

New rules changes resulting from the Jobs Bill and new contracting programs

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Topics Covered

- The new rule providing for accelerated payments to small businesses.
- Proposed penalties for firms who misrepresent their size and status on small business contracts.
- Contracts for WOSBs and EDWOSBs.
- Penalties to primes who use “bait and switch” tactics.
- Penalties to primes for not paying subcontractors on time.
- HubZone re-designated areas.
- Status of size standard change for Major Group 56.

Accelerated payments to small businesses.

- Agencies should pay small business government contractors within 15 days of receiving proper invoicing documents. Down from 30 days.
- This rule removes the term “disadvantaged” from the language at DFARS 232.903 and DFARS 232.906(a)(ii), thereby extending this payment policy uniformly to all small business concerns.
- This rule:
 - *mitigates cash flow problems*
 - *reduces the requirement of credit lines*
 - *produces a more steady stream of revenue.*
- Agencies are committed to honoring this goal but it is correct to say that penalties on interest are not incurred until after 30 days.

Proposed penalties for misrepresenting

- In the past firms who misrepresented their size successfully argued that the Agencies received no 'damage' if the contract was executed successfully.
- Under the new rules:
 - Unqualified companies that bid on a reserved contract are misrepresenting themselves, and could face fines, imprisonment, suspension or debarment, among other punishments.

Women Owned Small Business (WOSB)

- WOSB:
 - Be a small business that is at least 51% percent unconditionally and directly owned and controlled by one or more women who are United States citizens.
 - Have a woman manage the day-to-day operations, make long-term decisions for the business, hold the highest officer position in the business and work at the business full-time during normal working hours.

Economically Disadvantaged Woman Owned Small Business (EDWOB)

- EDWOB:
 - Be a WOSB that is at least 51% owned by one or more women who are “economically disadvantaged”.
 - Have an EDW manage the day-to-day operations, make long-term decisions for the business, hold the highest officer position in the business and work at the business full-time during normal working hours.
 - Determined if she has a personal net worth of less than \$750,000 (with some exclusions), her adjusted gross yearly income averaged over the three years preceding the certification less than \$350,000, and the fair market value of all her assets is less than \$6 million.

WOB & EDWOB Certification

- To participate in the Program, a WOSB or EDWOSB must meet the eligibility requirements and either
 - self-certify their business
 - be certified by an SBA-approved Third-Party Certifier.
- Register their status in the Central Contractor Registration (CCR) and the Online Representations and Certifications Application (ORCA), as well as upload required documents to the WOSB Program Repository. CCR and ORCA have been updated to allow WOSBs and EDWOSBs to register and certify.
- Third-Party Certification: A third party certifier is a national certifying entity approved by the Administrator that may engage in the certification process for the WOSB Program. All 3rd party certifiers can be found at www.sba.gov/wosb.

WOB & EDWOB Contracting (pg 1 of 3)

- Eligible Industry Codes: There are over 300 (NAICS) codes that are eligible for Federal contracting under the WOSB Program. The list can be found at www.sba.gov/WOSB.

WOB & EDWOB Contracting (pg 2 of 3)

- **Contracting officers may set aside a requirement for WOSBs if:**
 - The Business is eligible by NACIS Code
 - The contracting officer has a reasonable expectation that two or more WOSBs will submit offers.
 - The anticipated award price of the contract does not exceed \$6.5 million in the case of manufacturing contracts and \$4 million in the case of all other contracts.
 - The contracting officer believes the contract can be awarded at a fair and reasonable price.

WOB & EDWOB Contracting (pg 3 of 3)

- **Contracting officers may set aside a requirement for EDWOSBs if:**
 - The Business is eligible by NACIS Code.
 - The contracting officer has a reasonable expectation that two or more EDWOSBs will submit offers.
 - The anticipated award price of the contract does not exceed \$6.5 million in the case of manufacturing contracts and \$4 million in the case of all other contracts.
 - In the estimation of the contracting officer, the contract can be awarded at a fair and reasonable price.

Penalties to primes who use “bait and switch” tactics.

- Primes must notify the contracting officer in writing when the prime does not use a sub-contractor used in preparing a bid.
- This helps eliminate “bait-and-switch” tactics that occur when large primes – after winning the prime contract – don’t follow through with their own plans to give subcontracts to small businesses.
- Failure to comply with sub-contracting goals

Penalties to primes for not paying subcontractors on time.

- The law holds large prime contractors more accountable to their own subcontracting plans by requiring written justification when plans aren't met and when small business subcontractors aren't paid on time.
- Proposed rule changes would include:
 - Reports when payment is reduced, or payment to a sub is > 90 days
 - Clarification that the CO is responsible for monitoring sub-contracting performance.
 - Clarifying with sub-contracts must be included in in sub-contracting data performance.
 - Changes to subcontracting thresholds and referencing the eSRS.

HubZone re-designated areas

- Firms proposed for de-certification will be notified by the SBA and firms so identified have 30 days to respond to notice and must include specific evidence that they are in a HUBZone and meet employment requirements.
- The SBA Act provides for grandfathering QCTs and QNMCs that lose their HUBZone eligibility.
- During this grandfathering period, the area is termed a re-designated area. The re-designation expires
 - on the later of the date on which the Census Bureau publicly releases the first results from the decennial census
 - or three (3) years after the date on which the census tract or nonmetropolitan county ceased to be qualified (i.e., became re-designated).

Status of size standard change for Major Group 56

- Size standard determination methodology is currently being evaluated.
- This information is posted at www.sba.gov/size and is currently open for comment.
- Comment phase closes on proposed rule changes on **December 12, 2011** .
- Comments received will be posted on www.regulations.gov
- Any questions can be directed to Caitlin Cain, Regional Advocate at caitlin.cain@sba.gov or by phone at (504) 589-2838
- If you wish to comment, any information in your submission that you wish to remain Confidential Business Information (CBI) must be clearly identified in your submission with reasoning and justification. Comments can not be sent by e-mail and must be mailed, hand-delivered or couriered to.

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