



U.S. Small Business
Administration

Legislative & Regulatory Year in Review FY24

**For Small Business Government Contracting
Programs**

Legislative Action

NDAAs 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

NDAA FY25 - Passed the House, Sent to the Senate

[H.R. 8070](#), sent to the Senate July 8

- Sect. 861 - set DoD goals for contracting to SBA-certified VOSBs; create DoD VOSB sole-source authority without competitive determination
- Sect. 863 – if it misses its SDVOSB goal, DoD, with SBA, conducts training on increasing awards to SDVOSBs
- Sect. 864 - require DoD write contract solicitations in plain language
- Sect. 865 - require DoD to expand existing pilot programs for small businesses to access shared commercial classified infrastructure
- Sect. 866 – DoD and SBA collaborate on critical technology areas
- Sect. 869A – DoD Congressional bundling report

NDAA FY25 – Introduced in the Senate

[FY25 NDAA Bill Text \(senate.gov\)](https://www.senate.gov/legislation/bills/117)

- Introduced amendments:
 - Plain language solicitations
 - End self-certification in women-owned small business
 - Add new entrants to SBA scorecard
 - Eliminate credit in multiple socioeconomic categories
 - Raise sole source thresholds to \$8 mil/\$10 mil
 - Raise small-business goal to 25%
 - Duplicate 8(a) sole-source authority in WOSB/HUBZone/SDVOSB
 - Allow for ESOP participation in 8(a)/WOSB/SDVOSB
 - Create a subcontracting utilization report

Passed the House, Sent to the Senate

1. [H.R.4670](#) / [S. 3971](#), Small Business Contracting Transparency Act of 2023
- Require SBA to report annually on WOSB, HUBZone, and SDVOSB certifications
2. [H.R. 7105](#) - remove self-certified WOSB from scorecard
3. [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
4. [H.R. 7128](#) - in order to qualify for WOSB set-aside contracts, WOSB must have been approved as not exceeding the applicable size standard
5. [H.R. 6591](#) - require SBA to reassess the standards for economic disadvantage at least every four years

Passed the House, Sent to the Senate (cont.)

6. [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.
7. [H.R. 8014](#) - require SBA to issue rules related to canceled solicitations, assist small businesses with issues related to canceled solicitations.

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. 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).

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

Executive Action

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%

Recent SBA Regulatory Action

SBA Direct Final Rule: Eliminate SDVOSB Self-Certification

89 FR 48266 (June 6, 2024); **Clarification** published Aug. 1, 2024

- Must be certified by SBA for
 - agency's SDVOSB goals;
 - subcontracting plan SDVOSB goals
- Submitting application by December 22 qualifies until SBA makes a decision
- Clarified on Aug. 1 to state that “SDVOSBs may continue to self-certify until the grace period ends on December 22, 2024.”

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 Proposed Rule: HUBZone and Other Programs

[89 FR 68274](#) (August 23, 2024); clarified Sept. 19 in [89 FR 76751](#)

- Eligibility at time of offer for HUBZone contracts, not annually
- Recertification frequency from annual to every 3 years
- Employee definition:
 - Decrease to 90 days for HUBZone employee residency (from 180)
 - Employee definition requires 80 hours per month (up from 40)
- Principal office requirements :
 - Must have lease starting 30 days before and ending 60 days after SBA review
 - Virtual offices not allowed
 - Shared spaces must have dedicated area
 - For 100% telework, 51% of employees must be in HUBZones
- “Attempt to maintain” HUBZone employee percentage:
 - One-year grace period after HUBZone contract award where can drop to 20%
 - Return to 35% by next certification date
- Limited to one legacy employee at a time

Recent FAR Regulatory Action

FAR Final Rule: Order-level Protests

[89 FR 61333](#) (July 30, 2024)

- Provides processes and procedures for filing size and socioeconomic status protests for
 - partial set-asides and reserves under multiple-award contracts,
 - orders set aside under unrestricted multiple-award contracts, and
 - orders placed under multiple-award contracts where rerepresentation was requested
- Protests must be submitted within 5 business days of order award notification

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: HUBZone program

[89 FR 48544](#) (June 7, 2024)

- Appeals of HUBZone protest decisions are heard by the SBA's Office of Hearings and Appeals
- Proposes to remove the HUBZone representation in SAM because SBA certified HUBZone firms

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

Questions????

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NMR Class Waivers

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