



U.S. Small Business
Administration

Legislative & Regulatory Update

**For Small Business Government Contracting
Programs**

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Legislative Action

James M. Inhofe NDAA for FY23

[Pub. Law 117-263](#), enacted 12/23/22

- Codifies SBA scorecard and add set-aside data
- Requires Congressional reports on consolidated contracts
 - Agencies must provide information to SBA
- Makes permanent DoD Mentor-Protégé Program
 - Pilot for protégés to receive reimbursement for technology development
- Creates statutory DHS mentor-protégé program
- Authorizes DoD contract modifications to address economic inflation (sect. 822)

SBIR and STTR Extension Act of 2022

[Pub. Law 117-183](#), signed by the President on 9/30/22

- Extends the SBIR and STTR programs into FY 2025
- Businesses must disclose foreign ties
- Requires each agency to establish a Due Diligence Program on foreign influence
- Requires the Secretary of Defense to establish an Innovation Open Topics Program
- Increases Minimum Performance Standards

Senate-passed NDAA for Fiscal Year 2024

[S. 2226](#), Passed Senate / awaiting House action

- Repeals bona fide office rule
- Require DoD to consider the past performance of a small business's affiliates
- Primes must notify CO if payment under a small-business subcontracting plan is 30+ days past due; cooperate with CO
- Eliminate self-certification for SDVOSBs, prime and sub
- Increase SDVOSB goal to 5%
- Raise DoD sole-source thresholds to \$8mil/\$10mil for manufacturing
- Put SBA on FAR Council

Introduced in the Senate

- [S. 1407](#) (Sullivan)- eliminate the requirement for award of 8(a) construction contracts within the area of performance
- [S. 1469](#) (Ernst) - require certification of a SDVOSB in order to be counted toward goals for contract awards
- [S. 1470](#) (Ernst) – require certification of a women-owned SB in order to be counted toward goals for contract awards
- [S. 2144](#) (Hirono) – expand sole-source authority for NHO-owned 8(a) participants
- [S. 2146](#) (Ossoff) – increase the governmentwide SDVOSB goal

Introduced in the Senate

- [S. 2720](#) (Ernst) - Accountability and Clarity in Contracts to Engage Small Suppliers and Small Businesses Act
 - Require key words and contract requirements in SAM opportunities
 - Industrial-base metrics to 30% of SBA scorecard, add new metrics
 - Restrict scorecard credit to only 1 of SDB/WOSB/SDVO/HUBZone per contract, at CO election
 - Agencies receiving less than 'A' submit report to Congress and testify
 - Make subcontracting an evaluation factor for all contracts with subcontracting plan
 - Rule of Two analysis before multiple-award contracts and orders
 - Add PCR/OSDBU coordination requirements for bundled and consolidated contracts

Introduced in the House

- [H.R. 986](#) - require the DoD and SBA to coordinate government contracting assistance offered by SBDCs and APEX Accelerators
- [H.R. 1583](#) (Carson) - Provide for contracting preferences and other benefits for emerging business enterprises
- [H.R. 1744](#) (Castro) – Require SBA to disaggregate data on Federal contracts awarded to SDBs
- [H.R. 2726](#) (Stauber) - Provide 50% interim partial payment to small business for construction-related requests for equitable adjustments
- [H.R. 2744](#) (Bean) – Freedom from Government Competition Act

Introduced in the House (cont.)

- [H.R. 3511](#) (LaLota) – Require training for agencies that miss SDVOSB prime goal
- [H.R. 3716](#) (Neguse) – Increase the governmentwide small business goal to 25%
- [H.R. 3830](#) (Tokuda) – Expand sole-source authority for NHO-owned 8(a) participants
- [H.R. 4670](#) (Houlahan) – Add information to annual reports on SBA's certifications programs for businesses owned by women, HUBZone businesses, and businesses owned by veterans
- [H.R. 4671](#) (Perez) – Require more info in corrective-action reports and lookback on efficacy of previous actions

Introduced in the House (cont.)

- [H.R. 5063](#) (Velázquez) – Extend double-credit for Puerto Rico awards by 3 years
- [H.R. 5147](#) (Kiggans) – Increase the goal for service-disabled veteran-owned small businesses and exclude self-certified SDVOSBs from the goals
- [H.R. 5450](#) (Scholten) – Apply the HUBZone price eval. Preference to unrestricted orders on F&O and small-business MACs
- [H.R. 5454](#) (Velázquez) – Add SBA to the FAR Council, with a report on required resources and an annual report

Executive Action

OMB Memo on Increasing SDB Dollars

[M-23-01](#), Increasing the Share of Contracting Dollars Awarded to Small Disadvantaged Businesses (Oct. 4, 2022)

- Raises the governmentwide goal for Small Disadvantaged Business spending to 12% for FY23
 - SBA negotiates goals with 24 CFO Act agencies
- Build diversity and resilience of the Federal supplier base
- Lower barriers to entry and create opportunities for SDBs, WOSBs, SDVOSBs, and HUBZone businesses

OMB Memo on New and Recent Entrants

[M-23-11](#), Creating a More Diverse and Resilient Federal Marketplace through Increased Participation of New and Recent Entrants (Feb. 17, 2023).

- Focus on new and recent contractors to provide fresh innovative thinking
- Common definitions of "new entrant" and "recent entrant"
- [Supplier Base Dashboard](#) to track an agency's mix of new entrants, recent entrants, and established vendors
- "Priority supply chains"--market segments where agencies have experienced challenges finding contractors
- [Government-Wide Procurement Equity Tool](#) to support outreach for greater geographic and demographic diversity in procurement competitions.

Recent SBA Regulatory Action

SBA Final Rule: Ownership/Control and Contract Assistance for 8(a) **88 FR 26164** (April 27, 2023 corrected [May 5, 2023](#))

- Size and socioeconomic status determinations from SBA
 - Business shall update its status in SAM.gov no later than 2 days after final determination
 - SBA shall update if the business does not do so
 - Business must notify agencies with which it has a pending offer
- NMR waiver requests only required to reach 50% by SB manufacturers + waived items
- Prohibits competitions that require multiple certifications
- 8(a)/WOSB/HZ/SDVOSB cannot be JV partner for more than 1 JV per contract

SBA Final Rule: Ownership/Control and Contract Assistance for 8(a) **88 FR 26164** (April 27, 2023 corrected May 5, 2023)

- 8(a) on unrestricted multiple-award contracts or FSS
 - Must be offered and accepted by SBA, SBA will verify firm
 - Can use FSS ordering procedures
- SDB reviews and protests
- Include BPAs in list of vehicles subject to consolidation and bundling
- Overhead costs in Individual subcontracting calculations for prime contracts exceeding \$7.5 million
- LOS – CO cannot give satisfactory/positive past performance to a business that fails to comply with LOS, unless determination approved

SBA Final Rule: Ownership/Control and Contract Assistance for 8(a) **88 FR 26164** (April 27, 2023 corrected May 5, 2023)

- For Business Activity Targets – SBA will consider extenuating circumstances, offers on non-8(a) procurements
- Only need to document IRA exception for economic disadvantage if requested by SBA
- Threshold application issues: for-profit, citizen, one-time eligibility, some revenues for individually-owned applicants
- Bona fide place of business (moratorium through FY23) – can use existing contract locations
- Offer and acceptance not required under SAT, but still need eligibility
- Only active 8(a) firms can receive sole-source orders

SBA Final Rule: Inflation Adjustment for Size Standards, ED thresholds 87 FR 69118 (Nov. 17, 2022); finalized in 88 FR 46048 (July 19, 2023)

- Adds 13% increase to revenue-based size standards
- Adjusts economic disadvantage thresholds and other thresholds
 - Net worth from \$750,000 to \$850,000
 - AGI from \$350,000 to \$400,000
 - Total assets from \$6 mil to \$6.5 mil
 - Dollar limit for combined 8(a) contracts from \$100 mil to \$168,500,000

SBA Final Rule: Adoption of 2022 NAICS for Size Standards

[87 FR 59240](#) (Sept. 29, 2022)

- Reorganized SBA's size standard table for OMB's new NAICS revision.
- New NAICS codes were effective in January.
- The NAICS 2022 revision creates 111 new industries.
- Effective October 1, 2022.
- SBA also updated the WOSB Program NAICS codes in [87 FR 69060](#).

SBA Final Rule: Manufacturing and Employee-Based Size Standards

[88 FR 9970](#) (Feb. 15, 2023; eff. March 17)

- Increases 144 employee-based size standards
- Retains 500-employee NMR size standard
- Notable increases
 - 325412, Pharmaceutical Preparation Manufacturing, from 1,250 to 1,300 employees
 - 331491, Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding, from 750 to 900 employees
 - 336611, Ship Building and Repairing, from 1,250 to 1,300 employees
 - 339999, All Other Miscellaneous Manufacturing, from 500 to 550 employees
 - 562910 (Exception), Environmental Remediation Services, from 750 to 1,000 employees

Final Rule: Veteran-Owned, Service-Disabled Veteran-Owned Certification **87 FR 73400** (Nov. 29, 2022), **corrected** on July 2, 2023

- Governmentwide certification program for SDVOSBs
- Effective Jan. 1, 2023, self-certified SDVOSBs have one year to apply to SBA for certification
 - Existing VA-certified VOSB and SDVOSB stay certified
 - VA certifications are extended by 1 year
- Certification is required for set-aside or sole source SDVO or VOSB contracts
 - To get certified, must be small for a NAICS code on SAM profile
 - Unconditionally owned by veteran—but reasonable right of first refusal OK
 - Control—no outside obligations that prevent veteran from devoting time/attention
- No changes on self-certification for subcontracting or prime credit—potential separate rulemaking upcoming

SBA Final Rule: Past Performance Ratings for JV members and Subcontractors

87 FR 43731 (July 22, 2022)

- Small business can use past performance from a joint venture, provided it worked on the joint venture's contracts
- Small business can use past performance from a first-tier subcontract to go after a prime contract
 - Subcontracting plans will direct primes to provide a rating to the small business within 15 days
 - The small business must make the request to the prime contractors no later than 30 days after the end of the period of performance of the contract with the government.

SBA Final Rule: HUBZone Appeal Process

[88 FR 21086](#) (April 10, 2023)

- Authorizes SBA OHA to hear appeals from HUBZone protest decisions
 - Previously handled within SBA's GCBD
- Creates rules of practice for OHA to hear HUBZone appeals

SBA Proposed Rule: Loan Program Alternative Size Standard

[88 FR 48739](#) (July 28, 2023)

- Would raise the 7(a) and 504 loan programs' alternative size standards to
 - \$20 million in tangible net worth (now \$15mil)
 - \$6.5 million in net income (now \$5 mil)
- Would raise the contract limit for SBA-guaranteed surety bonds to \$9 million (now \$6.5 mil)
 - \$14 million for Federal contracts if CO certified that such a guarantee is necessary (now \$10 mil)
- Comments due Sept. 26

SBA Proposed Rule: Credit for Lower Tier Subcontracting

[87 FR 77529](#) (Dec. 19, 2022)

- Permits prime contractor to apply credit for subcontracts to small businesses at lower tiers toward its subcontracting goals
 - Only for individual plans, not commercial/comprehensive/GWAC/multi-agency contracts
 - Election recorded in the subcontracting plan
- Prime would incorporate lower-tier performance into subcontracting goals

Upcoming SBA proposed rules

1. HUBZone Program Updates and Clarifications
2. Affiliation in Small Business Procurement Programs
3. Small Business Contracting: Increasing Small Business Participation on Multiple Award Contract

Recent FAR Regulatory Action

FAR Final Rule: Small Disadvantaged Business Threshold

[88 FR 53751](#) (Aug. 8, 2023)

- Removes the \$750,000 net-worth threshold for small disadvantaged business status, and replaced with reference to SBA regulations
- Current SBA threshold is \$850,000

FAR Final Rule: Small Business Amendments

[88 FR 9734](#) (Feb. 14, 2023)

- Limit options past the 5th year on a long-term 8(a) contract to 8(a) firms that continue to qualify as 8(a) participants
- Clarify that the size standard for IT value-added resellers is 150 employees
- Apply the ostensible subcontractor rule to SBA's socioeconomic programs
- Determine size as of initial offer if the solicitation does not require a price evaluation

FAR Final Rule: Accelerated Payments

[88 FR 9730](#) (Feb. 14, 2023)

- Expands accelerated payments to small businesses
- 15-day goal of paying small-business prime contractors after invoice
- Accelerates payments to other prime contractors that agree to pay their small-business subcontractors within 15 days of the payment without further consideration from the small business

FAR Final Rule: WOSB Certification

[87 FR 58237](#) (Sept. 23, 2022)

- Require EDWOSB and WOSB concerns to apply for certification through SBA or an SBA-approved third-party certifier and to be certified in order to be eligible for WOSB or EDWOSB set-aside or sole-source contracts under the Program.
- Requires agencies to check SAM or SBA's DSBS for WOSB/EDWOSB set-asides and sole-source awards
 - SAM designation not yet effective
- Firms may submit offers on WOSB/EDWOSB set-asides if certification is pending

FAR Final Rule: Policy on Joint Ventures

[87 FR 58219](#) (Sept. 23, 2022)

- Permits joint ventures between mentor and protégé to qualify as small or for a socioeconomic program
- Agencies must consider the past performance of each party to a joint venture if the joint venture is not able to demonstrate its own
- SBA does not perform joint venture approval for competitive 8(a) awards (but still determines 8(a) participant eligibility)

FAR Final Rule: Update of HUBZone Program

[87 FR 58232](#) (Sept. 23, 2022)

- HUBZone firms are certified annually for the entire year, instead of being required to represent for each offer
- Removes requirement for firm to be HUBZone qualified at both offer and award for HUBZone set-asides—instead just offer
- Authorizes HUBZone set-aside and sole source awards under SAT
- HUBZone offerors must attempt to maintain HUBZone residency percentage if performing a HUBZone contract

FAR Final Rule: Construction Contract Administration

[87 FR 58227](#) (Sept. 23, 2022)

- For construction contracts for small businesses, agency must publish information about definitization of equitable adjustments
 - Policies or procedures that apply to definitization of equitable adjustments for change orders under construction contracts
 - 3-year data on time required to definitize equitable adjustments
 - Use table showing number of change orders definitized within 30 days, 60 days, 90 days, 180 days, 365 days, or more
 - If have less than 3 years, provide for available FYs
- Agency must collect data on time required to definitize change orders for construction contracts

FAR Final Rule: Exemption from Inflation Adjustments

[88 FR 25476](#) (April 26, 2023)

- Exempts two thresholds from automatic inflation increases:
 - The dollar level at which payment and performance bonds are required on a construction contract (currently \$150,000); and
 - The dollar level at which payment protections are required as an alternative to payment bonds (currently \$35,000).

FAR Proposed Rule: SBIR and STTR Programs

[88 FR 20822](#) (April 7, 2023)

- Extension of the SBIR/STTR data rights protection period from a minimum of 4 years to 20 years
- Sole-source actions under Phase III of the SBIR/STTR programs without further justification
- Instances when Phase II sole-source actions may be awarded without justification

FAR Proposed Rule: 8(a) Program

[87 FR 76598](#) (Dec. 15, 2022)

- Clarifies that the CoC program is not applicable to 8(a) sole-source awards;
- Requires agency to notify SBA when
 1. Agency determines that a procurement, though previously procured under 8(a), is a new requirement not subject to SBA release requirements;
 2. Agency will procure a follow-on 8(a) requirement through a limited-competition contract vehicle

Upcoming FAR proposed rules

1. Proposed 2023-017, Consolidation and Bundling
2. Proposed 2023-016, Subcontracting Plans and Limitations on Subcontracting
3. Proposed 2023-015, Policy on Joint Ventures
4. Proposed 2023-014, Small Business Protests
5. Proposed 2023-013, HUBZone Program
6. Proposed 2023-011, Small Business Participation on Certain Multiple Award Contracts
7. Proposed 2023-009, Credit for Lower-Tier Subcontracting

Upcoming FAR proposed rules

8. Proposed 2023-001, Subcontracting to Puerto Rican and Covered Territory Small Businesses
9. Proposed 2022-009, Certification of Service-Disabled Veteran-Owned Small Businesses
10. Proposed 2021-020, Limitations on Subcontracting Revisions
11. Proposed 2021-011, Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractor
12. Proposed 2021-009, Protests of Orders Set Aside for Small Business
13. Proposed 2020-016, Representation of Size and Socioeconomic Status



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