



U.S. Small Business
Administration

Legislative & Regulatory Update

**For Small Business Government Contracting
Programs**

SAME Boston Post 20th Annual Contract Opportunities

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

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

Recent SBA Regulatory Action

SBA Interim Final Rule: Inflation Adjustment for Size Standards, ED thresholds **87 FR 69118 (Nov. 17, 2022)**

- 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 Proposed Rule: Manufacturing and Employee-Based Size Standards

87 FR 24752 (April 26, 2022)

- Reviewed 432 employee-based size standards
 - Proposed to increase 150 size standards
 - 120 of the increases are in manufacturing industries
 - Proposed to retain 282 size standards
- Proposes to retain the 500-employee size standard for the nonmanufacturer rule
- If finalized, would add 250 small businesses

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

- 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 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
- Comments close Feb. 17, 2023

SBA Proposed Rule: HUBZone Appeal Process

[87 FR 76585](#) (Dec. 15, 2022)

- Authorizes SBA OHA to hear appeals from HUBZone protest decisions
- Creates rules of practice for OHA to hear HUBZone appeals

Proposed Rule: Ownership/Control and Contract Assistance for 8(a) **87 FR 55642**

- 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 must identify each item
 - Individual waivers limited to five years, including options
- Prohibits competitions that require multiple certifications
- 8(a)/WOSB/HZ/SDVOSB cannot be JV partner for more than 1 JV per contract

PR: Ownership/Control and Contract Assistance for 8(a) (cont.)

87 FR 55642

- 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 and bank fees in subcontracting calculations
- LOS – CO cannot give satisfactory/positive past performance to a business that fails to comply with LOS

PR: Ownership/Control and Contract Assistance for 8(a) (cont. pt. 2)

87 FR 55642

- 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

Upcoming SBA proposed rules

1. HUBZone Program Updates and Clarifications

Recent FAR Regulatory Action

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 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

FAR Proposed Rule: Exemption from Inflation Adjustments

87 FR 58300

- 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: Disclosure of Greenhouse Gas Emissions

[87 FR 68312](#) (Nov. 14, 2022)

- Implements EO for major Federal suppliers to publicly disclose greenhouse gases and climate-related financial risk
- Comments due Feb. 13, 2023
- Significant – received between \$7.5 and \$50 mil in contracts in prior year
 - Complete GHG inventory (Scope 1 and 2) and report in SAM.gov
 - ANCs, Indian tribes, NHOs exempted
- Major contractors – received more than \$50 mil in contracts in prior year
 - Requirements of significant contractors **plus**
 - Annual climate disclosure
 - Develop science-based targets
 - Small businesses exempted (but not from significant requirements)

Upcoming FAR proposed rules

1. Proposed 2023-001, Subcontracting to Puerto Rican and Covered Territory Small Businesses
2. Proposed 2022-009, Certification of Service-Disabled Veteran-Owned Small Businesses
3. Proposed 2021-020, Limitations on Subcontracting Revisions
4. Proposed 2021-012, 8(a) program
5. Proposed 2021-011, Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractor

Upcoming FAR proposed rules (cont.)

6. Proposed 2021-009, Protests of Orders Set Aside for Small Business
7. Proposed 2020-016, Representation of Size and Socioeconomic Status
8. Proposed 2020-010, SBIR/STTR
9. Proposed 2018-003, Credit for Lower-Tier Small Business Subcontracting

Upcoming FAR final rules

1. 2023-004, Small Disadvantaged Business Threshold
2. 2021-008, Federal Acquisition Regulation: Small Business Program Amendments
3. 2020-007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns



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