

# CLIENT ALERTS

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## DoD, NASA, and GSA Issue Interim Rule Addressing Key Changes to SDVOSB Certification Requirements

### Client Alert

3.18.2024

Late last month, the Federal Acquisition Regulation (FAR) Council issued an interim rule, amending the FAR to implement previously enacted changes to the certification requirements for service-disabled veteran-owned small business (SDVOSB) concerns.

The aforementioned changes relate to a November 2022 final rule, implementing Section 862 of the 2021 National Defense Authorization Act, which section transferred, from the Department of Veterans Affairs ("VA"), to the U.S. Small Business Administration ("SBA"), responsibility for the verification of small business concerns owned and controlled by veterans or service-disabled veterans. The previously published final rule enacted a certification requirement (by December 31, 2023) for SDVOSB's seeking sole-source and set-aside awards with non-VA federal agencies. Impacted business previously self-certified as to their eligibility for award.

The new interim rule was enacted to clarify the certification eligibility process in making awards. Under the interim rule, contracting officers first review the concern's System for Award Management (SAM) registration for designation as an SBA-certified SDVOSB. If the concern is not designated as such, the contracting officer checks SBA's Veteran Small Business Certification Program database to determine if the concern submitted an application for certification to SBA on or before December 31, 2023. If so, the contracting officer may rely on a concern's representation in SAM. As of January 1, 2024, uncertified SDVOSBs, without a pending application for certification, are ineligible for sole-source and set-aside awards under the SDVOSB Program.

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This is important because, as noted in a previous Client Alert, there was to be a one-year grace period, after January 1, 2023, for self-certifying SDVOSBs to apply to SBA for certification. However, as the interim rule makes clear, there are a large number of impacted businesses representing themselves as SDVOSBs in SAM that have not obtained formal certification:

- According to SAM, there are 32,284 concerns registered as SDVOSBs. Of the 32,284 SDVOSB concerns registered in SAM, 10,635 are already verified SDVOSBs in VA's verification program, which leaves 21,649 SDVOSB concerns that represent their socioeconomic status in SAM. Of the 21,649 that represent their socioeconomic status as an SDVOSB in SAM, 181 are veteran-owned small business concerns that are SDVOSB certified in the VA's certification database. Therefore, there are 21,468 SDVOSBs that represent their status in SAM that are not currently in the VA's verification program and that may submit an application for certification to SBA. However, the number of SDVOSB concerns that will submit applications for certification is unknown as is the number of potential new SDVOSB entrants; therefore, the number of small business entities impacted by this rule may be greater than or less than the 21,468 SDVOSBs that currently represent their status in SAM.

Thus, the interim rule makes clear which of these tens of thousands of concerns are eligible for SDVOSB awards. In this regard, the interim rule also requires concerns to update their status in SAM no later than two days following a final determination that the concern fails to meet the requirements of the status claimed. Indeed, one of the stated goals of the interim rule is to avoid a large number of sole-source and set-aside award protests because of eligibility confusion created by not-yet-certified SDVOSBs. Relatedly, the interim rule updates the protest procedures for such business concerns, directing protests to heard by SBA's Office of Hearings and Appeals.

We will continue to monitor this significant change impacting veteran-owned small business contractors. If you have any questions about the interim rule or small business contracting issues, please contact a member of the Butzel Aerospace and Defense Industry Team.

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