



Billing Code: 8025-01

## SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, 126 and 127

RIN 3245-AH02

Conforming Statutory Amendments and Technical Corrections to Small Business Government Contracting Regulations

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule; request for comments.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending its regulations to incorporate a provision of the National Defense Authorization Act of 2018 (NDAA 2018) and to update and provide several technical corrections to SBA's regulations. Specifically, the NDAA 2018 amended the Small Business Act by replacing fixed dollar amount thresholds with references to the micro-purchase and simplified acquisition thresholds. SBA is updating its regulations to conform to this new statutory language. SBA is also updating the sole source dollar amounts for the Service-Disabled Veteran-Owned (SDVO) small business and the Historically Underutilized Business Zone (HUBZone) small business regulations. The thresholds for sole source contracting are contained in the Small Business Act, SBA's regulations, and the Federal Acquisition Regulations (FAR). These thresholds are updated in the FAR for inflation periodically, and therefore, over time, SBA's regulations and the FAR's numbers diverge. SBA is making this change to conform the thresholds contained in SBA's regulations to those in the FAR. This rule also allows indirect ownership by United States citizens in the HUBZone program to more accurately align with the underlying statutory authority.

Finally, SBA is making several technical changes to address mistakes and typos made in previous rulemakings. For example, this final rule will update some cross-references that were not updated when a previous rulemaking changed numbering. Other changes made are for errors, grammar, syntax, and clarity.

**DATES:** This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] without further action, unless significant adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the *Federal Register*.

**ADDRESSES:** You may submit comments, identified by RIN 3245-AH02, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail, for paper, disk, or CD-ROM submissions: Kenneth Dodds, Director, Office of Procurement Policy and Liaison, 409 Third Street, SW, Washington, DC 20416.
- Hand Delivery/Courier: Kenneth Dodds, Director, Office of Procurement Policy and Liaison, 409 Third Street, SW, Washington, DC 20416.

SBA will post all comments on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.Regulations.gov](http://www.Regulations.gov), please submit the information to Brenda Fernandez, Office of Procurement Policy and Liaison, 409 Third Street, SW, Washington, DC 20416, or send an email to [Brenda.fernandez@sba.gov](mailto:Brenda.fernandez@sba.gov). Highlight the information that you consider CBI and

explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, Office of Procurement Policy and Liaison, 409 Third Street, SW, Washington, DC 20416, 202-205-7337, [Brenda.fernandez@sba.gov](mailto:Brenda.fernandez@sba.gov).

SUPPLEMENTARY INFORMATION: On December 12, 2017, President Trump signed into law the National Defense Authorization Act for Fiscal Year 2018 (NDAA 2018), Public Law 115-91, 131 Stat. 1283. Section 1702 of NDAA 2018 amended section 15(j)(1) of the Small Business Act, 15 U.S.C. 644(j)(1), by removing the \$2,500 and \$100,000 thresholds found in the Small Business Act and replacing them with references to the micro-purchase threshold and the simplified acquisition threshold, respectively. The Small Business Act previously required competition reserved exclusively for small business concerns for procurements with values falling between \$2,500 and \$100,000 (adjusted for inflation in regulations to \$150,000). SBA also uses dollar value thresholds for the application of the limitations on subcontracting requirements and nonmanufacturer rule to small business set-asides. This direct final rule merely adopts the statutory change by replacing the dollar thresholds with references to the micro-purchase and simplified acquisition thresholds in an identical way that the Small Business Act was amended.

SBA is also updating the sole source dollar amounts for the Service-Disabled Veteran-Owned (SDVO) small business and the Historically Underutilized Business Zone (HUBZone) small business regulations. The thresholds for sole source contracting

are contained in the Small Business Act, SBA's regulations (Title 13 of the Code of Federal Regulations), and the Federal Acquisition Regulations (FAR) (Title 48 of the Code of Federal Regulations). These thresholds are updated in the FAR for inflation periodically, and therefore over time, SBA's regulations and the FAR's numbers diverge. The dollar thresholds set forth in the FAR below which contracts may be awarded on a sole source basis, as adjusted for inflation, are as follows: for the 8(a) Business Development (BD) program (FAR 19.805-1), \$7 million, including options, for contracts assigned a manufacturing North American Industrial Classification System (NAICS) code, and \$4 million, including options, for all other contracts; for the SDVO small business program (FAR 19.1406) and Women-Owned Small Business (WOSB) program (FAR 19.1506), \$6.5 million, including options, for contracts assigned a manufacturing NAICS code, and \$4 million, including options, for all other contracts; and for the HUBZone program (FAR 19.1306), \$7 million, including options, for contracts assigned a manufacturing NAICS code, and \$4 million, including options, for all other contracts. SBA's regulations for the 8(a) BD and WOSB programs have previously been updated in 13 CFR 124.506(a)(2) and 127.503(c)(2), respectively, to synchronize those programs with the inflation adjustments made by the FAR. The sole source thresholds for the SDVO and HUBZone programs have not been similarly updated. This direct final rule merely incorporates the inflation adjustments made by the FAR for the SDVO and HUBZone programs into SBA's regulations.

The rule also amends the HUBZone regulations to allow indirect ownership by United States citizens to more accurately align with the underlying statutory authority. Direct ownership is not statutorily mandated, and SBA believes that the purposes of the

HUBZone program – capital infusion in underutilized geographic areas and employment of individuals living in those areas – may be achieved whether ownership by U.S. citizens is direct or indirect. The regulations first implementing the HUBZone program were largely based on those governing the Small Disadvantaged Business (SDB) program, which is no longer in existence and which served different goals than the HUBZone program. The SDB program and SBA’s other currently active socioeconomic programs (including the 8(a) BD program, the WOSB small business program, and the SDVO small business program) are intended to assist the business development of small concerns owned and controlled by certain individuals, so requiring direct ownership for these programs is consistent with their purposes. The HUBZone program differs in that the program’s goals do not center on the socioeconomic status of the SBC owner but rather the location of the business and the residence of its employees. This direct final rule deletes the requirement that ownership by United States citizens in the HUBZone program must be direct, and instead it merely copies the statutory requirement that a HUBZone small business concern must be at least 51% owned and controlled by United States citizens.

Finally, SBA is making several technical changes to address mistakes and typos made in previous rulemakings. For example, this final rule will update some cross-references that were not updated when a previous rulemaking changed numbering.

#### Section by Section Analysis

##### Section 121.103(h)(3)(ii)

This section deals with exceptions to SBA’s general affiliations rule for joint ventures. Specifically, the exception in subparagraph (ii) is for joint ventures

participating in SBA's mentor protégé program. The rule is intended to classify a joint venture between a small business and its SBA-approved mentor as small, as long as the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the contract and meets SBA's general joint venture requirements for the type of contract at issue. In other words, the joint venture can qualify as small for any contract (8(a), small business set aside, WOSB, SDVO, or HUBZone) provided it meets SBA's joint venture rules for the type of contract to be performed. However, the current regulation is missing cross-references to the joint venture requirements for 8(a) contracts and small business set asides. These cross-references were inadvertently left out. This change merely fixes that error.

Sections 121.404(g), 125.18(e)(1), 126.601(h)(1), and 127.503(h)(1)

SBA is making a technical correction to these sections. The paragraphs in question deal with the identical issue, recertification of size and/or status. The language and intent of each regulation is the same; the only difference is that each section deals with a separate socio-economic contracting program. It has been brought to SBA's attention that as drafted, it is not clear which sentence or clause the final sentence is referencing. It was SBA's intent, as made clear in the proposed and final rule enacting this regulation, entitled Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation, 78 FR 61114 (Oct. 2, 2013), that SBA wanted the sentence and the referenced exceptions to be applied to the entirety of the preceding paragraph. 78 FR 61114, 61119-20 (Oct. 2, 2013). Therefore, SBA is adding additional language to clearly align the paragraph to the intent of the regulation. This rule is not intended to make any substantive change to the paragraphs. SBA is also changing the heading to § 126.601(h),

the recertification paragraph for the HUBZone program, in order to make it identical to the recertification paragraphs relating to the other programs. There is no intended difference regarding recertification between the programs, so there is no need for the additional language in the HUBZone paragraph after the word recertification.

#### Section 121.406(a)

SBA is making a correction to paragraph (a) of this section in order to correct a missing word. With reference to the clause dealing with SDVO SBC contracting, SBA left out the modifier “sole” before “source contract” in the final rule enacting this regulation, entitled Small Business Government Contracting and National Defense Authorization Act of 2013 Amendments, 81 FR 34243, 34259 (May 31, 2016).

#### Section 121.406(d)

SBA is making a change to paragraph (d) of this section. This change removes the dollar value thresholds and replaces them with references to the micro-purchase and simplified acquisition thresholds, respectively. As explained above, the NDAA 2018 modified the Small Business Act by changing the dollar thresholds to references to the micro-purchase threshold and the simplified acquisition threshold. This direct final rule merely conforms the regulation to the statutory changes made by the NDAA 2018.

#### Section 125.3

This change removes the term “\$150,000” in paragraphs (c)(1)(viii) and (ix) and replaces it with a reference to the simplified acquisition threshold. As explained above, the NDAA 2018 modified the Small Business Act by changing the dollar thresholds to references to the micro-purchase threshold and the simplified acquisition threshold.

Thus, this direct final rule merely conforms the regulation to the statutory changes made by the NDAA 2018 and does not make any substantive change to the regulations.

Section 125.6

This change removes the dollar value thresholds and replaces them with references to the micro-purchase and simplified acquisition thresholds, respectively. As explained above, the NDAA 2018 modified the Small Business Act by changing the dollar thresholds to references to the micro-purchase threshold and the simplified acquisition threshold. Thus, this direct final rule merely conforms the regulation to the statutory changes made by the NDAA 2018 and does not make any substantive change to the regulations.

Sections 125.22 and 125.23

This direct final rule changes §§ 125.22 and 125.23 to correct cross-reference citations that were not updated when SBA renumbered its regulations. SBA is also amending the values authorized for SDVO small business sole source awards in order to be consistent with the current values set forth in FAR 19.1406, as adjusted for inflation.

Section 126.200(b)(1)

As set forth above in more detail, this rule deletes the requirement that ownership by United States citizens in the HUBZone program must be direct, and instead it merely copies the statutory requirement that a HUBZone small business concern must be at least 51% owned and controlled by United States citizens.

Section 126.612(b)(1) and (2)

SBA is amending these paragraphs to update the values authorized for HUBZone sole source awards in order to be consistent with the current values set forth in FAR 19.1306, as adjusted for inflation..

Section 126.616(d)(2)

SBA is amending this paragraph by replacing the word protégé with the term SBC. The inclusion of the word protégé was a mistake. The mistake could be interpreted to mean the availability of the benefits of this provision were available only to HUBZone SBCs partaking in the SBA’s mentor-protégé program. However, the clear intent of the final rule entitled “Small Business Mentor Protégé Programs, 81 FR 48557 (July 25, 2016), was for the joint venture benefits to be available to all certified HUBZone SBCs. In this regard, the supplementary information to the Small Business Mentor Protégé Programs rule, in which this provision was adopted, provided that “the final rule revises the joint venture provisions contained in § 125.15(b) (for SDVO SBCs, which are now contained in § 125.18(b)), § 126.616 (for HUBZone SBCs), and § 127.506 (for WOSB and Economically Disadvantaged Women-Owned Small Business (EDWOSB) concerns) to more fully align those requirements to the requirements of the 8(a) BD program.” 81 FR 48557, 48558, 48559 (July 25, 2016) (Emphasis added). This direct final rule merely conforms the HUBZone regulatory language to that of the other programs, something that was specifically intended in the original regulatory authority.

Compliance With Executive Orders 12866, 12988, 13132, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612)  
Executive Order 12866

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this direct final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this direct final rule has no federalism implications warranting preparation of a Federalism assessment.

Executive Order 13771

This final rule is not an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601-612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis, which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects

##### 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

##### 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

##### 13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small businesses.

##### 13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR parts 121, 125, 126, and 127 as follows:

**PART 121—SMALL BUSINESS SIZE REGULATIONS**

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662 and 694a(9).

2. Amend § 121.103 by revising paragraph (h)(3)(ii) to read as follows:

**§ 121.103 How does SBA determine affiliation?**

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

(ii) Two firms approved by SBA to be a mentor and protégé under § 125.9 of this chapter may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement, and the joint venture meets the requirements of §§ 124.513 (c) and (d), §§ 125.8(b) and (c), §§ 125.18(b)(2) and (3), §§ 126.616(c) and (d), or §§ 127.506(c) and (d) of this chapter, as appropriate.

\* \* \* \* \*

3. Amend § 121.404 by revising the last sentence of the introductory text of paragraph (g) to read as follows:

**§ 121.404 When is the size status of a business concern determined?**

\* \* \* \* \*

(g) \* \* \* However, the following exceptions apply to this paragraph (g):

\* \* \* \* \*

4. Amend §121.406 by:

a. Adding the word “sole” after the words “veteran-owned small business set-aside or” and before the words “source contract,” in paragraph (a); and

b. Revising paragraph (d) to read as follows:

**§ 121.406 How does a small business concern qualify to provide manufactured products or other supply items under a small business set-aside, service-disabled veteran-owned small business, HUBZone, WOSB or EDWOSB, or 8(a) contract?**

\* \* \* \* \*

(d) The performance requirements (limitations on subcontracting) and the nonmanufacturer rule do not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold (as both terms are defined in the FAR at 48 CFR 2.101).

\* \* \* \* \*

**PART 125-- GOVERNMENT CONTRACTING PROGRAMS**

5. The authority citation for part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644; 657f; 657r.

**§ 125.3 [Amended]**

6. Amend § 125.3 by removing the term “\$150,000” and adding in its place the phrase “the simplified acquisition threshold (as defined in the FAR at 48 CFR 2.101)” in paragraphs (c)(1)(viii) and (ix).

7. Amend § 125.6 by:

a. Removing the term “\$150,000” and adding in its place the phrase “the simplified acquisition threshold (as defined in the FAR at 48 CFR 2.101)” in paragraph (a) introductory text; and

b. Revising paragraph (f)(1) to read as follows:

**§ 125.6 What are the prime contractor's limitations on subcontracting?**

\* \* \* \* \*

(f) \* \* \*

(1) Small business set-aside contracts with a value that is greater than the micro-purchase threshold but less than or equal to the simplified acquisition threshold (as both terms are defined in the FAR at 48 CFR 2.101); or

\* \* \* \* \*

8. Amend § 125.18 by revising the last sentence of paragraph (e)(1) to read as follows:

**§ 125.18 What requirements must an SDVO SBC meet to submit an offer on a contract?**

\* \* \* \* \*

(e) \* \* \* (1) \* \* \* However, the following exceptions apply to this paragraph

(e)(1):

\* \* \* \* \*

9. Amend § 125.22 by revising paragraph (a) to read as follows:

**§ 125.22 When may a contracting officer set-aside a procurement for SDVO SBCs?**

(a) The contracting officer first must review a requirement to determine whether it is excluded from SDVO contracting pursuant to § 125.21.

\* \* \* \* \*

10. Amend § 125.23 by revising paragraphs (a), and (b)(1) and (2) to read as follows:

**§ 125.23 When may a contracting officer award sole source contracts to SDVO SBCs?**

\* \* \* \* \*

(a) None of the provisions of §§ 125.21 or 125.22 apply;

(b) \* \* \*

(1) \$6,500,000 for a contract assigned a manufacturing NAICS code, or

(2) \$4,000,000 for all other contracts;

\* \* \* \* \*

**PART 126-- HUBZONE PROGRAM**

11. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644, and 657a.

**§ 126.200 [Amended]**

12. Amend § 126.200 by removing the words “unconditionally and directly” in paragraph (b)(1)(i).

13. Amend § 126.601 by revising the heading of paragraph (h) and the last sentence of the introductory text of paragraph (h)(1) to read as follows:

**§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?**

\* \* \* \* \*

(h) *Recertification.* (1) \* \* \* However, the following exceptions apply to this paragraph (h)(1):

\* \* \* \* \*

14. Amend § 126.612 by revising paragraphs (b)(1) and (2) to read as follows:

**§ 126.612 When may a CO award sole source contracts to qualified HUBZone SBCs?**

\* \* \* \* \*

(b) \* \* \*

(1) \$7,000,000 for a contract assigned a manufacturing NAICS code, or

(2) \$4,000,000 for all other contracts.

\* \* \* \* \*

**§ 126.616 [Amended]**

15. Amend § 126.616 by removing the words “HUBZone protégé” and adding in their place the words “HUBZone SBC” in paragraph (d)(2).

**PART 127-- WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM**

16. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), 644 and 657r.

17. Amend § 127.503 by revising the last sentence of the introductory text of paragraph (h)(1) to read as follows:

**§ 127.503 When is a contracting officer authorized to restrict competition or award a sole source contract or order under this part?**

\* \* \* \* \*

(h) \* \* \* (1) \* \* \* However, the following exceptions apply to this paragraph

(h)(1):

\* \* \* \* \*

Dated: March 19, 2018.

Linda E. McMahon,  
*Administrator.*

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