

Small Business Updates 2023

2023 Honolulu Pacific Industry Forum

Set-Aside for Certification Programs and Socio-Economic Categories

Targeted set-asides and acquisition goals:

**Women-Owned Small Businesses
(5%)**

**Small Disadvantaged Businesses
(including 8(a) certified) (5%)*
*12% for 2023**

HUBZone Businesses (3%)

**Service-Disabled Veteran-Owned
Small Businesses (3%)**



Set-asides are reserved for small business between \$3,500 (Micro-purchase Threshold) to \$250,000 (Simplified Acquisition Threshold)

8(a) Business Development Program

Ultima Servs. Corp. v. Dep't of Ag.

On July 19, 2023, the U. S. District Court for the Eastern District of Tennessee issued a ruling affecting the SBA's 8(a) Business Development program. The district court enjoined the Small Business Administration (SBA) "from using the rebuttable presumption of social disadvantage in administering" the 8(a) BD Program.

The rebuttable presumption assumes, unless there is evidence to the contrary, that members of certain racial and ethnic groups qualify as socially disadvantaged within the meaning of the 8(a) BD Program requirements.

Ultima Decision Results

- The Court's decision required SBA to immediately stop using the presumption of social disadvantage to administer the 8(a) BD Program.
- 8(a) application processing is suspended
- In mid-August SBA began the process of determining social disadvantage for those Participants with a pending 8(a) contract
- Approximately 3,875 8(a)BD program participants must have social disadvantage affirmed by SBA
- Does not impact entity-owned concerns and those concerns who established individual social disadvantage based on a preponderance of evidence

Social Disadvantage Narrative

- **When** – Explain when the discriminatory conduct occurred. Exact dates, if available, are preferred but are not necessary so long as the incident provides a specific time period. This discrimination can be from any period of your life; you do not need to be experiencing current discrimination to qualify.
- **Where** – Explain where the discriminatory conduct occurred. The incident must have occurred in American society.
- **Who** – Explain who committed the discriminatory action. This could include an individual, a group of individuals, or an institution. Individual names, where available, are preferred but not necessary so long as the incident provides a specific figure or organization.
- **What** – Explain the discriminatory conduct.
- **Why** – Explain the reason(s) that the conduct was more likely motivated by bias or discrimination than other non-discriminatory reasons. Without additional facts, a mere assertion that the action was the result of bias or discrimination is not enough to support a claim of social disadvantage.
- **How** - Explain how each instance of discriminatory conduct impacted your entry into or advancement in the business world. Offensive comments or conduct, while reprehensible, will not support a claim of social disadvantage if there is no negative impact associated with the incident.

SBA Interim Final Rule: Inflation Adjustment for Size Standards, ED thresholds

87 FR 69118 (Nov. 17, 2022)

- Adjusts economic disadvantage thresholds and other thresholds
 - Net worth from \$750,000 to \$850,000
 - AGI from \$350,000 to \$400,000
 - Total assets from \$6 mil to \$6.5 mil
 - Dollar limit for combined 8(a) contracts from \$100 mil to \$168,500,000

Bona Fide Place of Business

The bona fide place of business (BFPOB) requirement, is derived from Section 8(a)(11) of the Small Business Act, which requires that “[t]o the maximum extent practicable, [8(a)] construction contracts] shall be awarded within the county or State where the work is to be performed.”

A moratorium of the requirement for a Program Participant to have a physical presence in a specific geographic area with at least one employee located at that site in order to be awarded any construction contract offered to the 8(a) BD program has been extended through September 30, 2024.

SDVOSB, WSOB, and HUBZone Small Business Programs

Service-Disabled Veteran Owned, Veteran-Owned Certification

- Governmentwide certification program for SDVOSBs through SBA
- Effective Jan. 1, 2023, self-certified SDVOSBs have one year to apply to SBA for certification
 - Existing VA-certified VOSB and SDVOSB stay certified
 - VA certifications are extended by 1 year
- Certification is required for set-aside or sole source SDVO or VOSB contracts
 - To get certified, must be small for a NAICS code on SAM profile
 - Unconditionally owned by veteran—but reasonable right of first refusal OK
 - Control—no outside obligations that prevent veteran from devoting time/attention
- No changes on self-certification for subcontracting or prime credit—potential separate rulemaking upcoming

HUBZone Program

- The HUBZone map changed on July 1, 2023.
- Certified HUBZone firms that are no longer eligible as of July 1, 2023 due to the map change may continue to participate in the HUBZone program through their following annual recertification.

WOSB Certification Program

- Self-certification is no longer allowed for WOSB/EDWOSB set-aside and sole-source contracts. Self-certification remains for prime/sub credit.
- To receive a WOSB/EDWOSB set-aside or sole-source contract, the firm must be certified:
 - by SBA,
 - an authorized Federal or state entity, or
 - an authorized third-party certifier (TPC)
- On October 15, 2021, SBA began issuing decisions on certification applications.



U.S. Small Business
Administration