

DREDGING SMALL BUSINESS ENGAGEMENT BREAKOUT SESSION

September 1, 2022



**US Army Corps
of Engineers®**



AGENDA



- | | | |
|-------|--|---|
| 0830 | Opening Remarks | Liz Walker, Jackie Luedtke
Borozan |
| 0835 | SBA Hot Topics | Liz Walker, Sam Le |
| 0930 | How to do business with USACE Panel | Liz Walker, Eva D'Antuono, Tamika Gray
Troy Robbins, Dave Willis |
| 1000 | Break | |
| 1015 | 5 year look ahead (broken by regions,
anticipated workload (\$/CY/Schedule) | Jase Ousley |
| 1045 | Open Discussion/KTR feedback | |
| 11:15 | Meeting Concludes | |

INTRODUCTIONS



**US Army Corps
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U.S. Small Business
Administration

Legislative & Regulatory Update

For Small Business Government Contracting
Programs

August 26, 2022

Legislative Action

National Defense Authorization Act for Fiscal Year 2022

[Pub. Law 117-81](#), signed by the President on 12/27/21

Sect. 861 - Keeps the Miller Act threshold for bonding protection for small-business subcontractors on construction projects at its present level, instead of raising it for inflation.

Sect. 863 - Requires update to SAM.gov for small business status changes and notification to agencies where the firm has a pending offer, if the change would affect eligibility.

Sect. 864 - Gives OHA jurisdiction over HUBZone appeals.

Sect. 866 - Requires DoD report on CMMC effects on small business.

The Price Act

Promoting Rigorous and Innovative Cost Efficiencies for Federal Procurement and Acquisitions Act of 2021

[Pub. Law 117-88](#), signed by the President on 2/22/22

- DHS operates a Procurement Innovation Lab aimed at experimenting with innovative acquisition techniques
- Directs DHS to issue an annual report on innovative procurement techniques, including those used to meet small-business goals.
 - Sunsets after 3 years
- Requires OMB to convene the CAO Council to examine best practices in acquisition innovation, including in contracting with small businesses
 - CAO Council may form a working group to address
 - CAO Council (or the working group) must issue a report on innovative acquisition techniques that lead to meeting or exceeding small-business goals

House version of NDAA FY23 – Passed House

[H.R. 7900](#), passed House on 7/14/22

- Would give qualified 8(a) firms an additional program year
- Raise sole-source thresholds to \$8 mil for most contracts, \$10 mil for manufacturing
- Extend deadline for transfer of SD/VOSB certification from VA to SBA
- Require more detailed analysis for nonmanufacturer rule waivers
- Allow interim partial payments on requests for equitable adjustment
- Require agencies to submit bundling data to SBA

Passed the House; Sent to Senate

- [H.R. 7670](#), the Women-Owned Small Business Program Transparency Act, would require SBA to issue an annual report on the WOSB Program.
- [H.R. 5879](#), the Hubzone Price Evaluation Preference Clarification Act of 2021, would extend the HUBZone price evaluation preference to unrestricted task orders.
- [H.R. 7694](#), the Strengthening Subcontracting for Small Businesses Act of 2022, would require agencies to, when awarding a contracting with subcontracting opportunities, use evaluation factors for subcontracting plans and prior small-business subcontracting.

Introduced in the House and Senate

- [H.R. 8079/S. 4413](#) – “Small Business Contracting Fairness Act of 2022” would apply SBA’s existing size standards to the IJA’s DBE program, thereby eliminating the \$26.29mil maximum size standard in DBE.

Introduced in the House

- [H.R. 4697](#), to strike section 8(a)(11), which is the basis of [bona-fide-place-of-business rule](#) in the 8(a) program
 - SBA has temporarily waived the requirement through Sept. 30, 2023: [SBA Announces Moratorium on Bona Fide Place of Business Requirements for the 8\(a\) Business Development Program](#)
- [H.R. 6347](#), Military Spouse Entrepreneurs Act of 2021 – to establish a 5-year pilot procurement program for small businesses owned and controlled by military spouses, with a 5% goal
- [H.R. 6504](#), Native Pacific Islanders of America Equity Act - to define a Native CHamoru Organizations as a nonprofit corporation owned by Guam natives or direct ancestors, define Native Northern Marianas Organizations, and give both such organizations the same treatment as Native Hawaiian Organizations for SDB and HUBZone eligibility.
- [H.R. 6923](#), the Accelerating Small Business Growth Act - create a grant program to help transportation agencies carry out innovative programs to compete for federally funded transportation projects.

Introduced in the House

- [H.R. 7628](#), IMPROVE the SBA Act would
 - mandate annual testimony from SBA's GCBD,
 - require agencies to allocate small-business-contract credit to no more than one socioeconomic category,
 - create a confidential questionnaire for first-tier small business subcontractors, and
 - require that a contractor's failure to submit timely subcontracting reports result in a negative effect on past performance
- [H.R. 7685](#), the Truth in Small Business Contracting Credit Act, would restrict small-business goaling credit so a contract would apply only for one socioeconomic category (e.g., SDB but not WOSB)
- [H.R. 8273](#), Small Business Payment for Performance Act, would require agencies to make partial payment on requests for equitable adjustment on a small-business construction contract, upon receipt of the request

Introduced in the Senate

- [S. 3928](#), the Accelerating Small Business Growth Act - create a DOT grant program (\$20mil over four years) to fund programs for SDBs to compete for contracts and subcontracts funded by DOT financial assistance.
- [S. 3929](#), the Disadvantaged Business Enterprise Supportive Services Expansion Act – raise the funding cap for FHWA supportive services program, and provide for supportive services programs at FTA and FAA

Passed House and Senate – in conference

- [H.R. 4521](#), America COMPETES Act of 2022
 - Sect. 50101 – would require one-third small-business purchasing for certain items from frontline operational components (TSA, Secret Service, FEMA, and others)
 - Sect. 50103 – would create a DHS mentor-protégé program for small businesses, HBCUs, and MSIs.
 - Sect. 61007 – would include small-business contracting percentage in the annual report of the Defense Production Act Fund

Executive Action

OMB Memorandum: Advancing Equity in Procurement

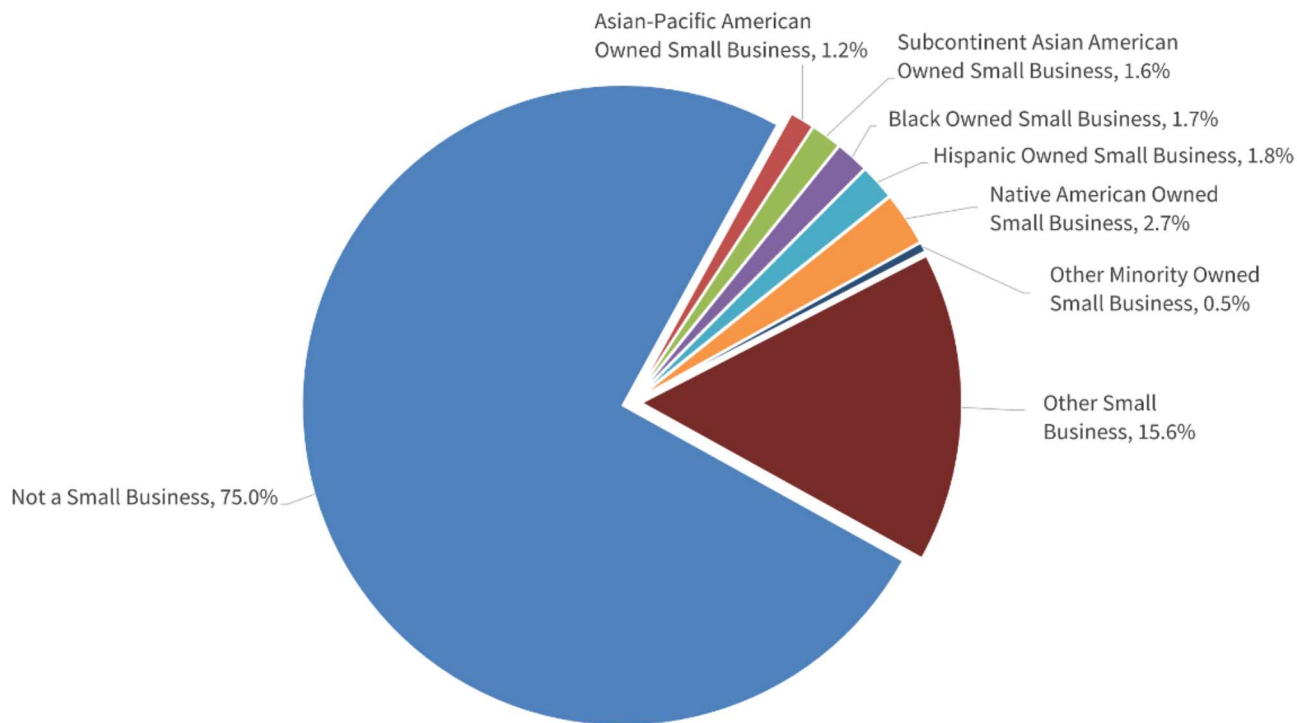
M-22-03, Dec. 2, 2021 – implementing Executive Order 13985

1. Raises governmentwide SDB contracting goal to 11% for FY22, on the way to 15% by 2025.
2. Implements major changes to Category Management.
 - A. automatic Tier 2 credit for socioeconomic small businesses (SDB, WOSB, HUBZone, SDVOSB)
 - B. reinforced importance of small-business goal achievements
 - C. making SBA and Dept. of Commerce voting members on the Category Management Leadership Council.
3. Seeks to increase new entrants and reverse the decline in the small business supplier base.
4. Makes Federal senior managers accountable for small business contracting goals.
5. Ensures OSDBUs have access to senior leadership

SBA Disaggregated Data Release

[SBA.gov](https://www.sba.gov) – as discussed on [whitehouse.gov](https://www.whitehouse.gov) and [analyzed by CEA](#)

FY 2020 Federal Contracting¹ by Race² and Business Size



1. Includes only small-business-eligible dollars (\$559 billion in FY 2020). This includes all Federal contracts except those excluded by SBA's Goaling Guidelines. This data does not apply the double-credit and subcontracting adjustments required by statute for SBA's annual scorecard.

2. Racial and ethnic categories are reflected here as they appear in the System for Award Management when an entity registers to do business with the government. Classifications are self-reported. The other small business category reflects those firms who did not report as being minority-owned.

OFPP Memo on SDB Strategies

Strategies for Meeting and Exceeding the Small Disadvantaged Business Goal for Fiscal Year 2022, June 2022

- Encourages agencies to maximize use of the 8(a) program
- Suggest that agencies review acquisitions under the SAT, which are required by statute to be set aside for small businesses.
- References the GSA Schedule, SBA's DSBS.SBA.gov, and SBA PCRs as other resources to facilitate awards to SDBs.

Recent SBA and FAR Regulatory Action

Final Rules (4): Revised Monetary Based Size Standards

[87 FR 18607](#) ; [87 FR 18627](#); [87 FR 18646](#); [87 FR 18665](#) (March 31, 2022)

- SBA issued four final rules to address monetary-based size standards, including all used in government procurement
- Reviewed 468 size standards
 - 229 increases
 - No decreases because of COVID-19
- Notable changes
 - Engineering Services, 541330 to \$22.5 million
 - Administrative Management and Consulting Services, 541611 to \$21.5 million
 - Architectural Services, 541310 to \$11 million

SBA Final Rule: Calculation of Employee-Based Size Standards

[87 FR 34094](#)

- Adopts a 24-month average to calculate a business's number of employees for size purposes
- Permits businesses in SBA's loan, SBIC, and surety programs to use 5-year average receipts, in addition to 3-year average receipts

SBA Proposed Rule: Manufacturing and Employee-Based Size Standards (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

SBA Proposed Rule: Adoption of 2022 NAICS for Size Standards

87 FR 40034 (July 5, 2022)

- Proposes to reorganize 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.

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

- 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.

Direct Final Rule: Definition of Surviving Spouse/Change to Sole-Source Thresholds

- Allows surviving spouse of deceased service-disabled veteran to qualify as owner of SDVOSBC for up to:
 - 10 years after veteran's death, if veteran was 100% disabled
 - 3 years after veteran's death, for less than 100% disability
- Changes 8(a) sole-source J&A threshold to \$100 mil for DoD, \$25 mil for civilian
 - Applies to entity-owned (ANC/Tribe for DOD & civilian agencies; NHO for DOD only) firms and
 - Applies if only one eligible Participant would submit a fair-market offer
- Changes sole-source thresholds in 8(a), WOSB, and HUBZone to:
 - \$4.5 mil for nonmanufacturing (but still \$4 mil in SDVOSBC)
 - \$7 mil for manufacturing (same for SDVOSBC)

Direct Final Rule: Small Businesses in U.S. Territories

[87 FR 50925](#)

- Adds Guam, U.S. Virgin Islands, American Samoa, and Northern Marianas to:
 - Definition of a “covered territory business”
 - Exception from limit of three protégés in SBA’s Mentor-Protégé Program
 - Eligibility for state-run surplus property programs
- Effective October 18, 2022 unless adverse comments are received by Sept. 19.

Proposed Rule: Veteran-Owned, Service-Disabled Veteran-Owned Certification **87 FR 43731**

- Would establish an SBA certification program for VOSBs and SDVOSBs
- Generally, SBA adopts existing application requirements from the VA
 - SBA considering eliminating incarceration from the "good character" requirement for certification
- Certification is required for set-aside or sole source SDVO or VOSB contracts
- Eligible for a term of three years from certification
 - Currently VA verified-firms maintain eligibility through transfer date
 - Self-certified firms must apply within one-year grace period

Direct Final Rule: HUBZone Governor-Designated Covered Areas

84 FR 62447

- Added new type of HUBZone: “Governor-Designated Covered Area”
 - Non-urbanized areas with populations of 50,000 or less
 - Unemployment of at least 120% the state or US average
 - Opportunity Zones encouraged
 - Governors must petition SBA – limited to one petition per year
- Published November 11, 2019
- Effective January 1, 2020
- [Illinois](#), Colorado, and Virginia granted expansions

Direct Final Rule: Extending HUBZone Map Freeze

[86 FR 23863](#)

- Extends the HUBZone Map freeze until June 30, 2023
 - Qualified census tract data using the 2020 Census results will not be available until late 2022.
 - Applies to all current Redesignated Areas and Qualified Base Closure Areas, and most current Qualified Disaster Areas.
 - The HUBZone Map has been updated to reflect the new expiration date for those areas.
 - After SBA receives the Census data from HUD, SBA will post a list identifying areas newly designated as Qualified Census Tracts, Qualified Non-metropolitan Counties, and Redesignated Areas, so that firms can plan accordingly.

HUBZone: New Qualified Non-Metropolitan Counties

[84 FR 65222](#)

- In early August, the HUBZone Map was updated to add 452 new Qualified Non-Metropolitan Counties (QNMCs).
- This update is in response to a statutory change to the definition of the term “Qualified Non-Metropolitan County” that went into effect in 2020.
- SBA conducted an analysis using the amended definition to identify additional non-metropolitan counties that would qualify as QNMCs and have added them to the HUBZone map.

Nonmanufacturer Rule Class Waiver: Dental Equipment

87 FR 31292

- SBA issued a class waiver under NAICS code 339114 for:
 - dental chairs,
 - dental delivery systems,
 - dental lights,
 - dental cabinets,
 - dental stools,
 - dental handpieces,
 - dental infection control apparatus,
 - dental air management systems, and
 - mechanical room equipment
- Allows otherwise qualified regular dealers to supply the waived items on certain small business contracts, regardless of the business size of the manufacturer.

Nonmanufacturer Rule Class Waivers: Terminations

[87 FR 29424](#) (radiology equipment); [87 FR 34921](#) (furniture)

- SBA terminated the class waivers of the nonmanufacturer rule for;
 - radiology equipment, NAICS code 334517; and
 - furniture under NAICS codes 337215, 337127, and 337113.
- Small businesses will need to provide the product of a small-business manufacturer for set-aside contracts, unless the agency obtains an individual waiver.

Notice of new WOSB Program NAICS Codes

[87 FR 15468](#) (March 18, 2022)

- SBA identified new NAICS codes for the WOSB program
- Underrepresented industries are qualified for EDWOSB set-asides/sole-source procurements
 - 113 underrepresented NAICS codes
- Substantially underrepresented industries are qualified for WOSB set-asides/sole-source procurements
 - 646 substantially underrepresented NAICS codes
- SBA will issue a notice to update for 2022 NAICS codes

FAR Final Rule: Small Business Programs Overseas

87 FR 24836

- Amends FAR 19.000 to specify that agencies “may apply” Part 19 (Small Business Programs) outside the United states and its outlying areas.
 - If applied, participants must meet definition of small business concern
 - And must submit representations
 - **Note:** SBA definition of “Small business concern” at 13 CFR 121.105:
“place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.”
- Applies bundling definition to contracts performed entirely outside the U.S. (they previously were exempted)

FAR Final Rule: Limitations on Subcontracting

[86 FR 44233](#)

- Applies across all small business programs
- Calculated as a percentage of the overall contract amount to be spent by the prime contractor on subcontractors.
- “Similarly situated entity”—a small business subcontractor that has the same small business program status as that which qualified the prime contractor for the prime contract
- Nonmanufacturer rule does not apply to small business set-asides at or below the simplified acquisition threshold
- Waivers of the nonmanufacturer rule allowed for procurements under the HUBZone Program

FAR Final Rule: Scope of PCR Review

86 FR 44247

- COs must provide the PCR a copy of any proposed acquisition package, at the PCR's discretion
- PCRs may recommend the set-aside or sole-source award to a small business; the breakout of discrete components, items, and requirements for competition; and ways to improve competition

FAR Final Rule: Good Faith in Small Business

Subcontracting

[86 FR 44249](#)

- Provides examples of activities that contracting officers may consider when evaluating whether the prime contractor made a good faith effort to comply with its small business subcontracting plan.
- Requires prime contractors with commercial subcontracting plans to include indirect costs, with certain exceptions, in their subcontracting goals

FAR Final Rule: Consolidation and Bundling

86 FR 61038

- Requires the publication on SAM.gov of a notice, no later than 7 days before the solicitation, for
 - Substantial bundling, and for
 - Consolidation
- Requires the publication on SAM.gov of a determination, with the publication of the solicitation of
 - The rationale for substantial bundling, or that
 - Consolidation of contract requirements is necessary and justified

FAR Proposed Rule: Small Business Program Amendments

87 FR 10327

- Size changes
 - Size determined at offer on a multiple-award contract, even if price not evaluated (e.g., two-step eval)
 - IT value-added reseller size standard of 150 employees
 - Allow status protests based on ostensible subcontractor
- Allow set-asides for socioeconomic programs where multiple-award contract was set aside for small business
- Cannot exercise an option past 5th year on an 8(a) contract if firm is no longer an 8(a) participant

FAR Proposed Rule: Update of HUBZone Program

[86 FR 31468](#)

- Published June 14, 2021
- Implements SBA's comprehensive revision (84 FR 65222)
 - Removes requirement for firm to be HUBZone qualified at both offer and award for HUBZone set-asides—instead just offer
- Authorizes sole source awards under SAT

FAR Proposed Rule: WOSB Certification

[86 FR 55769](#)

- Would require agencies to check SBA's DSBS for WOSB/EDWOSB designation for WOSB/EDWOSB set-asides and sole-source awards
- Firms may submit offers on WOSB/EDWOSB set-asides if certification is pending
- Would remove mentions of the WOSB repository, which no longer exists

Upcoming SBA proposed rules

1. Adjustment of Monetary Based Size Standards for Inflation
2. NDAA 2020, Credit for Lower Tier Subcontracting and Other Amendments
3. HUBZone Program Updates and Clarifications
4. Ownership and Control and Contractual Assistance Requirements for the 8(a) Business Development Program

Upcoming FAR proposed rules

1. Proposed 2022-002, Exemption of Certain Contracts from the Periodic Inflation Adjustments to the Acquisition-Related Thresholds
2. Proposed 2021-020, Limitations on Subcontracting Revisions
3. Proposed 2021-012, 8(a) program
4. Proposed 2021-011, Past Performance of First-Tier Subcontractors
5. Proposed 2021-010, Subcontracting to Puerto Rican and Other Small Businesses
6. Proposed 2021-009, Protests of Orders Set Aside for Small Business

Upcoming FAR proposed rules (cont.)

7. Proposed 2020-016, Representation of Size and Socioeconomic Status
8. Proposed 2020-010, SBIR/STTR
9. Proposed 2020-007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns

Upcoming FAR final rules

1. Final 2020-007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns
2. Final 2018-020, Construction Contract Administration
3. Final 2017-019, Policy on Joint Ventures



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