

FAR Part 19 deals with small business programs. It includes policy positions and size standards, and it establishes rules for small business “set-asides”—which are competitions reserved exclusively for small business participation. FAR Part 19 establishes the rules for prime contractor’s small business subcontracting programs. It discusses 8(a) programs and HUBZone programs and SDVO small business programs and WOSB programs. It is full of important information and, if you are dealing with those topics, you had better read it.

But FAR Part 19 doesn’t tell you everything you need to know.

Smart contractors know that there is other very important information found in the regulations of the Small Business Administration, over at Volume 13 of the Code of Federal Regulations. Over at [13 CFR Part 125](#), you can find many details regarding how small business programs work. Smart contractors know to look there for information that supplements FAR Part 19 stuff. If you are dealing with these topics, you need to read both FAR Part 19 and the SBA rules in 13 CFR to get the real nitty-gritty information.

One might reasonably wonder how conflicts between the FAR and the SBA rules are resolved. Further, one might reasonably wonder how conflicts between the many FAR Agency Supplements and the SBA rules are resolved. Good questions. Such conflicts are the stuff of many bid protests and other disputes.

As the result of confusion and some protests and some litigation, the GFY 2017 NDAA transferred “the responsibility for issuing regulations relating to ownership and control for the Department of Veterans Affairs verification of Veteran-Owned (VO) and Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC)” to the SBA. Subsequently, the SBA has issued a [proposed rule](#) that would address those issues within 13 CFR Part 125.

The SBA describes the proposed rule-making as creating “one definition of ownership and control for these concerns, which will apply to the Department of Veterans Affairs in its verification and Vets First Contracting Program procurements, and all other government acquisitions which require self-certification.” If you are concerned with small business issues related to contracting with the VA, you might want to check it out—and consider submitting comments, if warranted.

On a related note, the Section 809 Panel discussed concerns with DoD's small business subcontracting programs in Section 6 of its First Report. The Panel wants to "Refocus DoD's small business policies and programs to prioritize mission and advance warfighting capabilities and capacities." To attain that objective, the Panel issued a Recommendation (#21, including 21a, 21b, and 21c) to "Refocus DoD's small business policies and programs to prioritize mission and advance warfighting capabilities and capacities."

The Panel stated—

The Department of Defense's (DoD) small business policies and programs do not align with DoD's strategic priorities, including the Third Offset Strategy and building a more lethal force. DoD is not fully capitalizing on small businesses' innovativeness. Instead, DoD appears to focus its small business policies and programs on acquiring goods and services based on meeting societal goals not related to mission. Complexity and slowness in the acquisition system, an uncoordinated outreach process, a lack of clear points of entry into the defense market, and contract compliance requirements deter and appear to prevent small businesses from working with DoD. Small business programs enabling research, development, and innovation have the greatest potential to positively affect DoD and the small business community. ...

Contracting officers and program managers, not DoD's small business specialists, are held accountable for ensuring small businesses receive contracts, small business requirements are met, and goals are achieved. As a result, small business programs focus almost exclusively on the amount of money and number of contracts awarded to small businesses. ... Multiple experts with whom the Section 809 Panel spoke indicated most DoD small business contracts go toward procuring basic services and commodities, given an almost singular focus on the aggregate dollar value of small business contracts. It is easier and less risky for contracting officers to meet their contracting goals by acquiring basic commodities and services than it is to conduct market research and find new small businesses with which to work; available data confirm this assertion. ...

Meeting small business goals by acquiring basic commodities and services, rather than obtaining innovative products and support from small companies, will ultimately hurt DoD's ability to maintain warfighting dominance. Research shows small businesses can provide advanced capabilities and support to DoD; however, data show DoD is not prioritizing working with small businesses to acquire innovation and technology. ...

To better understand barriers to entry into the defense market for small businesses, the Section 809 Panel met with more than 50 small companies. Of those companies, at least 30 explicitly stated that doing business with DoD is too complex and burdensome. Many of these companies also stressed that the slowness of the acquisition system presents challenges. ...

That's good stuff, right? (Assuming you read it all, which you definitely should.) But the Section 809 Panel wasn't done. They had this to say—

Based on data gathered from Section 809 Panel interviews with small companies, many that pursue business with DoD for the first time either are unaware of or underestimate the potential effects of audits, paperwork, and other processes on their companies' ability to operate. ... Another challenge for small companies is the required audit of the firm's accounting systems and procedures. DCAA performs this function for DoD SBIR participants. According to DCAA, SBIR small businesses potentially are subject to two audits: a preaward audit of the financial system and a postaward audit of the contract. During a roundtable held by the Section 809 Panel, Army contracting officers identified the requirements for DCAA audits and the onerous contracting process as a substantial impediment to SBIR participants. Audit compliance, (see Section 2), is often burdensome and costly, especially for small businesses.

To sum this up, the FAR and SBA rules covering small business participation, small business plans, and socioeconomic reporting are complex and nuanced. The DoD is subject to many of those rules. Those rules, plus other factors identified by the Section 809 Panel, have actually impeded DoD's ability to make the best use of small businesses. In other words, the results have been counter-productive to the rules' objectives. That's not so good.

Perhaps the DoD will use the Section 809 Panel's recommendations as a springboard for reform. We'll have to wait and see whether that's the case.