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# Jobs Act

March 2011

## ◆ Jobs Bill Updates

- ❖ Parity
- ❖ Comp Demo
- ❖ MAS Set-asides
- ❖ Misrepresentations
- ❖ Subcontracting Payments & Plans

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# 1. Parity

## Section 1347 – Amendment to Small Business Act

- ❖ Result: delete “shall” in FAR Part 19.1305(a) to establish parity between HZ, SDVOSB, and 8(a);
- ❖ Replace with “may” for contract actions that have a reasonable expectation that two or more HUBZone small business concerns will submit offers (“the rule of two”).

Anticipated FAR change Spring 2011

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## 2. Repeal of the Comp Demo Program

◆ **FAC 2005-48**, issued 12/30/2010

- ❖ FAR Part 19.10 is deleted in its entirety.
- ❖ The Act eliminated unrestricted competition in designated industry groups ( FAR Part 19.1005) and the enhanced small business participation in 10 agency targeted industry groups.

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### 3. Set Asides for Multiple Award Schedules

❖ 15 U.S.C. 644 under Section 15 as amended requires that FAR be changed to establish guidance under which agencies **“may, at their discretion”**

(i) set aside part or parts of a multiple award contract for small business;

(ii) set aside orders placed against multiple award contracts for small businesses; and

(iii) reserve one or more contract award(s) for small businesses under full and open competition multiple award procurements.

## 4. Presumption of Loss (under False Claims Act) for Size Misrepresentation

Government may recoup the costs for the total amount expended when a concern that is other than small willfully sought and received a contract intended for small business.

Looking for deliberate misrepresentation, withholding information and repeat offenders.

Misrepresentation includes:

- ◆ Submitting a proposal or bid intended for or encouraging to be classified as a small business set-aside.
- ◆ CCR or ORCA registration

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## 5. Requires Annual Certifications of Size Status

- ❖ **Current Regs:** In contracts lasting up to 5 years, the bidder or offeror certifies it's size at the time of submission of proposal or bid. In long term contracts, the contractor has to recertify its size on the 5<sup>th</sup> year of the performance period and every option year, thereafter.
- ❖ The Act requires certifications of Size Status to be performed **annually** using the Online Reps & Certs Application (ORCA) database .

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## 6. Section 1343 - Establish Government-Wide Policy for Prosecution of Size and Status Fraud

- ❖ No later than 1 year after the date of enactment, the SBA Administrator in consultation with the DOJ Attorney General will issue the policy for prosecution of size and status fraud.

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# 7. Section 1314 - Establishes SB Teams Pilot Program

- Issue grants for up to \$5 million to organizations that will consult with small business concerns and help establish teaming and joint ventures.
- The eligible organizations will recommend contracting opportunities for teaming arrangements and joint ventures for small business concerns.
- Program expires in 5 years

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## 8. Section 1347 – Establish Mentor Protégé Programs in HUBZone, SDVOSB, and WOSB

- ❖ The Administrator may expand and establish official programs for small business set-aside programs in HubZone, SDVOSB, and WOSB modeled on the SBA's existing 8(a) Mentor Protégé Program.

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## 9. Section 1321 - Subcontracting Misrepresentations

- ❖ Requires that, by September 27, 2011, the FAR be amended to establish a policy on subcontracting compliance relating to small businesses, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices and periodic oversight and review activities.

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# 10. Section 1322 - Holding Large Prime Contractors Accountable to Subcontracting Plans

- ❖ To the extent the prime contractor is unable to make a good faith effort to utilize its small business subcontractors, the contractor must explain in writing to the Contracting Officer reasons why it is unable to do so.

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# 11. Section 1334 – Payment to subcontractors

- ❖ Prime contractor shall notify the Contracting Officer in writing when:
  - ◆ Subcontractor payments are less than the agreed to price
  - ◆ Timeliness of payments – prime cannot pay within 90 days
- ❖ Contracting Officer is to consider unjustified payment as a factor in rating performance

## 12. Section 1313 – Limitation on the Use of Acquisitions Involving Consolidation

- ❖ The act provides that before agency bundles contract requirements with a total value of more than \$2 million:
  - ◆ Conduct Market Research and
  - ◆ Identify alternative contract approach involving less consolidation
  - ◆ Make written determine if consolidation is necessary
  - ◆ Certify steps will be taken to include small business concerns in the acquisition plan/strategy

# 13. Section 1312 - Bundling Accountability Measures & Oversight

- ❖ Teaming requirements – Solicit MAS proposals (above substantial bundling threshold) from any responsible source, including small business concerns and teams or joint ventures of small business concerns.
- ❖ By September 27, 2011, amend the FAR to establish government-wide policy on contract bundling.
- ❖ Reduction of contract bundling through publication -
  - ◆ agencies required to post a list of rationale of any bundled contracts the agency has solicited or awarded.

# 14. ePCR – 3 Year Pilot Program

- ❖ Within 1 year of enactment, implement a 3-year pilot program for the PCR.
- ❖ This will allow the PCR to cover more contracting activities and procurement reviews.

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# 15. Update Size Standards Cycle

- ❖ Act provides every 18 months, the SBA must conduct a rolling review of at least 1/3 of the existing size standards, and the SBA must conduct a complete review of all size standards at least every 5 years.
- ❖ These reviews allow proper adjustment of industry sectors for more participation in small business set-asides.

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## 16. Establishes an Official HUBZone Subcontracting Goal

- ❖ Amends the calculation of the government-wide procurement goal of 3% participation by HUBZone small businesses to cover subcontracts
- ❖ The previous goal of “3 percent of the total value of all prime contracts” now reads “3 percent of the total value of all prime contracts and subcontracts”).

## 17. Micro-Purchase Guidelines

- ❖ No later than 1 year after enactment, OMB & GSA Administrator to create guidelines for analysis of purchase card expenditures to identify opportunities for achieving and accurately measuring fair participation of small businesses in purchases not exceeding micro-purchase thresholds.
- ❖ This effort will help measure SB Participation in ways to increase small business goals.

# 18. Section 1333 - Agency Accountability

- ❖ Agency goal communications at all levels - Senior Procurement Executives, senior Program Managers, and OSDDBU Directors shall communicate to the subordinates the importance of achieving small business goals.

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# 19. SB Contracting Training

- ❖ FAI in consultation with OFPP, DAU and the SBA shall develop courses for acquisition personnel (1102s, requirements personnel, and management) concerning proper classification of business concerns and small business size and status for purposes of Federal contract vehicles.

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