

Changes to Small Business Programs Create Challenges and Opportunities

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From the FAR Overhaul to agency reorganizations, the landscape for large and small government contractors is undergoing significant change. The recently-concluded government shutdown dominated the discussion last month, and small businesses in particular find it difficult to endure revenue interruptions and the lack of agency direction with staff on furlough. Other changes this year may significantly alter the opportunities for small businesses going forward, as well as their large business partners and competitors. Undoubtedly, there will be winners and losers from these changes, and keeping track will be vital to maintaining pipelines for new opportunities and compliance.

The FAR Part 19 overhaul delivered modest revisions rather than the sweeping reforms that many watchers anticipated.

- **Rule of Two:** Critically, the Rule of Two remains despite being non-statutory (at least outside the Department of Veterans Affairs). Under this rule, if two small businesses can perform the work at a fair price, the contract must be set aside for small business competition. Yet, as noted in the Practitioner Album issued with the FAR Part 19 overhaul, the Rule of Two does not apply to orders under multiple award contracts (MACs), which are within the contracting officer's discretion to set aside. Further, the revised Part 19 states that the exercise of this discretion is not grounds for a bid protest, but it will be up to GAO and the Court of Federal Claims to make that call.
- **8(a) Program:** "Once 8(a), Always 8(a)" – the notion that once an agency's requirement has been placed within the 8(a) program, it will never be released – has been pared back.

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Agencies will no longer need SBA approval to remove a requirement from the 8(a) program if the agency opts to set aside the follow-on for HUBZone, SDVOSB, or WOSB small businesses. Separately, the requirements for sole-sourcing 8(a) contracts have been heightened: Even for procurements below the applicable competition thresholds, agencies must first attempt a competitive solicitation through an SBA-approved government-wide acquisition contract (GWAC) before proceeding with an 8(a) sole-source award.

For more on changes to Part 19 and other revisions to the FAR, please check out our [Decoding the FAR Overhaul](#) page, which offers a full analysis of the overhauled FAR.

DBE. The U.S. Department of Transportation (DOT) has issued an interim final rule on the Disadvantaged Business Enterprise (DBE) program. Effective October 3, 2025, DOT eliminated the long-standing presumption of social and economic disadvantage based on race or gender. Under the new guidance, all applicants, regardless of race, ethnicity, or sex, must now make an individualized showing of social disadvantage to obtain or maintain DBE certification.

This presumption of disadvantage has been under review since the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), which DOT cites in its rule, and *Ultima Services Corp. v. U.S. Department of Agriculture*, 683 F. Supp. 3d 745 (E.D. Tenn. 2023), which challenged the similar presumption in the SBA's 8(a) program. In 2024, hearing similar arguments as in *Ultima*, the Eastern District of Kentucky issued a preliminary injunction against the DOT DBE program. It found that the presumption likely violated the U.S. Constitution's guarantee of equal protection but declined to issue a nationwide injunction.

DOT's interim rule removes the presumption, and now DBE status will be determined on a "case-by-case basis." As with the recent changes to the SBA 8(a) program, individuals previously presumed disadvantaged must now submit a detailed personal narrative demonstrating disadvantage. This requirement applies to new applicants and those already DBE-certified. Any business unable to prove disadvantage by a preponderance of the evidence will be denied certification or decertified.

This change has immediate effects at the state and local level, where DOTs nationwide rely on the federal DBE certification for their own DBE programs. Unified Certification Programs (UCPs) across the country are scrambling to interpret the interim rule and adjust their processes. For example, while the interim rule lists factors in evaluating disadvantage, it does not clarify what degree of economic or social harm would be sufficient to meet the standard. States like Wisconsin have already announced that DBE certifying agencies will refrain from setting DBE goals for new contracts or count DBE participation toward pre-existing goals until businesses can undergo recertification. Meanwhile, Indiana, perhaps anticipating this shift, had already appealed to the Trump Administration to be relieved of any obligation to comply with DBE goals based on race, ethnicity, or gender on federally assisted highway construction contracts. And Virginia halted all new DBE certification activity and set short deadlines for currently certified firms to submit their personal narratives or be decertified.

DOT has issued guidance in the form of FAQs, which address issues like reevaluation deadlines, appeal rights, and whether businesses must be reevaluated in every state where they're certified or just their home state. Still, many questions remain unanswered. One near certainty amid this uncertainty: The interim rule is likely to face legal challenges, including under the Administrative Procedure Act. Meanwhile, DBEs should begin preparing documentation, including the required personal narratives, and contractors should monitor further guidance from DOT and certifying agencies.

SBIR/STTR. The Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) programs sunsetted on September 30, 2025, and this action has cast many small businesses that were relying on Phase 1, Phase 2, or Phase 3 awards in limbo for the time being. Without congressional reauthorization, which did not occur in the recent continuing resolution that ended the shutdown, federal agencies cannot issue new SBIR/STTR awards. The House and Senate have put forth competing proposals to reauthorize the programs, but disagreements over material alterations have left discussions at an impasse. A key fight is over a proposed \$75 million lifetime cap on receiving SBIR/STTR awards. If a compromise bill fails to come to fruition, the most likely path forward is a short-term extension attached to a must-pass, year-end legislative vehicle like the National Defense Authorization Act (NDAA). Until then, contractors awaiting SBIR/STTR solicitations or awards are in a holding pattern.

SBA RIFs and Reorganization. Agency reorganization and personnel shakeups have been a staple of the first year of this Administration, and the U.S. Small Business Administration (SBA) has been struck particularly hard. In fact, between March and September, SBA's workforce shrank by 24%, making it one of the agencies most impacted by the Administration's reorganization efforts.

Amid the churn of staff turnover, SBA is also relocating six of its regional offices from municipalities that do not comply with U.S. Immigration and Customs Enforcement policies. So far, the Los Angeles office is the only location that has been affected in practice. While a permanent location has not been announced, staff have been instructed to temporarily work in nearby offices, like the SBA's district office in Orange County.

Given this reshuffling, small businesses should confirm their points of contact and ensure correspondence is directed to the correct personnel and office locations, and be prepared for longer wait times for any responses.

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In this environment, it is imperative that small business contractors, and their large business partners, stay informed on these evolving issues. Remaining attuned to these developments will allow small business contractors to remain competitive and compliant amid the regulatory turbulence.

Wiley continues to closely track these developments to help guide businesses of all sizes through these changes.

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