



U.S. Small Business
Administration



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SBA's Small Business Learning Series

Legislative & Regulatory Update

Not intended for public distribution

Hosts

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Welcome to “SBA Virtual Learning 2024”

1. Questions answered during the final 10 minutes.
2. Technical problems: Contact your IT admin who manages Teams settings for your organization.
3. Captioning available for this presentation.
4. We cover the “**SBA Quick Reference**” as time allows.
5. For more SBA training visit the SBA Learning Center website <https://www.sba.gov/tools/sba-learning-center/search/training>

Important Announcements

July 3, 2024, First Wednesday

- The July 3 session of First Wednesday is moved to Thursday, July 11, 2024
- This is due to First Wednesday proximity to July 4, 2024 (The Fourth of July Holiday Week)

The APEX Accelerator Program

The APEX Accelerators are a vital resource partner.

- The APEX Accelerators posts past “First Wednesday” programming at this link: <http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting Officer Resources: “How APEX Accelerators partner with federal agencies”: <http://www.aptac-us.org/federal-partners/>
- Find your nearest APEX Accelerators/Procurement Technical Assistance Center at <http://www.aptac-us.org>
- APEX Accelerator Information at <https://www.apexaccelerators.us/#/>

Small Business Administration YouTube Page

SBA YouTube page posts past “First Wednesday” programming at links below.

FY2023

- October 5, 2022 – 8(a) Business Development Program Updates: <https://youtu.be/Yl5Sp0dP1aE>
- November 2, 2022 – Surety Bond Guarantee Program: <https://youtu.be/QiZJiMLcc5o>
- December 7, 2022 – Subcontracting Program: <https://youtu.be/gMaaeGI8CBs>
- January 4, 2023 – Surveillance Review Program: <https://youtu.be/euUX4Jv6kRI>
- February 1, 2023 – HUBZone Program: <https://youtu.be/YGnS8e6idCc>
- March 1, 2023 – The Mentor Protégé Program: <https://youtu.be/A9KbCm4FP1c>
- April 5, 2023 – Non-Manufacture Rule (NMR): <https://youtu.be/AqwYMWoe9f0>
- May 3, 2023 – Size Program: https://youtu.be/45WZ_oPb1GY
- Jun 7, 2023 – Legislature and Regulatory Updates: <https://youtu.be/ljx9IajQJNY>
- July 5, 2023 – Market Research: [SBA First Wednesday Market Research - July 13, 2023](https://youtu.be/45WZ_oPb1GY)
- August 2, 2023 – Service-Disabled Veteran Owned Program (SDVOSB): <https://youtu.be/QxcxJISRhnw>

FY2024

- October 4, 2023 - Certificate Of Competency: <https://youtu.be/VDZ-uuCLlWw>
- November 1, 2023 - 8(a) Program Updates: <https://youtu.be/6fN3dK0EShs>
- December 6, 2023: <https://youtu.be/sa29iONBtfk>
- January 3, 2024 - Compliance Reviews: https://youtu.be/WmZn_oa13-o
- February 7, 2024 - Limitations on Subcontracting: <https://youtu.be/fYtGi6zhjXM>
- March 6, 2024 – Mentor Protégé Program: <https://youtu.be/ULmCzTe4c04>
- April 3, 2024 – Women-Owned Small Business Program: <https://youtu.be/E-R17-5lBn4>
- *May 9, 2024 - Participation Plans & Subcontracting Plans: <https://youtu.be/6OBLwxqdoZM>
- June 5, 2024 - Legislative and Regulatory Update:

**FIRST WEDNESDAY VIRTUAL LEARNING SERIES
FY 2024 SCHEDULE**

1:00 to 2:00 PM Central Time

FY 2024	Date	Topic
1	October 4, 2023	COC
2	November 1, 2023	8(a) Program Updates
3	December 6, 2023	The Timber Program and SBA POCs
4	January 3, 2024	Compliance Reviews
5	February 7, 2024	Limitations on Subcontracting
6	March 6, 2024	SBA Mentor Protégé Program and Joint Ventures
7	April 3, 2024	Women Owned Small Business (WOSB)
8	*May 9, 2024	Participation Plans versus Subcontracting Plans
9	June 5, 2024	Legislative and Regulatory Update
10	*July 11, 2024	HUBZone
11	August 7, 2024	Market Research

* Schedule Revision Due to Holiday or Programming Conflict

The program schedule is for information only and is subject to change.

One Continuous Learning Point

- Self-service process for one CLP of credit: Many of you want to receive credit for today's training. You will be glad to know that today's training is worth one CLP. The slide presentation will include the training certificate on Slide 10. Fill, download the training certificate, copy and submit it through regular channels.
- If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to sbalearning@sba.gov.

“SBA 1st Wednesday Virtual Learning 2024”

This Certificate is awarded to

Insert Your Name Here

For completion of

Legislative and Regulatory Update

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01. Recommendation of One CLP.



Pamela J. Beavers
Director, Area IV
SBA Office of Government Contracting

06/05/2024

DATE

Today's Speaker

Sam Q. Le
Director, Office of Policy Planning and Liaison
Office of Government Contracting and Business Development



U.S. Small Business
Administration

Legislative & Regulatory Update

**For Small Business Government Contracting
Programs**

June 5, 2024

Legislative Action

NDAA for Fiscal Year 2024

[Pub. Law 118-31](#), Enacted Dec. 22, 2023

Sect. 862: Primes must notify CO if payment under a small-business subcontracting plan is 30+ days past due; cooperate with CO

Sect. 863: Increase SDVOSB goal to 5%

- SBA enacting for FY24

Sect. 864: Eliminate self-certification for SDVOSBs, prime and sub

- Would be effective Dec. 22, 2024

Sect. 865: Require DoD to consider the past performance of a small business's affiliates

Passed the House, Sent to the Senate

- [H.R.4670](#) / [S. 3971](#), Small Business Contracting Transparency Act of 2023 - Require SBA to report annually on WOSB, HUBZone, and SDVOSB certifications
- [H.R. 7105](#) - remove self-certified WOSB from scorecard
- [H.R. 3511](#) - mandate that SBA's OVBD train employees at agencies that do not meet SDVOSB goals on how to increase the number of contracts to SDVOSBs
- [H.R. 7128](#) - in order to qualify for WOSB set-aside contracts, WOSB must have been approved as not exceeding the applicable size standard
- [H.R. 6591](#) - require SBA to reassess the standards for economic disadvantage at least every four years

Referred out of House Committee

1. [H.R. 5450](#) - apply HUBZone price evaluation preference to unrestricted task orders issued off unrestricted multiple-award contracts
2. [H.R. 7103](#) - require agencies to testify for failure to meet Governmentwide contracting goals
3. [H.R. 7988](#) - require SBA to evaluate how many "new small business entrants" an agency awarded to in the prior year and include that information on the small business scorecard.
4. [H.R. 7987](#) - mandate that agencies use plain language and include key words in notices for small businesses that are published on the governmentwide point of entry (SAM.gov).
5. [H.R. 8014](#) - require SBA to issue rules related to canceled solicitations, assist small businesses with issues related to canceled solicitations.

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 Senate

- [S. 1407](#) (Sullivan)- eliminate the requirement for award of 8(a) construction contracts within the area of performance
- [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. 3772](#) (Risch) – require that plain writing statements regarding the solicitation of subcontractors be included in subcontracting plans

Introduced in the House

- [H.R. 5063](#) (Velázquez) – Extend double-credit for Puerto Rico awards by 3 years
- [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
- [H.R. 6320](#) (Velázquez) – Mandate the Rule of Two on multiple-award contract orders, except under FAR 8.4

Introduced in the House

- [H.R. 7988](#) (Stauber) - require SBA to evaluate how many "new small business entrants" an agency awarded to in the prior year and include that information on the small business scorecard.
- [H.R. 7987](#) (LaLota) - mandate that agencies use plain language and include key words in notices for small businesses that are published on the governmentwide point of entry (SAM.gov).
- [H.R. 8014](#) (Mfume) - require SBA to issue rules related to canceled solicitations, assist small businesses with issues related to canceled solicitations.

Executive Action

Small Business Participation on Multiple Award Contracts

[OFPP Memo](#), Jan. 25, 2024; [DoD Memo](#), April 19, 2024

1. Award of new multiple-award contracts

- engage small-business specialists and PCRs earlier in the acquisition process
- consider on-ramps when developing the acquisition strategy

2. Award of orders under new and existing multiple-award contracts

- apply the rule of two to contract orders, with limited exception
- maximize orders to small businesses under the SAT

3. Best-in-Class contracts

- seek new entrants through BIC, or
- consider whether using an "open market" set-aside (outside of a BIC) would be more effective to finding new entrants

OMB Memo: Increasing SDB Dollars for FY24

[M-24-01 Increasing the Share of Contract Dollars Awarded to Small Disadvantaged Businesses for Fiscal Year \(FY\) 2024 and in Subsequent FYs \(Oct. 25, 2023\)](#)

- As required by [EO 14091](#), OMB set an SDB goal for FY24 of 13%
 - Agencies negotiate their SDB goals with SBA to cumulatively award 13% of Federal contract spending to SDBs
 - 8(a) program remains an important gateway for expanding contract access to those who have experienced past discrimination
- SDB goal for FY25 and beyond is 15%

Better Contracting Initiative (BCI)

[FACT SHEET: Biden-Harris Administration Announces New Better Contracting Initiative to Save Billions Annually](#) (Nov. 8, 2023)

BCI seeks to save \$10 billion annually in savings and cost avoidance with four efforts:

1. Leveraging data across Federal agencies to get lower prices and better terms;
2. Negotiating common enterprise-wide software licenses;
3. Saving money and avoiding waste by getting contract requirements right the first time (through holding acquisition workshops to pinpoint requirements for professional services contracts); and
4. Getting better value from sole source and other high-risk contracts.

Recent SBA Regulatory Action

SBA Interim Final Rule: WOSB Program Recertification

89 FR 16445 (March 7, 2024)

- Administrator or designee may postpone the required program examination in light of appropriate, extraordinary circumstances
- Otherwise, certified WOSBs undergo a program examination every three years

SBA Final Rule: Loan Program Alternative Size Standard

89 FR 11703 (Feb. 15, 2024)

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

SBA Final Rule: Credit for Lower Tier Subcontracting

88 FR 70339 (Oct. 11, 2023)

- 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

Size Standard Methodology: Request for Comment

[88 FR 85852](#) (Dec. 11, 2023); www.sba.gov/size

- How SBA establishes, evaluates, and adjusts small business size standards
- Changes from 2019 methodology:
 - Accounts for Federal contracting using a disparity-ratio approach to determine underrepresentation of small businesses in the Federal market
 - For size “exceptions,” use FPDS data
 - Minimum size standard of \$8 million (except agricultural -- \$2.5 million) *or* 250 employees
 - Maximum size standard of \$47 million *or* 1,500 employees

SBA Proposed Rule: Women-Owned Small Business

89 FR 42816 (May 16, 2024)

- Aligning the language on outside employment across the 8(a), women-owned, and service-disabled veteran programs
- Removing outdated references to the VA's certification program
- Implementing statutory requirements on a firm needing to change its WOSB self-certification status based on a status protest
- Changes to definitions
- Comments due July 15

Upcoming SBA proposed rules

1. HUBZone Program Updates and Clarifications
2. Women Owned Small Business Program
3. Small Business Contracting: Increasing Small Business Participation on Multiple Award Contracts

Recent FAR Regulatory Action

FAR Interim Final Rule: Certification of SDVOSBs

[89 FR 13950](#) (Feb. 23, 2024)

- As of January 1, contracting officers were required to check SAM or SBA's Veterans Small Business Certification Program database (veterans.certify.sba.gov) to determine whether the firm is an eligible SDVOSB to qualify for an SDVOSB set-aside or sole-source contract.
- Firms also eligible if on SBA list of applicants as of Dec. 31, 2023 that have not received a determination

FAR Final Rule: 8(a) program

[88 FR 69523](#) (Oct. 5, 2023)

- Requires notice to 8(a) program when a procurement, previously in the 8(a) program, is determined to be a new requirement, not subject to 8(a) release requirements
- Requires notice when agency intends to procure an 8(a) follow-on using an existing limited-competition contract vehicle, when the current or previous 8(a) contract was available to all 8(a) participants
- SBA reserves the right to appeal these decisions

FAR Proposed Rule: Limitations on Subcontracting

[89 FR 2910](#) (Jan. 17, 2024)

- Similarly situated entity must perform the work with its own employees
- Permits exclusion of other direct costs that are not the principal purpose of the acquisition, and not performed by small businesses
- For service contracts, excludes work performed outside the United States on contracts or orders approved or financed under the Foreign Assistance Act of 1961 and work required to be performed by a foreign contractor
- Removes the separate limitations on subcontracting regulations for 8(a) contractors

FAR Proposed: Protests of Orders Set Aside for Small Business

[88 FR 68067](#) (Oct. 3, 2023)

- Would allow size protests on set-aside orders on multiple-award contracts
- Allow status protests on set-aside orders on multiple-award contracts where MAC was not reserved for that category
- Applies where agency requested rerepresentation for the order
- Does not apply to orders and BPAs under Federal Supply Schedule

FAR Proposed Rule: Rerepresentation of Size and Status

[88 FR 67189](#) (Sept. 29, 2023)

- Would require rerepresentation for size and/or socioeconomic status for orders place under multiple-award contracts where:
 - Order set aside for small business under unrestricted MAC
 - Order set aside for socioeconomic where MAC set aside for small business
- Not mandatory on FSS orders, but CO can require rerepresentation

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

Upcoming FAR proposed rules

1. Proposed 2024-003, 8(a) Program
2. Proposed 2023-017, Consolidation and Bundling
3. Proposed 2023-016, Subcontracting Plans and Limitations on Subcontracting
4. Proposed 2023-015, Policy on Joint Ventures
5. Proposed 2023-014, Small Business Protests
6. Proposed 2023-013, HUBZone Program
7. Proposed 2023-011, Small Business Participation on Certain Multiple Award Contracts

Upcoming FAR proposed rules

8. Proposed 2023-009, Credit for Lower-Tier Subcontracting
9. Proposed 2023-001, Subcontracting to Puerto Rican and Covered Territory Small Businesses
10. Proposed 2021-011, Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractor



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