (RIN 3245-AG94)
 - Consolidate “All Small MPP” and the 8(a) Business Development MPP Program into one program
 - Eliminate SBA's role in approving JV agreements for 8(a) competitive contracts
 - Allow mentors participating in SBA's mentor protégé programs to have more than three protégés at one time

HUBZone, Mentor Protégé, and Other Gov't Contracting Amendments – SBA

- continued...
 - 8(a) Business Development (BD) Program
 - Preparatory tutorial to help 8(a) BD program applicants determine whether they are ready to fully benefit from the program's business development assistance
 - Revision to SBA processes for approving management changes in entity-owned 8(a) firms

Simplified Acquisition Threshold (SAT)

- SAT increased to \$250,000 (from \$150,000) –

Class Deviation 2018-O0013, April 13, 2018

- Impacts FAR 52.219-9(d)(11)(iii) “If Not, Why Not” clause—
i.e.,

- Contractors must maintain records on each subcontract solicitation resulting in an award of more than **\$250,000** indicating whether SB, VOSB, SDVOSB, SDB, and WOSB concerns were solicited and, **if not, why not**
- **NOTE:** potential impact to the number of subcontracts subject to SBLO review for SB advocacy

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

NIST Special Publication 800-171

- NIST Special Publication 800-171 was developed by NIST to further its statutory responsibilities under the Federal Information Security Modernization Act (FISMA) of 2014, 44 U.S.C. 3541 et seq., Public Law (P.L.) 113-283. The publication is entitled “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations,” NIST SP 800-171 Revision 1, available at:
<http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-171r1.pdf>
- All Department of Defense (DoD) contractors that process, store or transmit Controlled Unclassified Information (CUI) must meet the Defense Federal Acquisition Regulation Supplement (DFARS) minimum security standards by December 31, 2017 or risk losing their DoD contracts.
- DFARS Safeguarding rules and clauses, for the basic safeguarding of contractor information systems that process, store or transmit Federal contract information. DFARS provides a set of “basic” security controls for contractor information systems upon which this information resides. These security controls must be implemented at both the contractor and subcontractor levels based on the information security guidance in NIST Special Publication 800-171 “Protecting Controlled Unclassified Information in Non-Federal Information Systems and Organizations.”

NIST Special Publication 800-171

- NIST SP 800-171 provides federal agencies with recommended requirements for protecting the confidentiality of controlled unclassified information (CUI):
 1. when the CUI is resident in nonfederal information systems and organizations;
 2. when the information systems where the CUI resides are not used or operated by contractors of federal agencies or other organizations on behalf of those agencies; and
 3. where there are no specific safeguarding requirements for protecting the confidentiality of CUI prescribed by the authorizing law, regulation, or government wide policy for the CUI category or subcategory listed in the CUI Registry.
- NIST SP 800-171 requirements apply to all components of nonfederal information systems and organizations that process, store, or transmit CUI, or provide security protection for such components. A nonfederal information system is a system that does not meet the criteria for a federal system. A federal system is an information system used or operated by an executive agency, by a contractor of an executive agency, or by another organization on behalf of an executive agency.

NIST Special Publication 800-171

- There are 14 families of security requirements for protecting the confidentiality of CUI in nonfederal information systems & organizations.
 - Access Control
 - Awareness & Training
 - Audit & Accountability
 - Configuration Management
 - Identification & Authentication
 - Incident Response
 - Maintenance
 - Media Protection
 - Personal Security
 - Physical Protection
 - Risk Assessment
 - Security Assessment
 - System & Communications Protection
 - System and Information Integrity

SBA Scorecard

Category	Goal	2013		2014		2015		2016		2017	
		\$(B)	%SB	\$(B)	%SB	\$(B)	%SB	\$(B)	%SB	\$(B)	%SB
Small Business	23%	\$83.1	23.4%	\$91.7	24.9%	\$90.7	25.7%	\$99.7	24.4%	\$105.7	23.8%
Small Disadvantaged Business	5%	\$30.6	8.6%	\$34.7	9.5%	\$35.4	10.1%	\$39.1	9.4%	\$40.2	9.1%
Service Disabled Veteran Owned Small Business	3%	\$12.0	3.4%	\$13.5	3.7%	\$13.8	3.9%	\$16.3	4.0%	\$17.9	4.1%
Women Owned Small Business	5%	\$15.4	4.3%	\$17.2	4.7%	\$17.8	5.1%	\$19.7	4.8%	\$20.8	4.7%
HUBZone	3%	\$6.2	1.8%	\$6.7	1.8%	\$6.4	1.8%	\$6.9	1.7%	\$7.3	1.7%

- Federal Gov't:
 - Met SB contracting goal for 5th consecutive year!
 - Exceeded SDB and SDVOSB goals