



# ALASKA

## REGIONAL CONFERENCE

JUNE 20-23, 2022 — ANCHORAGE

Welcome



# ALASKA

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JUNE 20-23, 2022 — ANCHORAGE

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# 2023

# NATIONAL SMALL BUSINESS CONFERENCE

*THE PREMIER SUPPLIER DIVERSITY EVENT FOR ALL SMALL BUSINESSES*

*New Orleans, Louisiana*

**FEBRUARY 13-15, 2023**

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# Speaker

## Jackson S. Brossy

*Assistant Administrator, Office  
of Native American Affairs*

U.S. Small Business Administration





# ALASKA REGIONAL CONFERENCE

JUNE 20-23, 2022 — ANCHORAGE

## SBA Updates

Steven Brown, Alaska District SBA; Mike Fong, SBA & Theresa Meers, SBA

# Speaker

**Mike Fong**

*Region X Administrator*

U.S. Small Business Administration



# Speaker

**Steven Brown**

*Alaska District Director*

U.S. Small Business Administration





# Speaker

**Therese Meers**

*Acting General Counsel*

U.S. Small Business Administration





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JUNE 20-23, 2022 — ANCHORAGE

## SBA Updates

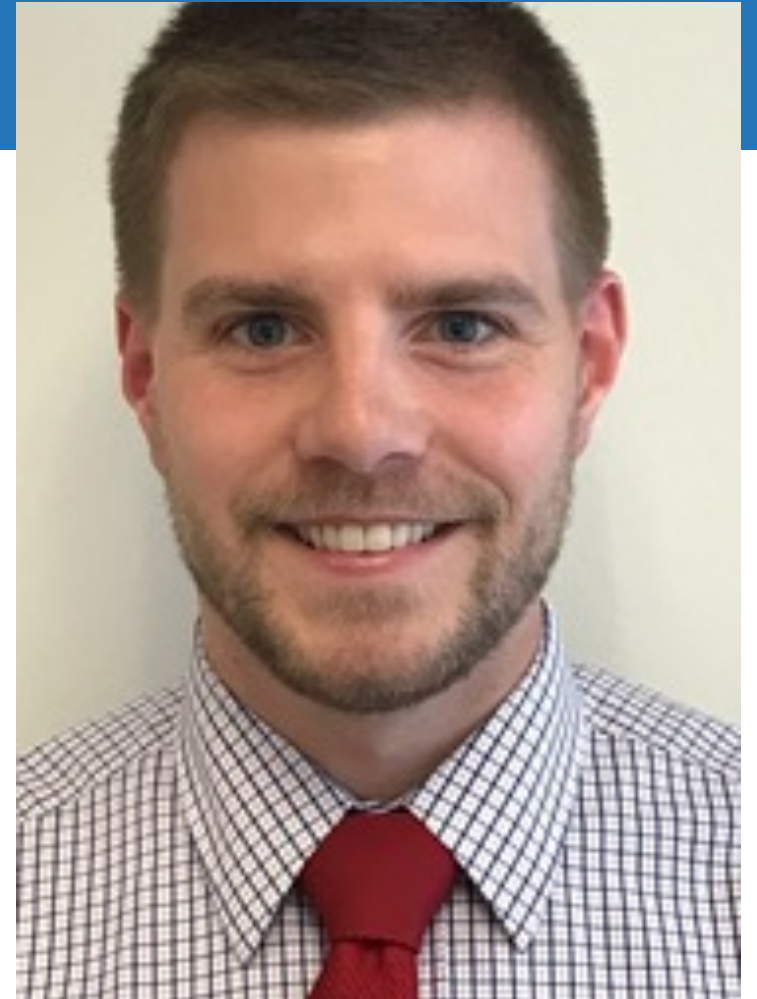
Mark Hagedorn, SBA & John Klein, SBA

# Speaker

## Mark Hagedorn

*Attorney Advisor Office of  
General Counsel*

U.S. Small Business Administration

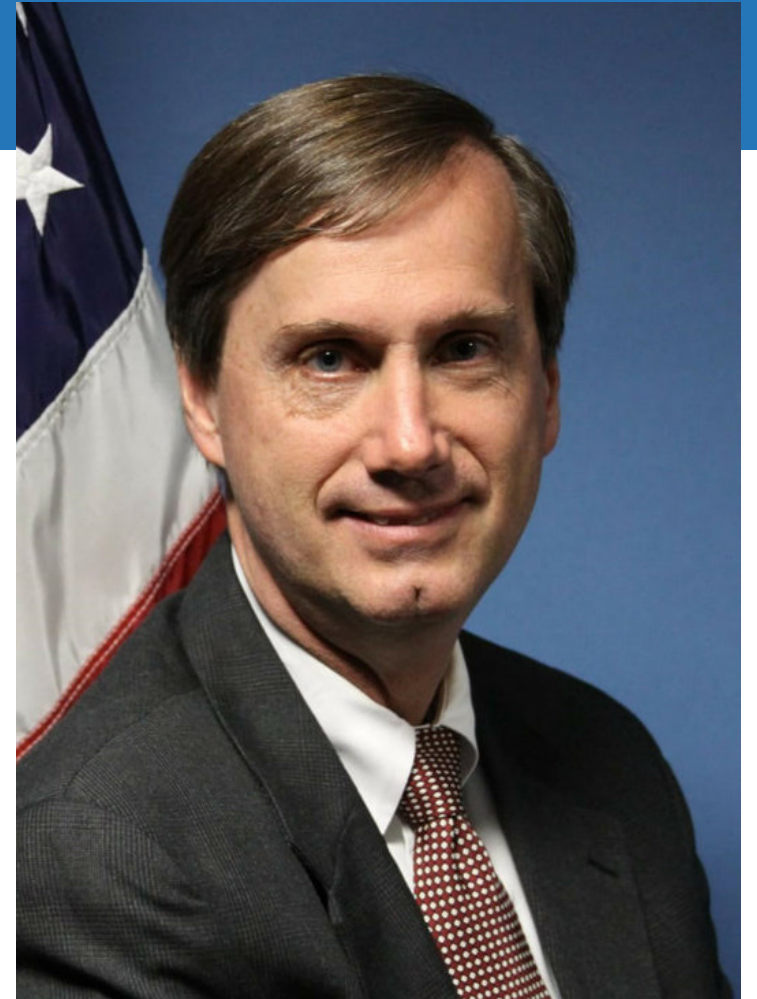


# Speaker

**John Klein**

*Associate General Counsel  
for Procurement Law*

U.S. Small Business Administration





U.S. Small Business  
Administration

# SBA Legal and Regulatory Updates

For Small Business Government Contracting  
Programs

June 21, 2022

# Legislative Action

# National Defense Authorization Act for Fiscal Year 2022

[Pub. Law 117-81](#), signed by the President on 12/27/21

**Sect. 861** - Keeps the Miller Act threshold for bonding protection for small-business subcontractors on construction projects at its present level, instead of raising it for inflation.

**Sect. 863** - Requires update to SAM.gov for small business status changes and notification to agencies where the firm has a pending offer, if the change would affect eligibility.

**Sect. 864** - Gives OHA jurisdiction over HUBZone appeals.

**Sect. 866** - Requires DoD report on CMMC effects on small business.

# Passed the House; Sent to Senate

- [H.R. 7670](#), the Women-Owned Small Business Program Transparency Act, would require SBA to issue an annual report on the WOSB Program.
- [H.R. 5879](#), the Hubzone Price Evaluation Preference Clarification Act of 2021, would extend the HUBZone price evaluation preference to unrestricted task orders.
- [H.R. 7694](#), the Strengthening Subcontracting for Small Businesses Act of 2022, would require agencies to, when awarding a contracting with subcontracting opportunities, use evaluation factors for subcontracting plans and prior small-business subcontracting.



# Introduced in the House

- [H.R. 4697](#), to strike section 8(a)(11), which is the basis of [bona fide place of business rule](#) in the 8(a) program
  - SBA has temporarily waived the requirement through FY23
- [H.R. 6347](#), Military Spouse Entrepreneurs Act of 2021 – to establish a 5-year pilot procurement program for small businesses owned and controlled by military spouses, with a 5% goal
- [H.R. 6504](#), Native Pacific Islanders of America Equity Act - to define a Native CHamoru Organizations as a nonprofit corporation controlled by Guam natives or direct ancestors, similarly define Native Northern Marianas Organizations, and give such organizations the same treatment as Native Hawaiian Organizations for 8(a)/SDB and HUBZone eligibility.

# Executive Action

# OMB Memorandum: Advancing Equity in Procurement

[M-22-03](#), Dec. 2, 2021 – implementing [Executive Order 13985](#)

1. Raises governmentwide SDB contracting goal to 11% for FY22, on the way to 15% by 2025.
2. Implements major changes to Category Management.
  - A. automatic Tier 2 credit for awards to socioeconomic small businesses (SDB, WOSB, HUBZone, SDVOSB)
  - B. reinforced importance of small-business goal achievements
  - C. making SBA and Dept. of Commerce voting members on the Category Management Leadership Council.
3. Seeks to increase new entrants and reverse the decline in the small business supplier base.
4. Makes Federal senior managers accountable for small business contracting goals.
5. Ensures OSDBUGs have access to senior leadership

# 2022 NAICS Manual Updates

[SBA Guidance Memo](#)

[OMB FR Notice](#)

[2022 NAICS Manual](#)

- On Dec 21, 2021, OMB adopted the U.S. Economic Classification Policy Committee's (ECPC) [recommended revisions](#) to the NAICS
- Approximately 170 codes in NAICS 2017 impacted
- OMB advised that effective date is January 1, 2022, for Federal statistical establishment data, **however, SBA is urging agencies to continue using the 2017 NAICS codes until SBA updates its size standards to NAICS 2022:**
  - The 2022 NAICS updates are not effective in SBA's loan programs and small business government procurement programs until SBA updates its Table of Small Business Size Standards through the rulemaking process
  - SBA's rule must be finalized before corresponding changes are made to the size standards in SAM.gov, FPDS-NG, and DSBS

# Recent SBA and FAR Regulatory Action

# New Revenue and Asset Based Size Standards

Sectors: [11,21,22,23](#)    [48-49,51,52,53](#)    [54,55,56](#)    [61,62,72,72,81](#)

- Four rules issued on March 31, 2022, effective May 2, 2022
- 468 size standards reviewed (463 receipts-based, five asset-based (i.e., financial institutions)) based on:
  - Average firm size;
  - Degree of competition;
  - Trends in federal contracting;
  - Economic impacts of COVID-19; and
  - Public comment
- 229 size standards increased

# New Wholesale and Retail Trade Size Standards

[87 FR 35869](#)

- Issued on June 16, 2022, **effective July 14, 2022**
- Grouped separately because these codes cannot be used to classify Government procurements for supplies; rather, the applicable manufacturing code is used
- 137 size standards reviewed
- 57 size standards increased, 80 size standards retained

# SBA Proposed Rule: Manufacturing and Employee-Based Size Standards

[87 FR 24752](#) (April 26, 2022)

- Reviewed 432 employee-based size standards
  - Proposed to increase 150 size standards
    - 120 of the increases are in manufacturing industries
  - Proposed to retain 282 size standards
- Proposes to retain the 500-employee size standard for the nonmanufacturer rule
- If finalized, would add 250 small businesses
- Comments are due June 27



# SBA Final Rule: Calculation of Number of Employees

[87 FR 34094](#)

- Implements Sec. 863 of NDAA 2021
- Adopts a 24-month average to calculate a business's number of employees for size purposes in all of SBA's programs (manufacturing industries and nonmanufacturing industries)
- Effective **July 6, 2022**, with no transition period
- Permit businesses in SBA's loan, SBIC, and surety programs to use 5-year average receipts, in addition to 3-year average receipts

## Direct Final Rule: Definition of Surviving Spouse/Change to Sole-Source Thresholds

### 86 FR 61670

- Allows surviving spouse of deceased service-disabled veteran to qualify as owner of SDVOSBC for up to:
  - 10 years after veteran's death, if veteran was 100% disabled
  - 3 years after veteran's death, for less than 100% disability
- Changes 8(a) sole-source J&A threshold to \$100 mil for DoD, \$25 mil for civilian
  - Applies to entity-owned (ANC/Tribe for DOD & civilian agencies; NHO for DOD only) firms and
  - Applies if only one eligible Participant would submit a fair-market offer
- Changes sole-source thresholds in 8(a), WOSB, and HUBZone to:
  - \$4.5 mil for nonmanufacturing (but still \$4 mil in SDVOSBC)
  - \$7 mil for manufacturing (same for SDVOSBC)

## SBA Proposed Rule: Past Performance Ratings for JV members and Subcontractors

### 86 FR 64410

- Implementing Sec. 868 of NDAA 2021
- Proposes to let small business use past performance from a joint venture, provided it worked on the joint venture's contracts
- Proposes to let a small business use past performance from a first-tier subcontract to go after a prime contract
  - Requires a change to subcontracting plans to direct primes to provide a rating to the small business within 15 days
  - Requests comment on whether to require a time frame within which the small business must make the request (e.g., during the prime's period of performance)

# Notice of new WOSB Program NAICS Codes

[87 FR 15468](#) (March 18, 2022)

- SBA identified new NAICS codes for the WOSB program
- Underrepresented industries are qualified for EDWOSB set-asides/sole-source procurements
  - 113 underrepresented NAICS codes
- Substantially underrepresented industries are qualified for WOSB set-asides/sole-source procurements
  - 646 substantially underrepresented NAICS codes

# SBA Final Rule: Correction to M/P Final Rule

[87 FR 380](#) (Jan. 5, 2022)

- Final rule of October 16, 2020, revised § 121.103(h) to clarify how a joint venture partner must calculate its proportionate share of joint venture receipts.
- JV partner must include in its receipts the same percentage as the percentage corresponding to the JV partner's share of work performed by the joint venture.
- Because the regulations no longer allow JVs to be populated, some reasoned that a JV populated with its own separate contracting-performing employees does not qualify as a JV, and thus that a JV need not include in its own receipts its proportionate share of receipts and employees from populated JVs.
- That was not SBA's intent.
- Correction clarifies that a concern must **include in its receipts and employee count its proportionate share** of joint venture receipts and joint venture employees, respectively, **regardless of whether the joint venture is populated or unpopulated.**

# Nonmanufacturer Rule Class Waiver: Dental Equipment

## 87 FR 31292

- SBA issued a class waiver under NAICS code 339114 for:
  - dental chairs,
  - dental delivery systems,
  - dental lights,
  - dental cabinets,
  - dental stools,
  - dental handpieces,
  - dental infection control apparatus,
  - dental air management systems, and
  - mechanical room equipment
- Allows otherwise qualified regular dealers to supply the waived items on certain small business contracts, regardless of the business size of the manufacturer.

## Nonmanufacturer Rule Class Waivers: Terminations

[87 FR 29424](#) (radiology equipment); [87 FR 34921](#) (furniture)

- SBA terminated the class waivers of the nonmanufacturer rule for;
  - radiology equipment, NAICS code 334517; and
  - furniture under NAICS codes 337215, 337127, and 337113.
- Small businesses will need to provide the product of a small-business manufacturer for set-aside contracts, unless the agency obtains an individual waiver.

# FAR Final Rule: Small Business Programs Overseas

[87 FR 24836](#)

- Amends FAR 19.000 to specify that agencies “may apply” Part 19 (Small Business Programs) outside the United states and its outlying areas.
  - If applied, participants must meet definition of small business concern
  - And must submit representations
  - **Note:** SBA definition of “Small business concern” at 13 CFR 121.105:  
“place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.”
- Applies bundling definition to contracts performed entirely outside the U.S. (they previously were exempted)



# FAR Proposed Rule: Small Business Program Amendments

[87 FR 10327](#)

- Comments due April 25, 2022
- Size changes
  - Size determined at offer on a multiple-award contract, even if price not evaluated (e.g., two-step eval)
  - IT value-added reseller size standard of 150 employees
  - Allow status protests based on ostensible subcontractor
- Allow set-asides for socioeconomic programs where multiple-award contract was set aside for small business
- Cannot exercise an option past 5<sup>th</sup> year on an 8(a) contract if firm is no longer an 8(a) participant

# FAR Final Rule: Limitations on Subcontracting

[86 FR 44233](#) (Aug. 11, 2021, effective Sept. 10, 2021)

- Applies across all small business programs
- Calculated as a percentage of the overall contract amount to be spent by the prime contractor on subcontractors.
- Adds concept of a “similarly situated entity”—a small business subcontractor that has the same small business program status as that which qualified the prime contractor for the prime contract
- Nonmanufacturer rule does not apply to small business set-asides at or below the simplified acquisition threshold
- Waivers of the nonmanufacturer rule allowed for procurements under the HUBZone Program
- CAAC [Letter No. 2021-02](#) authorizes civilian agencies to issue a class deviation to apply LOS exclusions for
  - Certain direct costs not provided by small business concerns (e.g., airline travel, cloud computing, mass media)
  - Work performed outside the United States on awards made pursuant to the Foreign Assistance Act of 1961, or work performed outside the United States required to be performed by a local contractor.

# FAR Final Rule: Scope of PCR Review

[86 FR 44247](#)

- Implements NDAA 2017 Section 1811
- COs must provide the PCR a copy of any proposed acquisition package, including small business set-asides and reserves, at the PCR's discretion
- Clarified existing PCR duties to better reflect SBA regulations. PCRs may recommend:
  - the set-aside or sole-source award to a small business;
  - the breakout of discrete components, items, and requirements for competition; and
  - ways to improve competition

# FAR Final Rule: Consolidation and Bundling

[86 FR 61038](#)

- Implements NDAA 2016 Section 863
- Requires the publication on SAM.gov of a notice, no later than 7 days before the solicitation, for
  - Substantial bundling, and for
  - Consolidation
- Requires the publication on SAM.gov of a determination, with the publication of the solicitation of
  - The rationale for substantial bundling, or that
  - Consolidation of contract requirements is necessary and justified

# FAR Proposed Rule: Update of HUBZone Program

[86 FR 31468](#)

- Published June 14, 2021
- Implements SBA's comprehensive revision (84 FR 65222)
  - Removes requirement for firm to be HUBZone qualified at both offer and award for HUBZone set-asides—instead just offer
- Authorizes sole source awards under SAT

# FAR Proposed Rule: WOSB Certification

[86 FR 55769](#)

- Would require agencies to check SBA's DSBS for WOSB/EDWOSB designation for WOSB/EDWOSB set-asides and sole-source awards
- Firms may submit offers on WOSB/EDWOSB set-asides if certification is pending
- Would remove mentions of the WOSB repository, which no longer exists



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