



Billing Code:

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN 3245- AH14

Regulatory Reform Initiative: Government Contracting Programs

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) is proposing to remove from the Code of Federal Regulations (CFR) four regulations in the Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) Program that are no longer necessary because they are unnecessary or redundant. The removal of these regulations will assist the public by simplifying SBA's regulations in the CFR.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN: 3245-AH14, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail or Hand Delivery/Courier: Brenda Fernandez, Office of Policy, Planning and Liaison, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI), as defined in the User Notice at

<http://www.regulations.gov>, please submit the information to Brenda Fernandez, Office of Policy, Planning and Liaison, Office of Government Contracting and Business Development, 409 Third Street SW, Washington, DC 20416, or send an email to Brenda.fernandez@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Khem Sharma, Chief, Office of Size Standards, (202) 205-7189 or khem.sharma@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Service-Disabled Veteran-Owned Small Business Concern Program

This program allows agencies to set aside contracts for SDVO SBCs. Under this program, Federal agencies may also award sole source contracts to SDVO SBCs so long as the award can be made at a fair and reasonable price and the anticipated total value of the contract, including any options, is below \$4 million (\$6.5 million for manufacturing contracts). For purposes of this program, veterans and service-related disabilities are defined as they are under the statutes governing veterans' affairs. In FY2017, the Federal Government awarded \$18.2 billion to SDVO SBCs:

- \$6.8 billion was awarded through SDVO SBC set-aside awards;
 - \$4.3 billion was awarded to SDVO SBCs in full-and-open competitions;
- and

- \$7.1 billion was awarded through awards with another small business preference (set-asides or sole source awards for small businesses generally or awards reserved for HUBZone firms, 8(a) firms, and WOSBs).

There are currently 21,750 active certified SDVO SBCs.

SBA is proposing to remove from the Code of Federal Regulations (CFR) four regulations that are no longer necessary because they are unnecessary or are covered elsewhere in SBA's regulations. These four regulations govern SBA's SDVO SBC Program.

B. Executive Order 13771

On January 30, 2017, the President signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended to ensure that an agency's regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless prohibited by law, this Executive Order requires the agency to (i) identify at least two existing regulations that the agency can cancel; and (ii) use the cost savings from the cancelled regulations to offset the cost of the new regulation.

C. Executive Order 13777

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying

regulations that, among other things: eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified. SBA has engaged in this process and has identified the regulations in this rulemaking as appropriate for removal in accordance with Executive Order 13777.

II. Section-by-Section Analysis

Section 125.15 May an SDVO SBC have affiliates?

Section 125.15 provides that an SDVO SBC may have affiliates. This rule is redundant because whether an SDVO SBC can have an affiliate is addressed in 13 CFR 121.103, the general rules of affiliation.

Section 125.16 May 8(a) Program participants, HUBZone SBCs, Small and Disadvantaged Businesses, or Women-Owned Small Businesses qualify as SDVO SBCs?

Section 125.16 states that an SDVO SBC may qualify for other SBA contracting programs. This regulation is unnecessary because the requirements for an SDVO SBC to qualify for other programs are addressed in the rules on eligibility for those specific programs.

Section 125.19 Does SDVO SBC status guarantee receipt of a contract?

Section 125.19 states that an SDVO SBC is not guaranteed receipt of a contract. This provision is unnecessary because nothing in SBA's regulations indicates that qualification as an SDVO SBC entitles a firm to a contract.

Section 125.20 Who decides if a contract opportunity for SDVO competition exists?

Section 125.20 is redundant because 13 CFR 125.22 and 125.23 already provide that contracting officers make SDVO SBC competition decisions.

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

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801, et seq.

B. Executive Order 13771

This proposed rule is expected to be an Executive Order 13771 deregulatory action with an annualized net savings of \$29,731 and a net present value of \$424,722, both in 2016 dollars.

The four regulations in the SDVO program are either unnecessary or redundant. Their removal will assist the public by simplifying the SBA's regulations in the CFR and reduce the time spent reviewing them. The cost saving calculation assumes 2 percent of the 21,750 SDVO small businesses per year (or about 435) will save 30 minutes from not reading this removed information. This time is valued at a rate of \$75.57 per hour—the wage of an attorney according to 2018 Bureau of Labor Statistics (BLS) data adding 30 percent more for benefits. This produces savings to SDVO small businesses per year of \$16,436 in current dollars.

The cost savings also includes a savings to the government, assuming that 2 percent of the 38,000 Federal contracting officers per year (or about 760) will save 30 minutes from not reading this removed information. This time is valued at a rate of \$54.21—assuming the average Federal contracting officer is a GS-12 step 1 (DC locality) and adding 30 percent more for benefits, for savings of \$20,600. This produces total savings per year of \$37,036 in current dollars.

In the first year, it is assumed that 5 percent of SDVO small businesses (about 1,088) and 5 percent of Federal contracting officers (about 1,900) would read this Federal Register proposed rule which is estimated to take 30 minutes per SDVO small business at \$75.57 per hour and \$54.21 per hour per Federal contracting officer, producing cost in the first year of \$92,591 (\$41,091 for SDVO small businesses and \$51,500 for the Federal Government). This cost is not expected to continue in subsequent years.

Table 1 displays the costs and savings of this rule over the first 2 years it is published, with the savings and costs in the second year expected to continue into perpetuity. Table 2 presents the annualized net savings in 2016 dollars.

Table 1. Schedule of Costs/(Savings) Over 2 Year Horizon, Current Dollars

| | Savings | Costs |
|---------------|----------------|--------------|
| Year 1 | 598 hours | 1,494 hours |
| | (\$37,036) | \$92,591 |
| Year 2 | 598 hours | 0 hours |
| | (\$37,036) | \$0 |

Table 2: Annualized Savings in Perpetuity with 7% Discount Rate, 2016 Dollars

| | Estimate |
|-------------------------------|-------------------|
| Annualized Savings | (\$35,544) |
| Annualized Costs | \$5,813 |
| Annualized Net Savings | (\$29,731) |

C. Executive Order 12988

This action meets applicable standards set forth in Sec. 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.

D. Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It 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, as specified in the Executive Order. As such, it does not warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act, (5 U.S.C. 601-612)

SBA has determined that this final rule does not affect any existing collection of information.

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

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

There are approximately 21,750 SDVO small businesses and all can be affected by this rule. However, this rule would remove regulations that are unnecessary or redundant, saving these entities time in reading the regulations. The annualized net

savings to SDVO small businesses is \$13,748 in current dollars, or less than a dollar per SDVO small business, as detailed in the Executive Order 13771 discussion above.

Accordingly, the Administrator of SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. SBA invites comment from the public on this certification.

List of Subjects in 13 CFR Part 125

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

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR part 125 as follows:

PART 125 – GOVERNMENT CONTRACTING PROGRAMS

1. The authority citation for part 125 is revised to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657(f), 657q, and 657s; 38 U.S.C. 501 and 8127.

§§ 125.15, 125.16, 125.19, and 125.20 [Removed and Reserved]

2. Remove and reserve §§ 125.15, 125.16, 125.19, and 125.20.

Dated: January 17, 2020.

Jovita Carranza,
Administrator.

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