

Client Alert

FAR Updated to Reflect Revised SBA Regulations

September 27, 2022

On September 23, 2022, the FAR Council issued a number of final rules amending the Federal Acquisition Regulation (FAR) to reflect changes previously implemented by the Small Business Administration (SBA) to its regulations on women-owned small businesses and HUBZones, as well as to clarify policy on joint ventures in small business contracting.

The final rule on HUBZones ([87 FR 58232](#)) aligns the FAR's definition of a HUBZone in provisions and clauses such as FAR 2.101, 52.212-3, 52.219-1, 52.219-8 and 52.219-9 to refer to the requirements described in 13 C.F.R. § 126.200 and SBA's designation of a HUBZone small business concern in the Dynamic Small Business Search (DSBS). This is in line with the SBA's recent revisions to the HUBZone regulations via which SBA annually certifies HUBZone entities in order to allow such entities to remain eligible for HUBZone contracts for the entire year rather than such entities being required to represent their status for each offer. Higher-tier contractors are required to confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing DSBS. The rule also allows contracting officers to award HUBZone set-aside and sole-source contracts at or below the simplified acquisition threshold.

The final rule on women-owned small business ([87 FR 58237](#)) aligns the FAR's definitions of economically disadvantaged women-owned small business concern (EDWOSB) and women-owned small business (WOSB) concern in provisions and clauses such as FAR 2.101, 52.212-3, 52.219-1, 52.219-28, and 52.219-30 to provide that for the WOSB Program, such concerns must be certified by SBA or an approved third-party certifier in accordance with 13 C.F.R. § 127.300. The rule also confirms that for contract awards outside the WOSB Program (including subcontracts), WOSB concerns may continue to self-certify their status.

The FAR Council also published a final rule implementing statutory and regulatory changes regarding joint ventures ([87 FR 58219](#)). Various provisions in FAR Part 19 and 52.219 clauses are updated to reflect that (1) joint ventures may qualify as small if all parties to the joint venture qualify as small under the size standard associated with the NAICS code for the solicitation, or if the joint venture is comprised of a mentor and protégé in the SBA Mentor-Protégé Program; and (2) joint ventures may qualify for one of the socioeconomic programs if the joint venture qualifies as a small business joint venture and one of the parties to the joint venture meets the associated requirements of the socioeconomic program. FAR 9.104-3 and 15.305 are also amended to provide for agencies to consider the past performance of each party to a joint venture if the joint venture is not able to demonstrate past performance for an offer for award.

These three rules take effect October 28, 2022.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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