



U.S. Small Business  
Administration

# Pending FAR Rules

- Similarly Situated Entities/Limitations on Subcontracting/Non-Manufacturer Rule Proposed Rule
- Title: Revision of Limitations on Subcontracting
  - FAR Case 2016-011
- Synopsis: Implements SBA's final rule (81 FR 34243) for section 1651 of the NDAA for FY 2013 (Pub. L. 112-239)
  - Revised the limitations on subcontracting and the nonmanufacturer rule.
  - Implements SBA's regulatory clarifications concerning application of the limitations on subcontracting, nonmanufacturer rule, and size determination of joint ventures.
- Status: 09/25/2018, Proposed FAR rule to FARSEC for preparation of FR notice.

# Pending FAR Rules

- Joint Venture Proposed Rule
- Title: Policy on Joint Ventures
  - FAR Case 2017-019
- Synopsis:
  - Implements regulatory changes regarding joint ventures made by the Small Business Administration (SBA) in their final rule published in the Federal Register on July 25, 2016 (81 FR 48558).
  - Clarifies that 8(a) joint ventures are not "certified" in the 8(a) Program and that 8(a) joint venture agreements must be approved by SBA prior to award of an 8(a) contract.
- Status: As of 03/20/2018, DAR staff notified FAR staff that DARC agreed to draft proposed FAR rule. Awaiting CAAC concurrence.

# Pending FAR Rules

- Multiple Award Contract Final Rule
- Title: Set-Asides Under Multiple- Award Contracts
  - FAR Case 2014-002
- Synopsis: Implements SBA's final rule (78 FR 61114) for sections 1311 and 1331 of the Small Business Jobs Act of 2010 (Pub. L. 111-240), which provides Government wide policy for partial set-asides and reserves, and setting aside orders for small business concerns under multiple-award contracts.
- Status: 09/12/2018, CAAC approved draft final FAR rule. DAR and FAR staff resolving draft final FAR rule open issues.

# Pending FAR Rules

- FAR Part 19 and Contracts Awarded and Performed Outside the U.S. Proposed Rule
- Title: Applicability of Small Business Regulations Outside the United States
  - FAR Case 2016-002
- Synopsis: Considers applicability of small business regulations to contracts performed outside the United States.
- Status: 08/31/2018, FAR staff notified DAR staff of CAAC differences from DARC suggested changes. DAR and FAR staff resolving draft proposed FAR rule open issues.

# Pending FAR Rules

- Lower Tier Subcontracting Proposed Rule
- Title: Lower Tier Subcontracting Proposed Rule
  - FAR Case 2018-003
- Synopsis: Implements section 1614 of the NDAA for FY 2014
  - implemented in the SBA regulations on 12/23/2016 (81 FR 94246)
  - allows prime contractors to receive credit toward goals in their small business subcontracting plans for subcontracts awarded by their subcontractors.
- Status: 09/14/2018, DAR staff notified FAR staff that DARC agreed to draft proposed FAR rule. Awaiting CAAC concurrence.

# Pending FAR Rules

- Title: Increased Micro-Purchase and Simplified Acquisition Thresholds
  - FAR Case 2018-004
- Synopsis: Implements sections 805, 806, and 1702(a) of the NDAA for FY 2018. Section 805 increases the MPT to \$10,000 and limits use of convenience checks to not more than 1/2 the MPT. Section 805 increases the SAT to \$250,000. Section 1702(a) amends section 15(j)(1) of the Small Business Act (15 U.S.C. 644(j)(1) to replace specific dollar thresholds with the terms "micro-purchase threshold" and "simplified acquisition threshold." Also addresses nonstatutory thresholds that are equal to the MPT or SAT as a matter of policy.
- Status: 09/06/2018 - OIRA cleared proposed FAR rule. FAR staff processing.
- NOTE: CAAC LETTER 2018-02, provided interim authority to use increased thresholds
- Implemented as interim FAR rule, the micro-purchase and simplified acquisition thresholds were raised by NDAA 2018 to \$10,000 and \$250,000, respectively. A final rule has not been implemented (FAR Case 2018-004), but agencies have been authorized to implement Class Deviations to begin using the new thresholds before the Final Rule is promulgated (see Civilian Agency Acquisition Council Letter No 2018-03, dated February 16, 2018)

# Final FAR Rules

- Title: Duties of the Office of Small and Disadvantaged Business Utilization (OSDBU)
  - FAR Case 2017-008
- Synopsis: Implements section 1812, 183, 1821 of the NDAA for FY 2017
  - Review summary purchase card data for acquisitions above the micro-purchase threshold but below the simplified acquisition threshold
    - to ensure these acquisitions are compliant with the Small Business Act
    - To ensure transactions properly recorded in FPDS)
  - Provide training on FAR compliance
  - Review all required small business subcontracting plans
    - to ensure maximum practicable opportunity for small business subcontractors
  - Increase small business participation in solicitations that involve bundling
- Status: Effective 5/31/18
- Final Rule, effective May 31, 2018. This final rule amends FAR Part 19 to reflect sections of NDAA 2017, P.L. 114-238, amends § 15(k) of the Small Business Act to provide additional duties for OSDBUs. These additional duties also apply to DOD Offices of Small Business Programs. NDAA § 1812, § 1813, § 1821 of the NDAA for FY 2017 amend section 15(k) of the Small Business Act to add duties for OSDBUs and OSBPs.
- Reference: FAR 19.201



# Pending SBA Rules

- SBA Draft Proposed Rule: National Defense Authorization Acts of 2016 and 2017, Recovery Improvements for Small Entities after Disaster Act of 2015, and Other Small Business Government Contracting Amendments
  - Limit the scope of review of Procurement Center Representatives for certain Department of Defense procurements performed outside of the United States
  - Establish that failure to act in good faith in providing timely subcontracting reports shall be considered a material breach of the contract
  - Establish procedures for the publication of acquisition strategies if the acquisition involves consolidation or substantial bundling
  - Solicit comment or provide information on:
    - exclusions from calculating compliance with the limitations on subcontracting
    - an agency's ability to set aside orders under set-aside contracts
    - contracting officer's authority to request reports on a prime contractor's compliance with the limitations on subcontracting
    - examples of bad faith in subcontracting proposed rule
- Status: In process, at OMB Office of Information and Regulatory Affairs (OIRA) for interagency comment. Discussion On 11/6/2018

# Pending SBA Rules

- WOSB Certification Proposed Rule
- Implements Section 825 of the National Defense Authorization Act for Fiscal Year 2015 (2015 NDAA) to establish a certification program for Federal WOSB and EDWOSB Program participants
  - Third Party Certification
  - Certification by States and Other Agencies
  - Certification by SBA
- Published 12/18/2015
- Comments received by: 2/16/16
- Status: Proposed Rule in Process, complete clearance by 11/30/2018, publish as final by 3/31/2019
- Reference: 80 FR 78984

# Pending SBA Rules

- HUBZone Proposed Rule (83 FR 54812)  
<https://www.gpo.gov/fdsys/pkg/FR-2018-10-31/pdf/2018-23285.pdf>
- Published 10/31/2018; Comments Due: 12/31/2018
- Comprehensive amendment to Historically Underutilized Business Zone (HUBZone) Program regulations:
  - To reduce the regulatory burdens imposed on HUBZone small business concerns and government agencies
    - Retention of HUBZone residency for employees
    - Annual recertification and representation at every offer
    - Amends definitions, e.g., employee (# hours, owners, 1099s, affiliates)
  - To implement new statutory provisions
    - NDAA 2018 section 1701(i): Redesignated areas - retain status until 2021
  - To eliminate ambiguities in the regulations
- Intent:
  - to make it easier for small business concerns to understand and comply with the program's requirements - stability
  - to make the HUBZone program a more attractive avenue for procuring agencies
- Proposed Rule published as Final Rule by 6/1/2019

# SBA Final Rule

- SDVO Ownership and Control Final Rule
  - Implement provisions of The National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017).
    - SBA responsible for issuing regulations relating to ownership and control for the Department of Veterans Affairs verification of Veteran-Owned (VO) and Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC)
    - Provides one definition of ownership and control for these concerns, which will apply to the Department of Veterans Affairs in its verification and Vets First Contracting Program procurements, and all other government acquisitions which require self- certification.
    - Circumstances where a firm can qualify as VO or SDVO when there is a surviving spouse or an employee stock ownership plan (ESOP)
- Comments due: Published 9/28/2018
- Status: Final rule – Effective 10/1/2018
- Reference: 83 FR 48908

# VA OHA Protests and Appeals Final Rule

- Protests of Center for Verification and Evaluation (CVE) eligibility and appeals of denials or cancellations of inclusion in the CVE database
- Implements portion of Section 1832 of the NDAA 2017
- Only applies to VA
- Non-VA SBA SDVO protest and appeal process remains
- Reference: 83 FR 13626 (March 30, 2018)
- Effective October 1, 2018

# NDAA 2018

- Section 805 – Simplified Acquisition Threshold increased to \$250,000
- Section 806 – Micro-Purchase Threshold increased to \$10,000
- Section 1702 – inserts SAT into Section 15(j) of the Small Business Act (the statutory SB reserve)
  - Replaces dollar amounts
- (reference FAR Case 2018-004)

# NDAA 2018 – Section 1702

- LOS and NMR will not apply to small business set-asides below \$250,000
- Section 1702 also defines prime contract, for purposes of the Small Business Act, as a contract or contractual action entered into by the Federal Government to obtain supplies, materials, equipment, or services of any kind.

# NDAAs 2018 – Section 1701

- Section 1701 (HUBZone)
- Uses state median income to calculate status for nonmetropolitan county
- Base Closure Area will remain HUBZone for at least 8 years
- Re-designated area eligible for 3 years
- State governors may petition for HUBZone designation
- HUBZone application review within 60 days of complete application



# NDAA 2018 – Section 1701

- HUBZone recertification no later than every 3 years
- Program Examination – if ineligible, firm has 30 days to show qualified, may not compete for HUBZone contracts during that time
- Map will not change until January 1, 2020, then will be updated every 5 years
- SBA must annually report on whether HUBZone is promoting economic development in distressed areas

Everything except map freeze, will be effective January 1, 2020

# NDAA 2019

- Section 851 - DOD Small Business Strategy
- Section 852 - Prompt payment to SBCs
  - 15 days for SBCs
  - 15 days for Other than small prime with SB subcontractors
- Section 861 – Puerto Rico Businesses
  - Double goaling credit for prime contract awards (4 years)
  - Agency reporting of awards
  - Contracting Incentives to Mentors who award subcontracts to Protégés
    - Positive consideration in performance evaluation
    - Application of costs to subcontracting plan
    - Additional MP Relationships - up to 2 mentor-protégé relationships

# Questions?

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