

# FEDERAL CONTRACTS PERSPECTIVE

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## TRUMP'S EXECUTIVE ORDER FLESHES OUT REGULATORY FREEZE PROCEDURES

In compliance with the memorandum issued by Reince Priebus, assistant to the president and chief of staff, on President Trump's Inauguration Day, agencies have been withholding regulations "until a department or agency head appointed or designated by the president after noon on January 20, 2017, reviews and approves the regulation". In addition, President Trump has issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, to provide instructions on complying with Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which requires the elimination of two regulations for every one new one. (For more on the Priebus memorandum and Executive Order 13771, see the February 2017 *Federal Contracts Perspective* article "President Trump Orders Regulatory Freeze.")

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Executive Order 13777 requires each agency to appoint a "Regulatory Reform Officer" (RRO). "Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law." In addition, the executive order requires each agency to establish a "Regulatory Reform Task Force" that will consist of the RRO (who will chair the task force), the agency's regulatory policy officer, a representative from the agency's central policy office, and at least three additional senior agency officials as determined by the agency head. The regulatory reform task force "shall evaluate existing regulations (as defined in Section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law."

At a minimum, each Regulatory Reform Task Force is to attempt to identify regulations that:

- “(i) eliminate jobs, or inhibit job creation;
- “(ii) are outdated, unnecessary, or ineffective;
- “(iii) impose costs that exceed benefits;
- “(iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- “(v) are inconsistent with the requirements of...those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

“(vi) derive from or implement Executive Orders or other presidential directives that have been subsequently rescinded or substantially modified.”

Within 90 days, and on a schedule determined by the agency head thereafter, each Regulatory Reform Task Force is to provide a report to the agency head detailing the agency’s progress toward the following goals: “(i) improving implementation of regulatory reform initiatives and policies...; and (ii) identifying regulations for repeal, replacement, or modification.”

## GSA LOOKING FOR ALTERNATES TO DUNS® NUMBERS

The General Services Administration (GSA) has released a Request for Information (RFI) “for government-wide entity identification and validation services...The government has a need for assignment and maintenance of a unique numbering system to consistently identify specific commercial, nonprofit, or government entities. The overarching government requirement is for business identification and validation services associated with that unique number.”

Currently, these services are provided by Dun and Bradstreet (D&B) through its Data Universal Numbering System (DUNS®) numbers. For decades, the government has required its contractors to obtain and report a unique DUNS® number as a condition for receiving a contract award. This proprietary number permits the government to: (1) uniquely identify a contractor entity; and (2) roll-up government procurements to the ultimate parent organization to show the corporate family receiving U.S. obligations. However, the Digital Accountability and Transparency Act of 2014 (DATA Act) (Public Law 113-101) specifically states that the data shall, to the extent reasonable and practicable, “incorporate a widely accepted, *nonproprietary*, searchable, platform-independent computer-readable format” and “include unique identifiers for federal awards and entities receiving federal awards that can be consistently applied governmentwide” (*emphasis added*).

D&B’s contract with GSA expires in 2018, so GSA is exploring alternatives to DUNS® numbers. In addition, the Federal Acquisition Regulation (FAR) has been amended by a final rule in Federal Acquisition Circular (FAC) 2005-91 to replace “Data Universal Numbering System (DUNS) number” and “Data Universal Numbering System +4 (DUNS+4) number” with “unique entity identifier” (“a number or other identifier used to identify a specific commercial, non-profit, or government entity”) and “Electronic Funds Transfer (EFT) indicator” (“a four-character suffix to the unique entity identifier”) (for more on FAC 2005-91, see the October 2016 *Federal Contracts Perspective* article “FAC 2005-91 Finalizes Rule on Women-Owned Small Business Sole Source Contracts”).

The RFI is posted on FedBizOpps at <https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=46419b596deed9dd757b2d6729c3a765>, and it will be available for review and comment until March 13, 2017.

Vivina McVay, Editor-in Chief

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## VA REVISES VETERAN-OWNED SMALL BUSINESS VERIFICATION

The Department of Veterans Affairs (VA) has issued an interim final rule that requires re-verification of the ownership and control of veteran-owned small businesses (VOSB) and service-disabled veteran-owned small businesses (SDVOSB) every three years rather than biennially.

Title 38 of the Code of Federal Regulations (CFR), Part 74, Veterans Small Business Regulations, implements the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Public Law 109-461), which enables VA to operate a procurement program in which VA contracting officers are required to conduct acquisition actions limited to VOSBs or SDVOSBs (which have priority over VOSBs) when two or more such businesses appear as “verified” in the Vendor Information Pages (VIP) database at <https://www.va.gov/osdbu> (formerly “VetBiz.gov”). In addition, VA’s prime contractors are required to use verified SDVOSBs and VOSBs to obtain credit in their subcontract plan achievement reports. (**EDITOR’S NOTE:** This is not the same program as the set-aside program in FAR subpart 19.14, Service-Disabled Veteran-Owned Small Business Procurement Program, which applies governmentwide. This particular program is separate and limited to VA only; see the VA Acquisition Regulation [VAAR] subpart 819.70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Acquisition Program.)

Section 74.15, What length of time may a business participate in VetBiz VIP Verification Program?, originally required the VA’s Center for Veterans Enterprise (CVE) to verify the continued eligibility of each firm in the VIP database (see the June 2008 *Federal Contracts Perspective* article “New Regs Address Veterans' Employment, Ownership”). This verification involves ascertaining the owners’ veteran status or service-disabled veteran status and reviewing the following: financial statements; federal personal and business tax returns; personal history statements; articles of incorporation/organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; state-issued certificates of good standing; contract, lease and loan agreements; payroll records; bank account signature cards; and licenses. In 2012, the one-year period was changed to two years because VA determined that an annual verification was not necessary to maintain the integrity of the program. Now, VA is confident that the integrity of the verification program will not be compromised by establishing a three-year eligibility period – in 2016, only 10 out of 1,019 reverification applications were denied. Therefore, VA is revising paragraph (a) of Section 74.15 to change the reverification period from “2 years” to “3 years.”

Comments on this interim final rule must be submitted no later than April 24, 2017, identified as “RIN 2900-AP93 – VA Veteran-Owned Small Business Verification Guidelines,” by any of the following methods: (1) the Federal eRulemaking Portal: <http://www.regulations.gov>; (2) fax: (202) 273-9026; or (3) mail or hand-delivery: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1068, Washington, DC 20420.

## DOD UPDATES FPI's PURCHASE LIST

Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) requires the Department of Defense (DOD) to publish a list of product categories for which the Federal Prison Industries' (FPI) share of the DOD market is greater than 5%. Products on the list must be procured using competitive (or fair opportunity) procedures (see Defense FAR Supplement (DFARS) 208.602-70, Acquisition of Items for Which FPI Has a Significant Market Share). In conducting such a competition, DOD contracting officers must consider a timely offer from FPI for any of the products on the list. In addition, FPI must be included in the process even if the procurement otherwise would have been set aside in accordance with FAR part 19, Small Business Programs. When the FPI item is determined to provide the best value as a result of FPI's response to a competitive solicitation, contracting officers are to follow the ordering procedures at <http://www.unicor.gov>.

The Office of Defense Procurement and Acquisition Policy has forwarded a memorandum to each service's deputy assistant secretary for procurement that contains a list of such product categories, by Federal Supply Classification (FSC) codes. The following is the list of products:

FSC	Description
N071	Installation of Equipment – Furniture
7125	Cabinets, Lockers, Bins, and Shelving
7210	Household Furnishings
7230	Draperies, Awnings, and Shades
8315	Notions and Apparel Findings
8405	Outerwear, Men's
8415	Clothing, Special Purpose
8470	Armor, Personal
9905	Signs, Advertising Displays, and Identification Plates

FSC N071, FSC 7125, and FSC 8315 have been added to the list. FSC H946, Other QC/Test/Inspect – Water Purification and Sewage Treatment Equipment; L071, Technical Representative – Furniture; FSC 3990, Miscellaneous Materials Handling Equipment; and FSC 8410, Outerwear, Women's are removed from the list.

For more on the changes made last year to the list, see the April 2016 *Federal Contracts Perspective* article "DOD Awakens with Flurry of DFARS Changes."

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