



**U.S. Small Business  
Administration**



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# Legislative & Regulatory Update

For Small Business Government Contracting  
Programs

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# John S. McCain National Defense Authorization Act for FY 2019

## Small Business Matters (sections 851-862)

- More limited on Small Business contracting than previous NDAAAs
- Affects prompt payment, construction contracting, and A/E for military housings

# Contracting

**Government-wide Small Business Contracting  
Goals are a floor—not a ceiling!**

**\$120.8 Billion in Prime  
Contracts to Small Business in  
FY2018**

**\$780 Million to Wisconsin Small Businesses**

# DOD-specific provisions on strategy and prompt payment

Sect. 851, 10 USC 2283; Sect. 852, 10 USC 2307(a)

- Prompt payments to small business contractors
  - prompt payment goal of 15 days for DOD small business prime contractors
  - encourage other-than small prime contractors to accelerate payments to their small business subcontractors

# NDAA 2019 Construction change order

transparency  
Sect. 855, 15 USC 644(w)

- Require Federal agencies to provide prospective construction contractors with information about an agency's policies and performance on the administration of change orders
- Require a notice of information about the agency's past performance in definitizing requests for equitable adjustments to be included with solicitation
- Historical information from NDAA19 enactment
- Past performance information for definitizing with the following times periods after request for equitable adjustment: 30, 60, 90, 180, 365, 365+ days

# NDAA 2019 Set-aside threshold for A/E and construction

Sect. 2804, 10 USC 2855

- Architectural and engineering services and construction design in connection with a military construction project or a military family housing project
- Below \$1,000,000 must follow set-aside provisions
- Does not restrict award under 8(a) program
- *Reverses old rule that prohibited set-asides over \$85,000 threshold*
- Implemented in 84 FR 18160 (April 30, 2019)

# Veterans Small Business Enhancement Act of

**2018** [Public Law No. 115-416](#); 15 U.S.C. 657b(g)

- Amends the Small Business Act to direct SBA to give access to and manage the distribution of U.S.-owned surplus property to small businesses owned and controlled by veterans.
- SBA intends to execute a memorandum of agreement between the SBA, the General Services Administration, and the head of the state agency for surplus properties,.

# Runway Extension Act Information Notice

[www.sba.gov/sites/default/files/resource\\_files/6000-180022SBRunwayExtensionAct.pdf](http://www.sba.gov/sites/default/files/resource_files/6000-180022SBRunwayExtensionAct.pdf)

- ❖ On June 24, 2019, the Small Business Administration (SBA) published its long-awaited **proposed rule** changing the period of measurement for a receipts-based size calculation from three years to five years
- ❖ This is to promote consistency government-wide on small business size standards, SBA proposes to change its own size standards to provide for a 5-year averaging period for calculating annual average receipts **for all** receipts-based size standards.

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[www.sba.gov/sites/default/files/resource\\_files/6000-180022SBRunwayExtensionAct.pdf](http://www.sba.gov/sites/default/files/resource_files/6000-180022SBRunwayExtensionAct.pdf)

- ❖ Smaller and larger small businesses industry wide could be impacted in terms of gaining access to government contracts.

***August 23, 2019, is the comment deadline.***

# Final Rule: Ownership and Control of Service-Disabled Veteran-Owned Small Business Concerns

83 FR 48908

- Common definition of ownership and control for SDVOSBCs across government-wide (including DOD) program and VA program
- VA determines eligibility for VA program
- Rule eases requirement that service-disabled vet make *all* decisions
  - Defines “extraordinary circumstances” in which non-SDV can have shared decision making authority
  - Control can shift when veteran is called to active duty
- If service-disabled veteran rated at 100 percent, surviving spouse can own and control for up to 10 years after veteran's

# Proposed Rule: HUBZone Comprehensive Review

83 FR 54812

- Proposed to define “*attempt to maintain*” HUBZone status during HUBZone contract performance as having at least 20% HUBZone employees (must be 35% at application and offer) and recruiting HUBZone employees.
- Proposed to include affiliate employees if no clear line of fracture between firms
- Proposed to move to annual recertification (from three-year), which would be effective for all HUBZone contracts for the one year period unless there is a merger or acquisition

# Proposed Rule: HUBZone Comprehensive Review

83 FR 54812  
(cont)

- Proposed to require HUBZone status in DSBS at time *of offer* (not necessarily time of award)
- For non-HUBZone multiple-award contract, proposed that firm must be certified as a HUBZone at time of offer on a HUBZone set-aside order
- An employee who resides in a HUBZone continues to count as HUBZone employee as long as an employee of the firm—even if employees moves or residence no longer qualifies

# Proposed Rule: WOSB Certification Program

84 FR 21256

- Proposed to implement a free certification program for Women-Owned Small Businesses (WOSBs) and Economically-Disadvantaged Women-Owned Small Businesses (EDWOSBs) and eliminate the self-certification option to comply with 2015 NDAA amendment that requires a WOSB/EDWOSB to be certified by SBA, an authorized Federal or state entity, or an authorized third-party certifier (TPC) in order to be awarded WOSB/EDWOSB set-aside or sole source contracts.
- Proposed to expand the list of Federal and state entities that will be authorized to certify WOSBs/EDWOSBs in lieu of certification by SBA's Women-Owned Small Business Program office. These include the 8(a) Business Development Program and the HUBZone Program, the DOT Disadvantaged Business Enterprise Program, and the VA Center for Verification and Evaluation.
- Proposed detailed information about how SBA will oversee TPCs.

# Proposed Rule: WOSB Certification Program (cont)

84 FR 21256

- Proposed to adopt a \$750,000 net worth standard when assessing economic disadvantage for EDWOSBs and continuing eligibility for the 8(a) Business Development Program in order to ensure consistency between SBA's programs.
- Proposed to outline steps for requesting reconsideration for initial decline decisions, similarly to the 8(a) Business Development Program.
- Proposed procedures for how WOSBs/EDWOSBs will maintain certification and how SBA will conduct program examinations.

# Upcoming SBA proposed rules

1. Small Business Size Standards: Services, Agricultural, Construction, Transportation, Manufacturing
2. Consolidation of Mentor Protégé Programs and Other Government Contracting Amendments
3. HUBZone Program Provisions for Governor-Designated Covered Areas and Restoring Lost Certifications
4. Calculation of Annual Average Receipts
5. Regulatory Reform Initiative

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